

# Determination of Merger Notification

## M/23/011 - DAA plc / Certain Assets of Mr Gerard Gannon

21 March 2024



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

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## 1. INTRODUCTION

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### Introduction

1.1 On 23 March 2023, in accordance with section 18(3) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a merger notification form (the “Merger Notification Form”) concerning a proposed acquisition whereby daa plc (“DAA”) would acquire the freehold interest in, and therefore sole control of, the site at Swords Road/Old Airport Road, County Dublin being the entire of the lands comprised in Folios DN9035 and DN172061F of the Register of Freeholders, County Dublin (the “Target Site”) from Mr Gerard Gannon (the “Vendor”) (the “Proposed Transaction”). DAA and the Vendor are the parties to the Proposed Transaction (the “Parties”).

### The Proposed Transaction

1.2 The Proposed Transaction is to be implemented by way of a contract for the sale of the freehold interest in the Target Site dated 21 December 2022 between DAA and the Vendor (the “Property Contract”). Under the terms of the Property Contract, DAA will acquire the freehold interest in, and therefore sole control of, the Target Site from the Vendor.

### The Undertakings Involved

#### The Acquirer – DAA

1.3 DAA is a State-owned public limited company that is headquartered at Dublin Airport. DAA’s principal activities involve the operation and management of Dublin Airport and Cork Airport.

1.4 DAA owns and operates three public short-term car parks and four public long-term car parks at Dublin Airport.<sup>1</sup> In total, DAA provides 22,951 public car parking spaces at Dublin Airport. Of these 22,951 spaces, 3,932 are located in short-term car parks, and 19,019 are located in long-term car parks.

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<sup>1</sup> The Merger Notification Form states that DAA owns and operates 3,932 short-term car park spaces at Dublin Airport. The DAA Website provides the following breakdown of the short-term car park spaces: Terminal 1A (approximately 450 spaces); Terminal 1C (approximately 1,500 spaces); and Terminal 2 Short Term (approximately 1,800 spaces). This breakdown equates to a total of 3,750. For the purposes of this Determination, the Commission will use the 3,932 total as provided by DAA. DAA operates the following long-term car parks at Dublin Airport: Express Red (8,000 spaces); Holiday Blue (8,000 spaces); Express Green (2,749 spaces); and Terminal 2 Surface (270 spaces).

- 1.5 For the financial year ending 31 December 2021, DAA's total worldwide turnover was approximately €324,090,000 of which approximately €214,022,000 was generated within the State.<sup>2</sup>

### The Vendor

- 1.6 The Vendor is an Irish businessman, landlord and property developer active in the sale and development of residential and commercial property in the State. The Vendor is the owner of the freehold interest in the Target Site. The Vendor's primary business is a property development company, Gannon Homes Limited, with its registered address at 52 Northumberland Road, Dublin 4.<sup>3</sup>

### The Target Site

- 1.7 The Target Site consists of a 41.76 acre site located on the R132 Swords Road, Santry, Dublin 9, approximately 1 kilometre south of Dublin Airport. The Target Site has permanent planning permission for use as a long-term car park with 6,122 long-term car parking spaces.<sup>4</sup> Since December 2003, the Vendor leased the Target Site for use as a car park, most recently to Parkfly Limited ("Parkfly"),<sup>5</sup> which operated the Target Site as a car park under the trading name 'QuickPark' until September 2020.<sup>6</sup>
- 1.8 In the sales brochure for the Target Site available on the Colliers<sup>7</sup> website (the "Sales Brochure"),<sup>8</sup> the Target Site is described as follows:

*"There is a single access point for the controlled barrier access and pay station infrastructure to the car park, with signalised junction to the Swords Road.*

*Full planning permission has been granted (ABP Case Ref. PA06F.302651) for the construction of a new entrance building comprising office space for staff and a total of 6,122 long-stay car parking spaces. The car park is laid out to provide internal tarmac*

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<sup>2</sup> Merger Notification Form, Annex 3, page 95.

<sup>3</sup> The Parties stated in the Merger Notification Form that Gannon Homes Limited, CRO number 110602, is not involved in the Proposed Transaction.

<sup>4</sup> An Bord Pleanála (2019) Case reference PA06F.302651, "Permanent continuation of use of the existing long-term car park known as Quickpark, including construction of new entrance building with associated revised entrance layout resulting in 6,122 long-term car parking space, and all associated ancillary infrastructure and works". Available at: <https://www.pleanala.ie/en-ie/case/302651>.

<sup>5</sup> Parkfly Limited, CRO Number 455475.

<sup>6</sup> QUICKPARK, CRO number 243988 ("QuickPark").

<sup>7</sup> JS (City) Limited, CRO number 20138, PSRA Licence No. 001223 ("Colliers").

<sup>8</sup> The Sales Brochure was provided as Annex 7 of the Merger Notification Form. It is publicly available online at: <https://s3-eu-west-1.amazonaws.com/mediamaster-s3eu/0/8/08f3a5ee776819c5ee56a7e29e15c1a4.pdf>.

*circulation roads around the car park, while the parking spaces have been finished with a hardcore and tarmac surface. Works have recently been completed to regrade the parking areas and upgrade the internal access roads. Three-phase power is in place with street lighting, covered bus stops provided around the car park and security office provided on-site.”<sup>9</sup>*

1.9 For the financial year ending 31 December 2022, the turnover of the Target Site was nil (as no economic activity has been conducted at the Target Site since its closure in September 2020).<sup>10</sup> In its last full year of trading,<sup>11</sup> the audited turnover from the car parking business on the Target Site was ██████████.<sup>12</sup>

1.10 The Target Site is illustrated in Figure 1 below.

Figure 1: The Target Site and the environs of Dublin Airport



Source: Annex 7 of the Merger Notification Form

<sup>9</sup> On page 9 of the Sales Brochure, it is stated that the new entrance building, for which planning permission has been granted, is “intended for use as an office for the day-to-day operations of the car park such as administration in addition to bus drivers, car park attendants etc.”

<sup>10</sup> Merger Notification Form, page 6, paragraph 5.

<sup>11</sup> 4 October 2018 to 3 October 2019.

<sup>12</sup> Merger Notification Form, Annex 8, page 3, bullet point 10.



## Rationale for the Proposed Transaction

1.11 The Parties stated the following in the Merger Notification Form, in relation to the rationale for the Proposed Transaction:

*“The rationale for the Proposed Transaction is for [DAA] to ensure that there is sufficient car parking capacity, on a sustainable, reasonable and guaranteed basis, to serve passengers using Dublin Airport in accordance with [DAA’s] statutory and commercial duties to smoothen the passenger journey as much as possible.”<sup>13</sup>*

*“The rationale for the Proposed Transaction for [DAA] is to increase the supply and availability of car parking spaces to best serve its customers / passengers and facilitate their journeys through Dublin Airport. The acquisition of the Target Site would be to support and ease the pressure on the existing car parks and other modes of transport to the airport facilitated by [DAA] such as private car passenger drop offs / collection, taxi services, public buses and private coaches, and car rental services.”<sup>14</sup>*

*“For [DAA], an additional rationale for the Proposed Transaction is also to bring the proportion of car parking spaces available at Dublin Airport closer to being in line with other UK and European airports. The availability of car parking at Dublin Airport is significantly disproportionately small as against comparable airports, such as Manchester airport and Glasgow airport.”<sup>15</sup>*

1.12 In response to a Requirement for Further Information (“RFI”) served by the Commission on DAA on 4 May 2023 pursuant to section 20(2) of the Act (the “DAA Phase 1 RFI”), DAA reiterated the rationale for the Proposed Transaction set out above. It also stated:

*“[DAA] is keen to prevent, and now avoid, an under-supply of car parking spaces and disruption for its passengers, especially at peak times, both in the immediate term for summer 2023 and also for the longer term. In particular, [DAA] is seeking to avoid disruptions, complaints from the public and the negative publicity that [DAA] attracted in the summer season of 2022.”<sup>16</sup>*

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<sup>13</sup> Merger Notification Form, page 9, paragraph 13.

<sup>14</sup> Merger Notification Form, page 32, paragraph 72.

<sup>15</sup> Merger Notification Form, pages 32 and 40, paragraphs 76 and 92.

<sup>16</sup> DAA Phase 1 RFI Response, page 1, question 1.

- 1.13 In response to a witness summons (the “Phase 1 Summons”) and a notice to provide information (the “Phase 1 Notice”) served by the Commission on the Vendor pursuant to section 18(1) of the Competition and Consumer Protection Act 2014, as amended, the Vendor provided the following rationale as to why the Vendor sought to sell the Target Site:<sup>17</sup>

*“The Target Site is an asset owned by [the Vendor] and secured by mortgage to NAMA against his debt obligations as acquired by NAMA from [REDACTED]*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Preliminary Investigation (“Phase 1”)

### Contact with the undertakings involved

- 1.14 On 4 May 2023, the Commission served the DAA Phase 1 RFI pursuant to section 20(2) of the Act. The service of the DAA Phase 1 RFI adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.
- 1.15 On 30 May 2023, the Commission served the Phase 1 Summons and the Phase 1 Notice on the Vendor.
- 1.16 DAA provided a full response to the DAA Phase 1 RFI on 29 June 2023 (the “DAA Phase 1 RFI Response”).
- 1.17 The Vendor complied with the Phase 1 Summons and the Phase 1 Notice on 1 June 2023.<sup>18</sup>

<sup>17</sup> Vendor Phase 1 RFI Response, document entitled ‘Signed Response Document.pdf’ page 10.

<sup>18</sup> For ease of reference in this Determination, the Phase 1 Summons and the Phase 1 Notice are together referred to as the “Vendor Phase 1 RFI” and the Vendor’s response to each of the Phase 1 Summons and the Phase 1 Notice are together referred to as the “Vendor Phase 1 RFI Response”.

1.18 Upon receipt of the DAA Phase 1 RFI Response, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 29 June 2023.<sup>19</sup>

1.19 During the Phase 1 investigation, the Commission requested and received further information and clarifications from the Parties. On 20 June 2023, the Commission’s case team made a site visit to Dublin Airport.

### Third party submissions

1.20 14 third-party submissions were received during the Commission’s Phase 1 investigation. Of these 14 third-party submissions, ten were made by individual members of the public,<sup>20</sup> two were made by stakeholders of the car parking industry,<sup>21</sup> and two were made by entities that were involved in the bidding process for the Target Site.<sup>22</sup> These submissions have been fully considered by the Commission insofar as they related to the potential effects of the Proposed Transaction on competition in markets for goods and services in the State.

### Market enquiries

1.21 The Commission also conducted market enquiries during the Phase 1 investigation and engaged with third parties in relation to its assessment of the competitive effects of the Proposed Transaction. This engagement included carrying out calls with third parties (the “Third Party Calls”). Among the third parties contacted by the Commission were those third parties that made submissions, and several other industry stakeholders including:

- State agencies;<sup>23</sup>
- The relevant local authority;<sup>24</sup>
- Hotels in the vicinity of Dublin Airport;<sup>25</sup>

<sup>19</sup> The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

<sup>20</sup> [REDACTED] (“Complainant 1”), [REDACTED] (“Complainant 2”), [REDACTED] (“Complainant 3”), [REDACTED] (“Complainant 4”), [REDACTED] (“Complainant 5”), [REDACTED] (“Complainant 6”), [REDACTED] (“Complainant 7”), [REDACTED] (“Complainant 8”), [REDACTED] (“Complainant 9”) and [REDACTED] (“Complainant 10”).

<sup>21</sup> Euro Car Parks (Ireland) Limited (“Euro Car Parks”), CRO number 297908-, and Third-Party Submission 1.

<sup>22</sup> [REDACTED] CRO number [REDACTED] and [REDACTED] CRO number [REDACTED].

<sup>23</sup> The Commission for Aviation Regulation (the “CAR”). Note that the roles of CAR and the Irish Aviation Authority (the “IAA”) were merged in 2023. The Determination will henceforth refer to the IAA throughout the document.

<sup>24</sup> Fingal County Council (“FCC”).

<sup>25</sup> Carlton Hotel Dublin Airport Limited (the “Carlton Hotel”), CRO number 554304; Clayton Hotel Dublin Airport (the “Clayton Hotel”), CRO number 545349; Crowne Plaza Dublin Airport (the “Crown Plaza Hotel”), CRO number 233248; and Radisson Blu Hotel Dublin Airport (the “Radisson Blu Hotel”), CRO number 400910.

- Entities involved in the bidding process for the Target Site;<sup>26</sup> and,
- QuickPark.

1.22 During the Phase 1 investigation, the Commission contacted 2 State agencies and FCC in relation to the Proposed Transaction and received responses from all three. The Commission contacted 12 hotels in the vicinity of Dublin Airport and received responses from 4. The Commission contacted 5 entities that were involved in the bidding process for the Target Site and received responses from 4. The Commission also contacted QuickPark in relation to the Proposed Transaction and received a response. The Commission contacted 16 members of the public who had contacted the Commission in relation to the Proposed Transaction and received responses from 5 of them.<sup>27</sup> The Commission contacted 2 stakeholders of the car parking industry and received responses from both.

1.23 Having considered all the available information in its possession at the time, the Commission was unable to form the view, at the conclusion of its Phase 1 investigation, that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.

1.24 On 9 August 2023, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

## Full Investigation (“Phase 2”)

### Third party submissions

1.25 During the Phase 2 investigation, the Commission received a submission from a third party, Compecon Limited,<sup>28</sup> in relation to the Proposed Transaction (the “Compecon Submission”) and received further third party submissions from Euro Car Parks, [REDACTED] and [REDACTED]. These submissions were fully considered by the Commission insofar as they related to potential competition concerns arising from the Proposed Transaction.

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<sup>26</sup> [REDACTED] CRO number [REDACTED].

<sup>27</sup> Of the 16 members of the public noted here, six sent correspondence to the Commission prior to the notification of the Proposed Transaction. The Commission contacted these individuals to enquire if they would like their correspondence to be considered as a third-party submission following the notification of the Proposed Transaction. The Commission did not receive a response from these six individuals and therefore this correspondence was not considered as part of the Commission’s review of the Proposed Transaction. For completeness, the Commission notes that this correspondence expressed similar views to the other third-party submissions from members of the public discussed in this Determination.

<sup>28</sup> Compecon Limited (“Compecon”), CRO number 343962.

## Market enquiries

1.26 During the Phase 2 investigation, the Commission continued the process initiated during the Phase 1 investigation of seeking the views of and engaging with relevant third parties in relation to the potential competitive effects of the Proposed Transaction.

1.27 Such third parties included:

- State Agencies;<sup>29</sup>
- Hotels in the vicinity of Dublin Airport;<sup>30</sup>
- Members of the public who had engaged in the process;<sup>31</sup>
- QuickPark;
- Stakeholders of the car parking industry; and,<sup>32</sup>
- Entities involved in the bidding process for the Target Site (or business).<sup>33</sup>

## Contact with the undertakings involved

1.28 During the Phase 2 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from the Parties.

1.29 On 1 September 2023, the Commission served an RFI on DAA in accordance with section 20(2) of the Act (the “DAA Phase 2 RFI”). On 18 September 2023, the Commission served an RFI on the Vendor in accordance with section 20(2) of the Act (the “Vendor Phase 2 RFI”).<sup>34</sup> In accordance with section 22(4A) of the Act, the issuance of the Phase 2 RFIs had the effect of adjusting the deadline by which the Commission was required to issue its assessment of the Proposed Transaction in Phase 2.

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<sup>29</sup> The National Asset Management Agency (“NAMA”), FCC and IAA.

<sup>30</sup> The Clayton Hotel and the Crowne Plaza Hotel.

<sup>31</sup> Complainant 1, Complainant 2, Complainant 3, Complainant 4, Complainant 5, Complainant 6, Complainant 7, Complainant 8, Complainant 9, and Complainant 10.

<sup>32</sup> Euro Car Parks; Third Party Submission 1; Dublin Valet Airport Parking Limited (“Dublin Park and Fly”), CRO number 745658; and Expresspark Limited.

<sup>33</sup> [REDACTED] CRO number [REDACTED].

<sup>34</sup> Together, the DAA Phase 2 RFI and the Vendor Phase 2 RFI are referred to in this Determination as the “Phase 2 RFIs”.

- 1.30 DAA provided a full response to the DAA Phase 2 RFI on 13 October 2023 (the “DAA Phase 2 RFI Response”).
- 1.31 The Vendor provided a partial response to the Vendor Phase 2 RFI on 10 November 2023, with a full response provided on 22 November 2023 (the “Vendor Phase 2 RFI Response”).<sup>35</sup>
- 1.32 DAA submitted a report on 7 December 2023 titled “*Proposed Acquisition of ‘Quick Park Car Park’: An Economics of Competition Policy Report*” (the “DAA Economic Report”).<sup>36</sup> The Vendor submitted a report on 8 December 2023 titled “*Economic Regulation, Car Parking Charges & Substantial Lessening of Competition*” (the “Vendor Economic Report”).<sup>37</sup>
- 1.33 On 14 December 2023, DAA submitted a letter dated 13 December (the “A&L Goodbody 13 December Letter”)<sup>38</sup> and a further paper titled “*daa’s Proposed Acquisition of ‘Quick Park Car Park’: daa’s motivations/incentives*” (the “DAA Economic Report Update”).<sup>39</sup> The Vendor also submitted an updated economic report on 13 December 2023, titled “*A Response to the Competition and Consumer Protection Commission Comments on ‘Economic Regulation, Car Parking Charges & Substantial Lessening of Competition’*” (the “Vendor Economic Report Update”).<sup>40</sup>
- 1.34 The Commission issued its preliminary assessment of the Proposed Transaction (the “Assessment”) to the Parties on 18 December 2023 in accordance with paragraph 3.13 of the Commission’s Mergers and Acquisitions Procedures.<sup>41</sup> In accordance with paragraph 3.3 of the Commission’s Access to the File Procedures,<sup>42</sup> on 18 December 2023 the Commission also

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<sup>35</sup> Together, the DAA Phase 2 RFI Response and the Vendor Phase 2 RFI Response are referred to in this Determination as the “Phase 2 RFI Responses”.

<sup>36</sup> Submission on behalf of DAA during the Commission’s Phase 2 investigation, [REDACTED] (2023) *daa’s Proposed Acquisition of ‘Quick Park Car Park’: An Economics of Competition Policy Report*, dated 7 December 2023, document entitled ‘daa Economics of Competition Policy Report Thursday Afternoon December 7 2023.pdf’.

<sup>37</sup> Submission on behalf of the Vendor during the Commission’s Phase 2 investigation, [REDACTED] (2023) *Economic Regulation, Car Parking Charges & Substantial Lessening of Competition*, dated 7 December 2023, document entitled [REDACTED] Final Report - 08.12.23 (00768688xE641E).pdf’.

<sup>38</sup> Submission by A&L Goodbody LLP on behalf of DAA during the Commission’s Phase 2 investigation, dated 13 December 2023, document entitled ‘Letter to CCPC dated 13 December 2023.pdf’, received 14 December 2023.

<sup>39</sup> Submission on behalf of DAA during the Commission’s Phase 2 investigation, [REDACTED] (2023) *daa’s Proposed Acquisition of ‘Quick Park Car Park’: daa’s motivations/incentives*, dated 13 December 2023, document entitled ‘FOT Clarification Wednesday 13-12-2023.docx’.

<sup>40</sup> Submission on behalf of the Vendor during the Commission’s Phase 2 investigation, [REDACTED] (2023) *A Response to the Competition and Consumer Protection Commission Comments on ‘Economic Regulation, Car Parking Charges & Substantial Lessening of Competition’*, date 13 December 2023, document entitled ‘2023.12.13.PKG Unredacted Paper on Response to CCPC @ 12 Dec Mtg.pdf’.

<sup>41</sup> Competition and Consumer Protection Commission (2023) *Mergers and Acquisitions Procedures*, dated 1 August 2023 (the “Mergers and Acquisitions Procedures”), paragraph 3.13. Available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Mergers-and-Acquisitions-Procedures-2023.pdf>.

<sup>42</sup> Competition and Consumer Protection Commission (2023) *Access to the File Procedures*, dated 1 August 2023 (the “Access to File Procedures”). Available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Access-to-the-File-Procedures.pdf>.

provided the Parties with a schedule of all of the Parties' documents and all of the third-party documents included in the file on 18 December 2023.

- 1.35 According to the Access to File Procedures, parties to whom an assessment has been addressed are to be given access to documents on the Commission's file as soon as is practicable upon request, and in the case of a merger investigation within 5 working days of receipt of a request for access to documents on the File.<sup>43</sup>
- 1.36 The Vendor requested and was granted access to all non-confidential third-party documents on 19 December 2023. The Vendor did not request access to DAA's documents.
- 1.37 DAA requested access to all third-party documents on 19 December 2023. Access to all non-confidential third-party documents was granted to DAA on 20 December 2023. On 22 December 2023, DAA requested and was granted access to all of the Vendor's documents.
- 1.38 According to paragraph 3.19 of the Mergers and Acquisitions Procedures, within five working days of the furnishing of the Assessment, any undertaking involved in the merger who wishes to make oral submissions shall notify the Commission in writing that it intends to do so, and the Commission will fix a date to hear the submissions. DAA requested an oral submission on 22 December 2023.
- 1.39 Within 15 working days of the delivery of an assessment, the undertakings involved in the merger may respond in writing to the assessment.<sup>44</sup> Following a request by the Parties, the Commission extended the deadline for responses to the Assessment to 15 January 2024. Following a further request by the Parties, the Commission extended the deadline for responses by an additional two working days, to 17 January 2024.
- 1.40 On 17 January 2024, DAA submitted a written response to the Assessment<sup>45</sup> (the "DAA Written Response"), as well as an economic report entitled "*Assessment M/23/011: Three Significant Trade-Offs*"<sup>46</sup> (the "DAA Economic Response").

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<sup>43</sup> Access to File Procedures, paragraph 3.4.

<sup>44</sup> Merger and Acquisitions Procedures, paragraph 3.17.

<sup>45</sup> Submission on behalf of DAA in response to the Assessment, A&L Goodbody LLP (2024) *Response by daa plc to the "Assessment" of 18 December 2023 in Case M/23/011 daa plc / Certain Assets of Mr Gerard Gannon*, dated 17 January 2024, document entitled 'Submission to the CCPC 17 January 2024.pdf'.

<sup>46</sup> Submission on behalf of DAA in response to the Assessment, [REDACTED] (2024) *Assessment M/23/011: Three Significant Trade-Offs*, dated 16 January 2024, document entitled 'FOT Written Response to Assessment Three Significant Trade Offs 16-1-24.pdf'.

- 1.41 The Vendor also submitted a written response to the Assessment<sup>47</sup> (the “Vendor Written Response”) on 17 January 2024.
- 1.42 The Parties made oral submissions to Commission Members on 29 January 2024 (the “Oral Submission”).<sup>48</sup> The Vendor submitted a written note to accompany their oral submission (the “Vendor Accompanying Note”).<sup>49</sup>
- 1.43 On 4 February 2024, in response to a query raised at the Oral Submission, the Vendor provided a further submission (the “Vendor Query Note”).<sup>50</sup>
- 1.44 Following the Parties’ various written submissions described above, and the Oral Submission, the Commission undertook additional market enquiries to address several points raised by the Parties and on foot of further third party submissions received by the Commission. The Parties were given access to all additional non-confidential information gathered in this regard.<sup>51</sup>
- 1.45 On 14 February 2024, following receipt of the non-confidential information gathered by the Commission, the Vendor’s economic expert submitted a letter which analysed the contents of one of the Commission’s call notes. On 15 February 2024, the Parties submitted a joint response in respect of purported procedural issues. On 16 February 2024, DAA’s legal representatives sent a follow-up email to the same effect. On 19 February 2024, the Commission sent a letter addressing all three of the Parties’ submissions. In this letter, the Commission explained that the disclosure of new material was in keeping with the Commission’s Access to the File Procedures as it is a necessary step in ensuring that the Parties are provided with all evidence on which the Commission may ultimately rely on in a determination.

## Information Sources Relied Upon

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<sup>47</sup> Submission on behalf of the Vendor in response to the Assessment, Smith Foy & Partners LLP (2024) *WRITTEN RESPONSE by Mr GERARD GANNON to the COMPETITION AND CONSUMER PROTECTION COMMISSION ASSESSMENT in M/23/011 – DAA PLC/CERTAIN ASSETS OF MR GERARD GANNON*, dated 17 January 2024, document entitled ‘2024.01.17 Final Vendor Written Response (00778637xE641E).pdf’.

<sup>48</sup> The Oral Submission included responses to the Assessment from both DAA (the “DAA Oral Response”) and the Vendor (the “Vendor Oral Response”). A transcript of the oral submission was prepared and provided to the Parties on 7 February 2024 (the “Oral Submission Transcript”).

<sup>49</sup> Submission on behalf of the Vendor, ██████████ (2024) *Note Prepared by ██████████ to Accompany the Vendor’s Oral Response to the Competition & Consumer Protection Commission’s Assessment*, dated 25 January 2024, document entitled ‘2024.01.25.Part II Oral Response.pdf’.

<sup>50</sup> Submission on behalf of the Vendor, ██████████ (2024) *A Note Prepared by ██████████ on Behalf of the Vendor in Response to a Query Raised by the Chairperson of the Competition & Consumer Protection Commission at the Oral Submission on 29 January 2024*, dated 4 February 2024, document entitled ‘2024.02.04 Response to Chair CCPC Query’.

<sup>51</sup> This non-confidential information comprised notes of calls that the Commission held with ██████████, CBRE Ireland, Euro Car Parks and ██████████ as well as copies of emails exchanged between the Commission and each of these third parties.



- 1.46 In forming its conclusions on the Proposed Transaction, as set out in this Determination, the Commission considered all the relevant information available to it at the time of making the Determination including information provided by the Parties in response to the Commission’s RFIs and information requests, submissions made by the Parties, information obtained from third parties, and other information available in the public domain.
- 1.47 During the Phase 2 investigation, the Commission also sought expert economic advice and analysis from Dr Christian Koboldt of DotEcon Ltd. Dr Koboldt’s advice is incorporated into the Commission’s analysis of the Proposed Transaction and, although the Commission benefited from his expert advice, the Commission alone is responsible for the views expressed in this Determination.

## Phase 2 Proposals

- 1.48 On 23 February 2024, DAA submitted draft remedies proposals (the “First Draft Proposals”) to the Commission. The submission of these proposals extended the deadline within which the Commission was required to make its determination of the Proposed Transaction in Phase 2. The extension added 15 working days to the Phase 2 period, bringing the review period to a total of 135 working days, in accordance with section 22(4B) of the Act.
- 1.49 On 29 February 2024, the Commission informed DAA that it had considered the First Draft Proposals and was of the view that they fell far short of what would be required to address the serious competition concerns raised by the Proposed Transaction. The Commission stated that, where the Commission has identified serious competition concerns in relation to a notified merger, as in this case, it may approve that merger only if it is satisfied that measures offered by the parties would constitute a comprehensive and effective remedy in respect of those competition concerns. The Commission provided reasons for its view that the First Draft Proposals did not meet this threshold, either in nature or in scope and that the First Draft Proposals would not ameliorate the Commission’s competition concerns in the Relevant Market.
- 1.50 On 14 March 2024, DAA sent a letter to the Commission containing an update to the First Draft Proposals. On 15 March 2024, DAA sent draft legal form proposals along with a resubmission of the letter sent on 14 March 2024 (together the “Revised Draft Proposals”).<sup>52</sup>

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<sup>52</sup> DAA (2024) *Proposals submitted by daa plc to the Competition and Consumer Protection Commission*, dated 15 March 2024, document entitled ‘Formal Remedy Proposals 15 March 2024.pdf’.

## Overview of the Legislative Framework and Relevant Case Law and Guidelines

### Introduction

1.51 The legislative framework within which the Commission conducts its review of mergers and acquisitions notified pursuant to section 18 of the Act is set out below and includes a summary of relevant guidelines published by the Commission and relevant case law. All statutory references in this section are to the Act, unless otherwise stated.

### Legislative Framework

1.52 When a merger or acquisition within the meaning of section 16 is notified to the Commission pursuant to section 18 (a “Notified Transaction”) the Commission is required to assess the effect of the Notified Transaction on competition in the State, pursuant to section 20. The applicable legal test at that stage is set out in section 20(1)(c) which provides that the Commission:

*“shall form a view as to whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State.”*

1.53 Following notification, the Commission has 30 working days after the appropriate date within which to decide whether it can clear a Notified Transaction without having to carry out a full investigation under section 22, known as a “Phase 2 Investigation”.<sup>53</sup> This decision is taken on the basis of the evidence available to it, including the submissions of the parties to the Notified Transaction and third parties.<sup>54</sup> If the Commission has been unable, on the basis of the information before it, to form the view that the result of the Notified Transaction will not be to substantially lessen competition in markets for goods or services in the State, it must carry out a Phase 2 Investigation under section 22.

1.54 Where the Commission has decided to carry out a Phase 2 Investigation, it must make a determination within 120 working days of the appropriate date.<sup>55</sup> Upon completion of a Phase 2 Investigation, the Commission must make a determination that the merger:

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<sup>53</sup> The appropriate date may be reset pursuant to section 19(6)(b); and it may be extended pursuant to section 21(4).

<sup>54</sup> Section 21(2)(b) of the Act and paragraph 3.1 of the Mergers and Acquisitions Procedures.

<sup>55</sup> The term “appropriate date” is defined in section 19 of the Act. Section 22(4A) of the Act suspends the 120 working day timeframe referred to in section 22 where the Commission has issued a requirement to provide information pursuant to section 20(2) of the Act. Section 22(4B) provides that the Commission shall furnish a copy of the written determination to the notifying parties within 135 working days after the appropriate date where the notifying parties submit proposals to the Commission in accordance with section 20(3) of the Act.

- “(a) may be put into effect;
- (b) may not be put into effect; or
- (c) may be put into effect subject to conditions specified by it being complied with, on the ground that the result of the merger or acquisition will or will not, as the case may be, be to substantially lessen competition in markets for goods or services in the State, or, as appropriate, will not be to substantially lessen such competition if conditions so specified are complied with.” (emphasis added)

### The Commission’s Approach to the SLC Test

- 1.55 Under the Act, the Oireachtas has entrusted to the Commission the task of investigating competition issues raised by Notified Transactions. The Act imposes on the Commission a duty to act but has set the terms upon which the Commission must act in such a way as to afford the Commission a wide latitude in its assessment of the competition issues upon which it is required to decide as well as in relation to the remedial decisions it must take.
- 1.56 Each stage in the Commission’s decision-making process (i.e., whether there is a merger or acquisition within the meaning of section 16; whether the merger will or will not result in a substantial lessening of competition (“SLC”) under section 22(3); and whether remedies will ameliorate any effects of the merger on competition in markets for goods or services under section 20) necessarily involves a predictive exercise and involves an important element of judgement. Thus, in carrying out its duties to assess whether there is a merger, to identify any SLC and to assess potential remedies, the Commission has a wide margin of appreciation which is recognised both in the Irish and EU courts.<sup>56</sup>
- 1.57 In this regard, the Commission refers to *Rye Investments Ltd. v The Competition Authority* [2009] IEHC 140 (“*Rye Investments*”). This case concerned the Commission’s predecessor the Competition Authority. In his judgment, Cooke J held:

*“in a case such as the present, where primary findings of fact have not been put in issue, the Court considers that a determination by the Authority that a merger or*

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<sup>56</sup> See, for example, *Rye Investments Ltd. v The Competition Authority* [2009] IEHC 140, paragraph 5.18; and Case T-5/02 *Tetra Laval v Commission* [2002] ECR II-4389 upheld on appeal by the Court of Justice in Case C-12/03P *Commission v Tetra Laval* [2005] ECR I-1047.

*acquisition will result in a substantial lessening of competition ought not to be set aside by this Court unless:-*

*(a) The Authority is shown to have committed a serious error in drawing inferences or conclusions from facts, such that the inferences or conclusions become untenable or unsound by reason of the error having been made; or*

*(b) It is demonstrated that the Authority has failed to take into consideration or adequately to consider, relevant information or data such that an inference or conclusion material to the determination is unsupported by or is rendered inconsistent with the clear force and effect of the available evidence taken as a whole; or*

*(c) A significant appraisal of economic or technical factors material to the functioning of competition in the relevant market is shown to be so inconsistent with the available evidence as to be manifestly unreasonable and unsound; or*

*(d) The Authority's statement of its reasons for reaching conclusions material to the basis of the determination is lacking in cogency or coherence or is contradicted by the evidence which was available to it; or*

*(e) The Authority has made a material error of law either in the construction and application of the Act or by otherwise infringing some applicable principle of constitutional or natural justice.*

...

*"...where the Authority has, without committing significant error, exercised its specialist expertise in making judgments as to the prospective consequences of the economic and commercial factors which govern or influence competition in the relevant market, this Court should not intervene even if it is demonstrated that an opposite conclusion might plausibly have been reached by placing weight on different aspects of the available evidence or data or by attributing different or greater significance to other pertinent factors in the economic assessment."*

...

*"Accordingly, the Court considers that even if it might be said that the Authority is taking the most favourable view of the information at its disposal, the Court does not*

*consider that it has gone beyond the margin of judgment which it is accorded in such matters and has not committed any obvious or significant error of assessment in respect of the material before it.”<sup>57</sup>*

- 1.58 The Commission considers that, in the test set out in section 22(3) quoted above, the relevant standard of proof is the ordinary civil standard, i.e., the balance of probabilities. In other words, in order to decide whether the result of the merger or acquisition will (or will not) be an SLC, the Commission must decide that it is more likely than not that an SLC will occur.<sup>58</sup>
- 1.59 The application of the balance of probabilities test is also recognised in the Commission’s Merger Guidelines.<sup>59</sup> For example, paragraph 1.16 explains that in applying the SLC test, the Commission investigates the likely effect of a merger not only by reference to current competitors, but also by reference to potential competitors. Similarly, paragraph 1.19 provides that the Commission requires sufficient reliable evidence from the merging parties regarding the likely competitive effects of the merger.
- 1.60 Furthermore, it is important to recognise that the concept of a standard of proof provides a framework within which, for example, the Commission conducts its assessment of the effects of a merger. Such an assessment is, however, a matter of judgement and evaluation and an unduly technical or rigid approach to the application of the standard of proof is not helpful or appropriate.
- 1.61 Where the range of ways in which an SLC could be made manifest is wide and, indeed, necessarily unpredictable, the Commission’s assessment must be carried out in the round by looking at all the relevant factual material, including the incentives which those involved might have to act to reduce competition, and then making an overall assessment of the likelihood of the merger resulting in an SLC.
- 1.62 Accordingly, any Commission finding in relation to the presence or absence of an SLC will be based on all available information to the Commission *“considered in the light of all credible theories of consumer harm arising from possible adverse competition effects”*.<sup>60</sup>

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<sup>57</sup> *Rye Investments*, paragraphs 5.20, 5.21 and 8.21.

<sup>58</sup> In this regard, and for the avoidance of doubt, where the Commission refers to the “likely” results of the Proposed Transaction in this Determination, this should be understood as meaning that it is more likely than not that result will occur.

<sup>59</sup> Competition and Consumer Protection Commission (2014) *Guidelines for Merger Analysis*, dated 31 October 2014 (the “Commission’s Merger Guidelines”). Available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines-1.pdf>.

<sup>60</sup> The Commission’s Merger Guidelines, paragraph 1.7.

1.63 As set out in this Determination, the Commission has in mind the relevant civil standard in considering the statutory question of whether, in its view, the result of the merger will be an SLC, and it applies that standard in reaching its conclusion as to the likelihood of possible outcomes. While the Commission may use quantitative measures to assist in analysing whether a merger is likely to result in an SLC, the Commission will assess each merger on its merits. Paragraph 1.8 of the Commission’s Merger Guidelines states as follows:

*“While certain quantitative measures can be used to assist in analysing whether a merger is likely to result in an SLC there are no standard measures of competitive effects that can determine definitively, on their own, whether a given merger is likely to have such an effect. Each proposed merger needs to be assessed on its merits and in its own particular circumstances.”*

1.64 Paragraph 1.9 of the Commission’s Merger Guidelines goes on to make the important point that, in applying the SLC test, the Commission analyses not only the effect on the price of affected products but also other effects that can impact on consumers, such as changes to output (quantity), quality, consumer choice and innovation (e.g., development of new products or enhancements to existing products).

1.65 Chapters 2 to 9 of the Commission’s Merger Guidelines set out the Commission’s approach to the key elements of merger review, such as an analysis of market definition, horizontal merger effects, barriers to entry and expansion, countervailing buyer power, efficiencies and failing firm arguments. The remainder of this Determination will summarise the applicable principles which the Commission considers relevant to its analysis of the Proposed Transaction.

### **Commission’s Views on the Position of the Parties**

1.66 The DAA Written Response and the Vendor Written Response (together the “Written Responses”) set out at length the positions of the Parties in relation to the evidence obtained by the Commission during its review of the Proposed Transaction and alleged procedural issues in the Commission’s review of the Proposed Transaction. These positions, and the Commission’s views on them, are summarised below.

1.67 In the DAA Written Response and Oral Submission, DAA contended that there were “indications of bias / serious pre-judgment on the file”.<sup>61</sup> In particular, DAA alleged that a call

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<sup>61</sup> DAA Written Response, paragraph 160.

between the Commission and the IAA prior to the notification of the Proposed Transaction indicated that the Commission was biased or “*leading the witness*”.<sup>62</sup> The Commission rejects this contention. The Commission’s engagement with the IAA prior to the notification of the Proposed Transaction was provisional and in no way demonstrates that the Commission, as the ultimate decision-maker with regard to the Proposed Transaction, was biased or was seeking to influence any responses provided by the IAA. For the avoidance of doubt, the Commission has undertaken its review of the Proposed Transaction in an open-minded, fair, and balanced manner.

- 1.68 The Written Responses also set out the Parties’ views of procedural concerns regarding the Commission’s level of engagement with the Parties during the merger review process. For example, the Vendor contended that the Commission’s alleged lack of feedback and engagement prejudiced “*the ability of the Parties to adequately respond*”<sup>63</sup> and DAA contended that there was “*a lack of meaningful and timely engagement on the substance of the [Commission’s] concerns*”.<sup>64</sup> The Commission rejects these contentions. Although there is no express statutory obligation on the Commission to provide written or oral feedback prior to the issue of a written assessment, the Commission engaged promptly and constructively with the Parties throughout the merger review process. This included a number of ‘state of play’ meetings, a site visit by the Commission’s case team, and videocalls and in-person meetings to discuss the Parties’ RFI responses and economic submissions. Further, the Assessment set out in full the Commission’s preliminary competition concerns (and the evidence on which those concerns were based), and the Parties exercised their rights to respond to the Assessment in writing and through the Oral Submission.
- 1.69 The Commission considers the issuing of an Assessment to be an important way for parties to exercise their procedural rights and rights of defence in a timely and effective manner. The purpose of the Commission’s Assessment is to set out clearly the Commission’s concerns regarding the effect of a proposed transaction on competition for markets for goods or services in the State. The Assessment set out cogently, comprehensively and in writing the Commission’s preliminary conclusions in respect of the Proposed Transaction and the evidence supporting those preliminary conclusions. As set out in the Commission’s Mergers and Acquisitions Procedures, once the undertakings involved in a merger review receive an

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<sup>62</sup> DAA Written Response, paragraph 164.

<sup>63</sup> Vendor Written Response, page 14.

<sup>64</sup> DAA Written Response, page 47.

Assessment, they have the right to: (i) respond in writing to the Assessment; (ii) request to make oral submissions; and (iii) access the Commission's file. These are key parts of the parties' procedural rights and the Phase 2 Investigation. They enable the parties to question, clarify and challenge both the Commission's preliminary views and the evidential basis for those views.



## 2. INDUSTRY BACKGROUND

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### Introduction

- 2.1 The Proposed Transaction involves the acquisition of the Target Site by DAA. As set out in Section 1, from 2003 to September 2020, the Target Site was used for the provision of car parking at Dublin Airport and is intended to be used by DAA for this purpose following the implementation of the Proposed Transaction.
- 2.2 The purpose of this Section is to provide context for the identification of relevant product markets and for the Commission's assessment of the competitive effects of the Proposed Transaction set out later in this Determination. This section provides background information on:
- (a) Dublin Airport's place in the Irish aviation sector;
  - (b) modes of passenger access to Dublin Airport;
  - (c) car parking at Dublin Airport;
  - (d) ownership of car parks at other airports; and,
  - (e) a description of the economic regulation of Dublin Airport.

### Dublin Airport's place in the Irish aviation sector

- 2.3 There are three State Airports in Ireland - Dublin, Cork and Shannon.<sup>65</sup> These three State Airports are commercial Semi State Companies.<sup>66</sup> DAA operates Cork Airport and Dublin Airport. Prior to 2013, DAA also operated Shannon Airport which is currently run by the Shannon Group.<sup>67</sup>

### Dublin Airport passenger numbers

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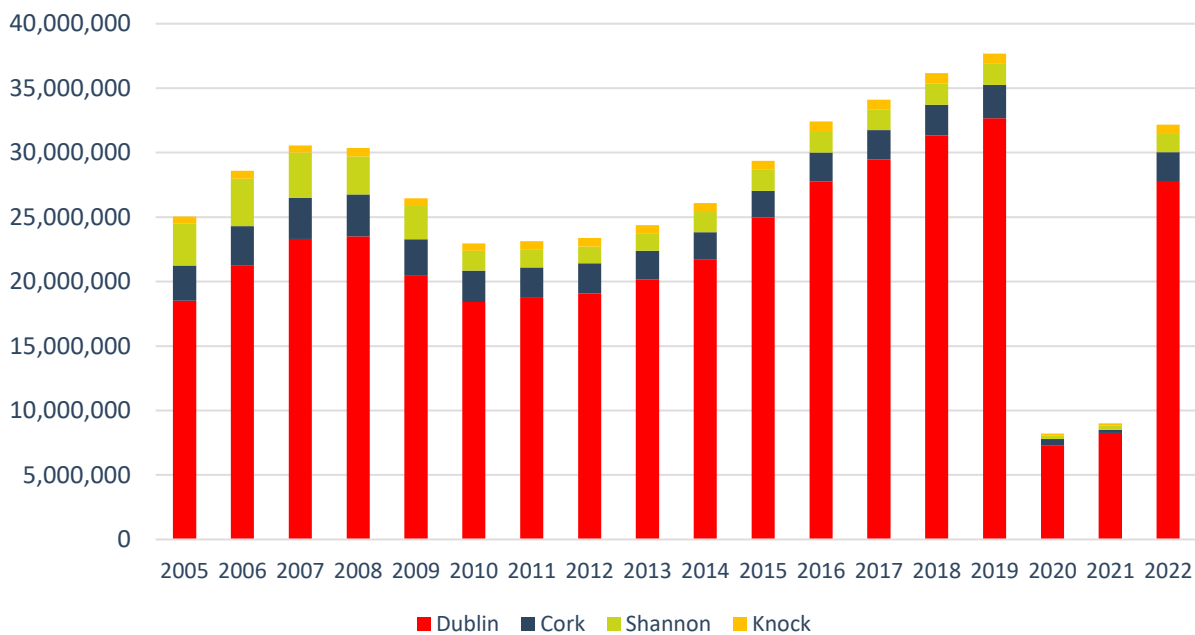
<sup>65</sup> Within the meaning of section 4 of the State Airports Act 2004 as amended.

<sup>66</sup> The Minister for Transport is a shareholder in DAA (which also operates and manages Cork Airport) and Shannon Group plc. The Minister for Transport oversees aspects of corporate governance of DAA and Shannon Group plc, including the appointing of Directors and the setting of objectives and priorities. More information available here: <https://www.gov.ie/en/policy-information/bb3245-airports/>.

<sup>67</sup> [snnairportgroup.ie](https://www.snnairportgroup.ie/about-us/a-history-of-innovation/) (2023) *A history of Innovation*. Available at: <https://www.snnairportgroup.ie/about-us/a-history-of-innovation/>.

2.4 As can be seen in Figure 2 below, the vast majority of passengers using airports in the State pass through Dublin Airport.<sup>68</sup> In 2022, Dublin Airport accounted for 86% of all air passengers travelling through Irish airports<sup>69</sup> making Dublin Airport the busiest airport in the State.<sup>70</sup> In 2023,<sup>71</sup> approximately 31.9 million passengers passed through the terminals at Dublin Airport.<sup>72</sup> In addition, approximately 1 million other passengers connected through Dublin Airport<sup>73</sup> and approximately 530,000 passengers did not use the airport terminals.<sup>74</sup>

Figure 2: Air traffic passengers travelling through Irish airports 2005-2022<sup>75</sup>



Source: Commission, based on CSO data

<sup>68</sup> Beesley, A. (2023) ‘Dublin Airport in talks with airlines on staying below 32m passenger ‘cap’ for flights’, *Irish Times*, 17 October 2023. Available at: <https://www.irishtimes.com/transport/2023/10/17/dublin-airport-in-talks-with-airlines-on-staying-below-planning-cap-for-flights/>.

<sup>69</sup> cso.ie (2023) *Aviation Statistics Quarter 4 and Year 2022*. Available at: <https://www.cso.ie/en/releasesandpublications/ep/p-as/aviationstatisticsquarter4andyear2022/>.

<sup>70</sup> The Commission notes that the passenger numbers provided in the Merger Notification Form are [REDACTED] and for the purpose of this Determination, the Commission will rely on figures published by the Central Statistics Office (the “CSO”).

<sup>71</sup> dublinairport.com (2024) *Almost 32 Million Through Dublin Airport’s Terminals In 2023*. Available at: <https://www.dublinairport.com/latest-news/2024/01/24/almost-32-million-through-dublin-airport-s-terminals-in-2023>.

<sup>72</sup> These were passengers who commenced / ended their journey at Dublin Airport. Source: dublinairport.com (2024) *Almost 32 Million Through Dublin Airport’s Terminals In 2023*. Available at: <https://www.dublinairport.com/latest-news/2024/01/24/almost-32-million-through-dublin-airport-s-terminals-in-2023>.

<sup>73</sup> These were passengers who “who connected through the terminals at Dublin Airport (counted once); one person equals one passenger, as opposed to a double count of such people (as they take two flights (1 arriving and 1 departing) for aviation reporting purposes”. Source: dublinairport.com (2024) *Almost 32 Million Through Dublin Airport’s Terminals In 2023*. Available at: <https://www.dublinairport.com/latest-news/2024/01/24/almost-32-million-through-dublin-airport-s-terminals-in-2023>.

<sup>74</sup> This includes “Transit passengers who do not exit the plane when landing at Dublin Airport, and other categories such as Search and Rescue and Air Ambulance”. Source: dublinairport.com (2024) *Almost 32 Million Through Dublin Airport’s Terminals In 2023*. Available at: <https://www.dublinairport.com/latest-news/2024/01/24/almost-32-million-through-dublin-airport-s-terminals-in-2023>.

<sup>75</sup> At the time of writing, the CSO has not yet published passenger figures for Irish airports for 2023.

- 2.5 Dublin Airport's share of total passengers has increased over the last two decades. In 2005, 74% of all air passengers in Ireland flew through Dublin Airport. By 2019, this share increased to 86%. In contrast, the share of all air passengers travelling through Shannon Airport fell from 13% to 4% while a similar, albeit less pronounced, decline was experienced by Cork Airport over the same period (11% to 7%).<sup>76</sup>
- 2.6 Dublin Airport is also a large airport in a European context. In 2019 Dublin Airport was the tenth busiest airport in the EU in terms of overall passenger numbers.<sup>77</sup>

## Modes of passenger access to Dublin Airport

### Accessing Dublin Airport

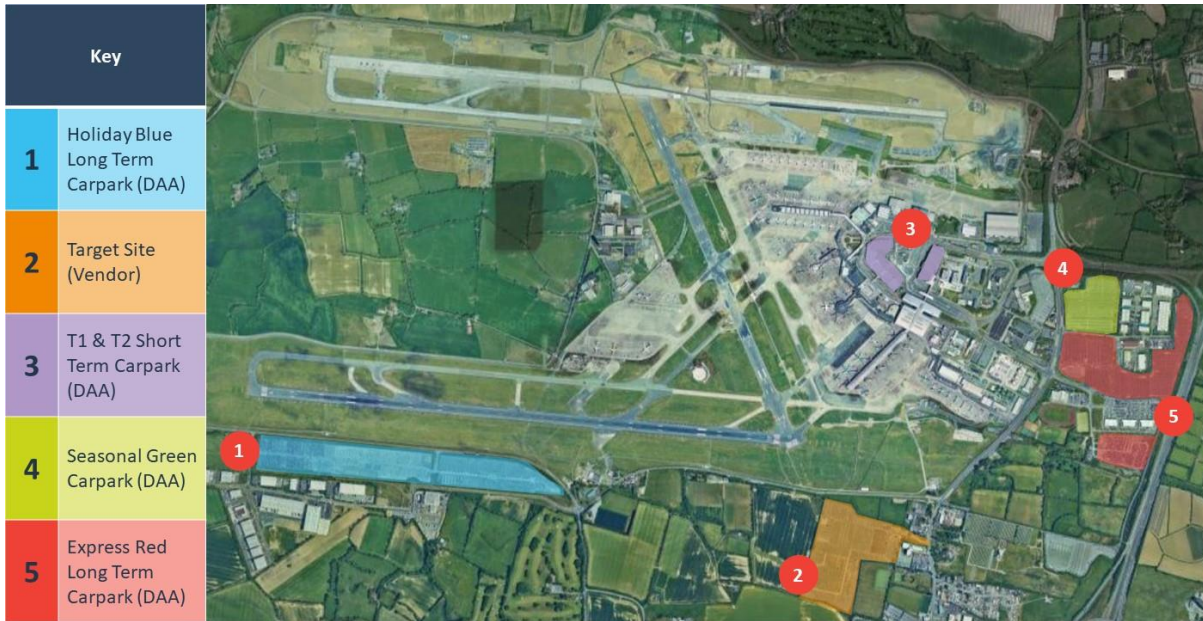
- 2.7 Dublin Airport is located approximately 10 kilometres north of Dublin city centre, in Swords, County Dublin. It is accessible from Dublin city centre via the Swords Road (R132) and via the M50 Motorway (including the Dublin Port Tunnel) and the M1 Motorway. It is accessible from Junction 4 of the M50 Motorway via the Old Airport Road, and from Junction 2 of the M1 Motorway. The Target Site is located approximately 1 kilometre south of the Dublin Airport terminals.
- 2.8 Figure 3 below illustrates the location of the DAA car parks and the Target Site relative to Dublin Airport terminals.

Figure 3: Dublin Airport, DAA car parks, the Target Site

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<sup>76</sup> Sunesen, E.R., Brown, J., and Hansen, M.M. (2019) *Assessment of aviation policy as a driver of economic development in the West and Mid-West of Ireland*. Copenhagen: Copenhagen Economics on behalf of Limerick Chamber in association with Galway Chamber, Ennis Chamber, and Shannon Chamber, page 25. Available at: <https://copenhageneconomics.com/publication/assessment-of-aviation-policy-as-a-driver-of-economic-development-in-the-west-and-mid-west-of-ireland/>.

<sup>77</sup> Eurostat (2024) *Air passenger transport by main airports in each reporting country – 2019* (online data code: *avia\_paoa*) [Data set]. Available at: <https://ec.europa.eu/eurostat/databrowser/bookmark/72be1653-8f37-42e9-9b79-0574a1cf2f01?lang=en>.



Source: Commission, based on information provided by the Parties in the Merger Notification Form

2.9 Passengers travelling through Dublin Airport come from across the State and beyond. A number of factors determine what modes of access to Dublin Airport passengers have available to them. These include the availability of public transport options, the price of different transport options, and the specific circumstances of the passenger (for example, if they are travelling as part of a group, with lots of luggage, or with young children).

2.10 Below, the Commission describes the main modes of passenger access to Dublin Airport, including:

- Private car (car park or drop off);
- Bus/coach;
- Taxi;
- Hire car; and,
- By air.

2.11 The Commission also briefly discusses prospective rail access to Dublin Airport.

### Main modes of access to Dublin Airport

#### Private Car

2.12 As noted above, Dublin Airport is accessible from the public road network via the M50, M1, and Swords Road (R132). Passengers may be picked-up/dropped-off by private car at Dublin Airport or may park in one of the car parks serving Dublin Airport.

*Bus/coach*

2.13 In response to the DAA Phase 2 RFI, DAA stated that “*Dublin Airport is the busiest/biggest bus station in Ireland*”.<sup>78</sup> Dublin Airport is connected to many towns and cities on the island of Ireland by both public bus and private coach services.

2.14 Table 2 below provides details on bus and coach routes servicing Dublin Airport. In compiling this table, the Commission considered the information available on the Dublin Airport website, documents provided to the Commission by DAA in response to the DAA Phase 1 RFI,<sup>79</sup> and the operators’ websites.

Table 2: Bus and coach routes servicing Dublin Airport<sup>80</sup>

Operator <sup>81</sup>	Route	Route Number	Approx. Duration	Price of Single Adult Ticket	No. Services per day
<b>Greater Dublin Area</b>					
<b>Aircoach</b>	Dublin Airport-Leopardstown Leopardstown-Dublin Airport	700	55 – 80 mins each way	€12.50	60 from Dublin Airport to Leopardstown  56 from Leopardstown to Dublin Airport
	Dublin Airport-Greystones Greystones-Dublin Airport	702	70 – 95 mins from Dublin Airport to Greystones	€17	8 each way

<sup>78</sup> DAA Phase 2 RFI Response, Question 35.

<sup>79</sup> Such documents include: DAA Phase 1 RFI Response, Question 33, document entitled ‘March 2023 Update.docx’. and DAA Phase 1 RFI Response, Question 33, document entitled ‘37.1 Bussing info Concessions.docx’.

<sup>80</sup> All routes were advertised on the DAA website and information was sourced from each. Information was correct as of the date of 4 October 2023. Source: dublinairport.com (2023) *Bus Routes – All Ireland*. Available at: <https://www.dublinairport.com/to-from-the-airport/by-bus/all-ireland-bus-routes>.

<sup>81</sup> Operators include Dublin Bus; National Express Bus & Coach Services Limited (“Dublin Express”), CRO number [REDACTED]; Last Passive Limited (“Aircoach”), CRO number [REDACTED]; Bus Éireann Irish Bus DAC (“Bus Éireann”), CRO number [REDACTED] and its Expressway operation (“Expressway”), CRO number [REDACTED]; Comfordelgro Irish Citylink Limited (“Irish Citylink”), CRO number [REDACTED]; Airport Hopper Holdings Limited (“Airport Hopper”) CRO number [REDACTED]; Last Bus Limited (“Dublin Coach”), CRO number [REDACTED]; Go-Ahead Transport Services (Dublin) Limited (“Go-Ahead Ireland”), CRO number [REDACTED]; M4 Direct Travel Limited (“M4 Direct”), CRO number [REDACTED]; I.P. Passenger Services Limited (“Wexford Bus”), CRO number [REDACTED]; Flight Link Limited (“Flight Link”), CRO number [REDACTED]; J.J. Kavanagh & Sons Limited (“J. J. Kavanagh & Sons”), CRO number [REDACTED]; McGinley Coach Travel Limited (“John McGinley”), CRO number [REDACTED]; Translink (NI) Limited (“Translink”), UK company number [REDACTED].

			85 – 100 mins from Greystones to Dublin Airport		
	Dublin Airport-Killiney Killiney-Dublin Airport	703	55 – 70 mins from Dublin Airport to Killiney 70 – 75 mins from Killiney to Dublin Airport	€14	11 from Dublin Airport to Killiney 9 from Killiney to Dublin Airport
Airport Hopper	Dublin Airport-Maynooth Maynooth-Dublin Airport	767	35 mins from Dublin Airport to Maynooth 45 – 50 mins from Maynooth to Dublin Airport	€18 on the bus €14.95 online	7 – 18 each way (service more frequent going from Maynooth to Dublin Airport)
	Dublin Airport-Tallaght Tallaght-Dublin Airport	777	35 mins each way	€16 on the bus (one-way) €13.95 online (one-way)	7-18 going each way (service more frequent on weekends)
Bus Éireann	Dublin-Drogheda Drogheda-Dublin	101	55 – 115 mins from Dublin Airport to Drogheda 49 – 75 mins from Drogheda to Dublin Airport	€6.50 €4.55 with leap card	24 – 46 each way (service less frequent on weekends)
	Dublin Airport-Navan/Kells Navan/Kells-Dublin Airport	109A	105 mins – 115 mins from Dublin Airport to Kells 90– 110 mins from Kells to Dublin Airport	€11 €7.70 with leap card	24 each way
Dublin Bus	Dublin Airport-Ballinteer Ballinteer-Dublin Airport	16	100 mins from Dublin Airport to Ballinteer (off-peak estimate)	€2 with a leap card €2.60 cash	63 – 88 each way (service more frequent on weekdays)

			100 mins from Ballinteer to Dublin Airport (off-peak estimate)		
	Lower Abbey Street-Swords Manor Swords Manor-Lower Abbey Street	41	40 mins from Dublin Airport to Lower Abbey Street and from Lower Abbey Street to Dublin Airport (off-peak estimate)	€2 with a leap card €2.60 cash	48 – 66 each way (service more frequent on weekdays)
<b>Dublin Coach</b> <i>(big GREEN bus)</i>	Dublin Airport-Dundrum Dundrum-Dublin Airport	750	45 mins each way	€12	18 each way
<b>Dublin Express</b>	Dublin Airport-Customer House Quay via Heuston Station (runs on a loop)	782	50-87 mins from Terminal 1 to Custom House Key 20-41 mins from Custom House Key to Terminal 1	€8 (one-way)	65-72 each way (service more frequent on weekdays)
	Dublin Airport-Harcourt Luas Harcourt Luas-Dublin Airport	784	40-62 mins from Terminal 1 to Harcourt Luas 34-49 mins from Harcourt Luas to Terminal 1	€8 (one-way)	34 each way
<b>Go-Ahead Ireland</b>	Dublin Airport-Sutton Station Sutton Station-Dublin Airport	102	50 – 65 mins from Dublin Airport to Sutton Station and 50-60 mins from Sutton Station to Dublin Airport	€2 with a leap card €2.60 cash	31 – 37 each way (service less frequent on Sundays)
	Dublin Airport-Balbriggan/Skerries	33A	55 mins – 75 mins from Dublin Airport	€2 with a leap card	19 – 25 each way (service less)

	Balbriggan/Skerries-Dublin Airport		to Balbriggan and from Balbriggan to Dublin Airport	€2.60 cash	frequent on Sundays)
<b>Rest of Leinster</b>					
<b>Dublin Coach (big GREEN bus)</b>	Portlaoise-Dublin Airport Dublin Airport-Portlaoise	726	150 mins each way	€12	24 each way
<b>Expressway</b>	Dublin Airport- Wexford Wexford-Dublin Airport	2 X2	150 – 175 mins each way	€21.40	11- 15 (service more frequent on weekdays)
	Dublin -Dundalk Dundalk-Dublin	100X	70 - 90 mins each way	€11.40	19 each way
<b>M4 Direct</b>	Dublin Airport-Ballymahon Ballymahon-Dublin Airport	842	150 – 200 mins each way	€35	1 -2 each way (service more frequent on weekdays, does not run on Sunday)
<b>Wexford Bus</b>	Wexford-Dublin Airport Dublin Airport-Wexford	740	150 – 170 mins	€21 €19.95 with leap card	16 – 19 each way (service more frequent on weekdays)
	Wexford-Dublin Airport Dublin Airport-Wexford	740X	130 – 155 mins	€21 €19.95 with leap card	3 each way
	Gorey-Dublin Airport Dublin Airport-Gorey	740A	130 – 145 mins each way	€19 €18.05 with leap card	6 – 10 going from Dublin Airport to Gorey (service more frequent on weekdays) 4 – 9 going from Gorey to Dublin Airport (service more frequent on weekdays)



Connacht					
Aircoach <sup>82</sup>	Dublin Airport-Galway	706	185 – 200 mins from Dublin Airport to Galway	€19	10 each way
	Galway-Dublin Airport	706X	155 – 215 mins from Galway to Dublin Airport		
Expressway	Dublin -Ballina (via Dublin Airport)	22	205 – 265 mins each way	€23.30	6 each way
	Ballina-Dublin (via Dublin Airport)				
Expressway	Dublin -Sligo (via Dublin Airport)	23	185 – 255 mins each way	€20.90	6 each way
	Sligo-Dublin (via Dublin Airport)				
Irish Citylink <sup>83</sup>	Dublin Airport-Galway Coach Station	720	140 – 180 mins each way	€23 online	34 – 37 from Dublin Airport to Galway (service more frequent at the weekend)
	Galway Coach Station- Dublin Airport	760		€24 onboard (ÉirEagle)	
	Galway Coach Station- Dublin Airport	761		€21 online	
Dublin Airport-Galway Coach Station	763	215 – 270 mins each way	€20	8 each way	
Galway Coach Station- Dublin Airport					
Irish Citylink <sup>83</sup>	Dublin Airport-Castlebar	721	210 – 245 mins each way	€22	6 each way
	Castlebar-Dublin Airport				

<sup>82</sup> On 13 March 2024, Aircoach announced that this service would be discontinued from 8 April 2024. As this service remained operational at the date of the Commission's Determination, it has been retained in this table. See: <https://www.rte.ie/news/regional/2024/0312/1437495-aircoach-dublin-galway/>.

<sup>83</sup> It is worth noting that information relating to *Irish Citylink*, *ÉirEagle* and *gobus*, are all available on Irish Citylink's website. Therefore, the Commission has grouped the services provided by these three operators together under Irish Citylink in Table 2.

Munster					
Aircoach	Dublin Airport-Cork Cork-Dublin Airport	704X	185 – 215 mins each way	€19 - €22	18 each way Friday-Monday 16 each way Tuesday-Thursday
	Dublin Airport-Killarney Killarney-Dublin Airport	722	240 mins each way	€35	5 each way
Flightlink	Ennis – Dublin Airport Dublin Airport- Ennis	723	195 mins each way	€25	4 each way
	Dublin Airport- Waterford Waterford-Dublin Airport	4	165 – 190 mins each way	€22.35	7 each way
Expressway	Dublin Airport-Cork Cork-Dublin Airport	707	180 – 210 mins each way	€20	13 – 14 each way (service more frequent on Friday and Sunday)
	Dublin Airport-Limerick Limerick-Dublin Airport	712X	150 mins each way	€20	11 each way
Irish Citylink	Dublin Airport-Clonmel Clonmel-Dublin Airport	717	165 – 210 mins each way	€25	9 each way
	Dublin Airport-Limerick Limerick-Dublin Airport	735	225 – 245 mins each way	€25	4 each way
J.J. Kavanagh & Sons					

	Dublin Airport-Waterford Waterford-Dublin Airport	736	150 – 230 mins each way	€24	14 each way
<b>Ulster</b>					
<b>Aircoach</b>	Dublin City-Derry (via Dublin Airport) Derry-Dublin City (via Dublin Airport)	705X	255 – 270 mins each way	€24 - €26	12 – 13 each way (bus terminates / originates in Belfast once per day)
<b>Dublin Express</b>	Dublin City-Belfast (via Dublin Airport) Belfast-Dublin City (via Dublin Airport)	785	110 – 120 mins each way	€11.50 - €16.50	16 – 17 each way (service more frequent Friday-Monday)
<b>Expressway</b>	Dublin -Donegal (via Dublin Airport) Donegal-Dublin (via Dublin Airport)	30 X30	195 – 220 mins each way	€23.30	13 each way
	Dublin Airport-Letterkenny Letterkenny-Dublin Airport	32 X32	190 – 220 mins each way	€23.75	10 each way
<b>John McGinley</b>	Dublin-Crolly Crolly-Dublin	932	270 – 350 mins each way	€30	2 – 4 (service more frequent on Mondays, Fridays and Sundays)
	Dublin-Moville Moville-Dublin	933	300 – 330 mins each way	€30	2 each way
<b>Translink</b>	Dublin -Belfast Belfast-Dublin	X1	135 – 140 mins each way	£9	21 going from Dublin Airport to Belfast  20 going from Belfast to Dublin Airport

	Dublin Airport -Belfast Belfast-Dublin Airport	X2	105 – 110 mins each way	£9	7 each way
	Dublin -Derry Derry-Dublin	X3	215 – 230 mins each way	£11	2 going from Dublin Airport to Derry  3 going from Derry to Dublin Airport
	Dublin -Derry Derry-Dublin	X4	200 – 255 mins each way	£11	5 going from Dublin Airport to Derry  4 going from Derry to Dublin Airport
	Newry-Dublin Airport	X5	70 mins	£7	1 going from Newry to Dublin Airport

Source: Commission, based upon information available on Dublin Airport’s website, information provided by DAA in response to the DAA Phase 1 RFI, and information available on the operators’ websites.

2.15 As can be seen in Table 2 above, several bus and coach services connect Dublin Airport to main towns and cities on the island of Ireland. However, the prices of these services, and the frequency with which they travel between Dublin Airport and the destination town/city, vary significantly.

### Taxi

2.16 DAA is responsible for issuing taxi permits which allow taxi drivers to pick up passengers from the official Dublin Airport taxi rank. The Parties explained that the “*taxi permitting system is designed to incentivise a suitable number of taxis of sufficient quality being available for passengers arriving in Dublin Airport*”.<sup>84</sup>

2.17 On 15 June 2023, DAA announced that it had increased the provision of taxi permits, issuing an additional 300 permits.<sup>85</sup>

<sup>84</sup> Merger Notification Form, page 51, paragraph 134.

<sup>85</sup> dublinairport.com (2023) *Daa Issues 300 New Taxi Permits at Dublin Airport*, 15 June 2023. Available at: <https://www.dublinairport.com/latest-news/2023/06/15/daa-issues-300-new-taxi-permits-at-dublin-airport>.

2.18 Taxi fares are regulated by the National Transport Authority.<sup>86</sup> Maximum fares and charges that may be charged by a taxi driver for a journey in the State are set for a range of tariffs, and conditions specified for when each tariff will apply. Conditions include measures of time and distance.<sup>87</sup>

#### *Car Hire*

2.19 A number of car hire providers serve Dublin Airport, including Alamo, Avis, Budget, Carhire.ie, Dollar, Enterprise, Europcar, Flizzr, Hertz, National, NewWay Care Hire, Payless, Sixt and Thrifty. These car rental providers are active on the Dublin Airport campus, and cars are available to hire at both Dublin Airport terminals.<sup>88</sup>

#### *By air – international and domestic flights.*

2.20 Passengers may also access Dublin Airport by air through a connecting flight. Dublin Airport operates as a hub for a number of airlines, and thus passengers may transit through it to connect from one flight to another. Transiting passengers are captured in DAA's data regarding modes of access to Dublin Airport, but transit passengers generally do not leave the airport. As noted in paragraph 2.4 above, in 2023, Dublin Airport reported that approximately 1 million passengers connected through Dublin Airport, and approximately 530,000 other passengers did not use the airport terminals.<sup>89</sup>

#### *Prospective rail access to Dublin Airport*

2.21 Dublin Airport is not served by rail.

2.22 The proposed development of *Metrolink*, which is envisaged to connect Dublin Airport to Dublin city centre via a rail line, is not expected to be completed before 2035.<sup>90</sup> The Parties stated that, once completed, the *Metrolink* will “pose a serious competitive constraint on car parks servicing Dublin Airport”.<sup>91</sup> DAA elaborated on this view in the DAA Written Response, noting that public transport is prioritised in the design of the transport access network serving

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<sup>86</sup> Part 3 of the Taxi Regulation Act 2013 as amended. Available at: <https://revisedacts.lawreform.ie/eli/2013/act/37/revised/en/html>.

<sup>87</sup> S.I. No. 293/2022 - Taxi Regulation (Maximum Fares) Order 2022.

<sup>88</sup> dublinairport.com (2024) *Car Rental*. Available at: <https://www.dublinairport.com/to-from-the-airport/car-rental>.

<sup>89</sup> dublinairport.com (2024) *Almost 32 Million Through Dublin Airport's Terminals In 2023*, 24 January 2024. Available at: <https://www.dublinairport.com/latest-news/2024/01/24/almost-32-million-through-dublin-airport-s-terminals-in-2023>.

<sup>90</sup> Jacobs Idom (2022) *Response to Request for Further Information: Appendix A9.2-M Traffic and Transportation Assessment – St Stephen's Green Station*. Available at: [https://www.pleanala.ie/publicaccess/Responses/314724/Response%20to%20Further%20Public%20Notice/Appendix%20A9.2M%20Traffic%20and%20Transportation%20Assessment%20St%20Stephens%20Green%20Station%20\(Omitted%20from%20original%20application%20for%20a%20railway%20order\).pdf?r=278733](https://www.pleanala.ie/publicaccess/Responses/314724/Response%20to%20Further%20Public%20Notice/Appendix%20A9.2M%20Traffic%20and%20Transportation%20Assessment%20St%20Stephens%20Green%20Station%20(Omitted%20from%20original%20application%20for%20a%20railway%20order).pdf?r=278733).

<sup>91</sup> Merger Notification Form, page 15, paragraph 18, bullet point 20.

Dublin Airport, and that it is inaccurate to say that *Metrolink* does not act as a competitive constraint on the use of car parks at Dublin Airport.<sup>92</sup>

2.23 While the Commission recognises the Government’s commitment to public transport, the relevant issue for the Commission is the timing of the *Metrolink* development. According to An Bord Pleanála, the Railway Order Application (application for planning permission) for *Metrolink* was lodged by Transport Infrastructure Ireland on 30 September 2022.<sup>93</sup> According to An Bord Pleanála, the application “*Requires Further Consideration*” and, accordingly, an oral hearing was scheduled to take place over the period 19 February – 28 March 2024. Given that no Railway Order has yet been granted and given that the *Metrolink* is unlikely to be completed before 2034 in any event,<sup>94</sup> the Commission considers that the eventual outcome of Railway Order Application process and the implementation of any decision and construction of the *Metrolink* is not certain and is not timely.<sup>95</sup> Accordingly, the Commission does not consider that the impact of *Metrolink* as a potential constraint on car parking can be taken into account in its assessment of the competitive effects of the Proposed Transaction, and will not consider it any further in this Determination.

### Trends in accessing Dublin Airport

2.24 DAA collects [REDACTED] Dublin Airport [REDACTED] [REDACTED].<sup>96</sup> DAA provided information [REDACTED] regarding passenger access to Dublin Airport to the Commission in the Merger Notification Form, the DAA Phase 1 RFI Response and the DAA Phase 2 RFI Response.

2.25 Figure 4 below sets out the proportion of all passengers accessing Dublin Airport [REDACTED] [REDACTED] over the period Q1 2018 to Q1 2023.<sup>97</sup>

[REDACTED]

<sup>92</sup> DAA Written Response, paragraphs 397-401.

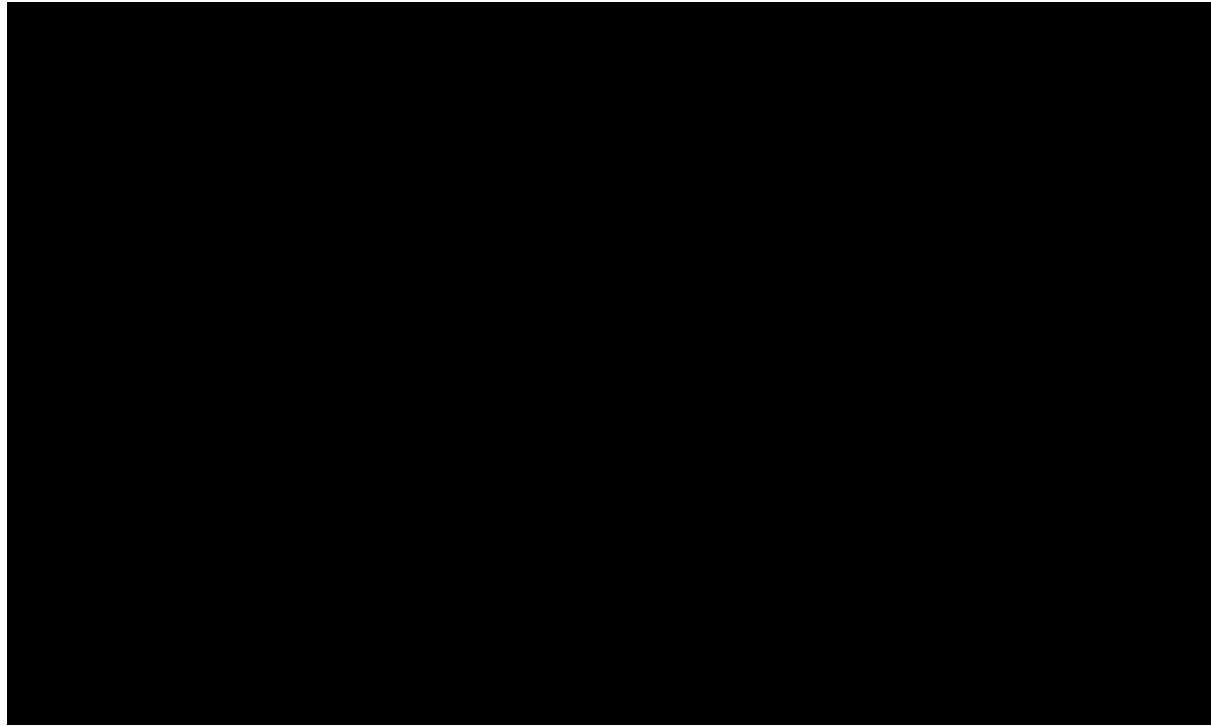
<sup>93</sup> An Bord Pleanála (2022) Case reference NA29N.314724, “*Metrolink. Estuary through Swords, Dublin Airport, Ballymun, Glasnevin and City Centre to Charlemont, Co. Dublin*”, lodged 30 September 2022. Available at: <https://www.pleanala.ie/en-ie/case/314724>.

<sup>94</sup> Paragraph 17(1) of the Draft Railway Order states: “*execution of the authorised works shall be substantially completed by the end of the period of 10 years, or such further period as the Board may allow, beginning on the date on which this Order comes into operation*”. Available at: <https://downloads.metrolink.ie/documentsro/Draft%20Railway%20Order.pdf>.

<sup>95</sup> See paragraph 6.5 of the Commission’s Merger Guidelines which states that a timeframe of two years is normally used by the Commission in assessing timeliness of entry.

<sup>96</sup> “*Market research information is provided by [DAA] Marketing & Insights team. As part of the annual budgeting process the Insight & Marketing Team provide [REDACTED] [REDACTED] Merger Notification Form, Annex 5, page 9, paragraph 2.3.*”

<sup>97</sup> For Q1 2020 – Q4 2021, it is noted that there is a break in the data collection due to the pandemic. Source: DAA Phase 1 RFI Response, Question 4, document entitled [REDACTED].



Source: DAA Phase 1 RFI Response <sup>98</sup>

2.26 As shown in Figure 4, in Q1 2023 [REDACTED] of all passengers [REDACTED] used car parking facilities when travelling to Dublin Airport.<sup>99</sup> This distribution remains broadly unchanged from pre-pandemic figures. In Q1 2023, private cars (drop off and car park) represented the [REDACTED] mode of transport to Dublin Airport [REDACTED] of passengers being dropped-off and [REDACTED] of passengers using a car park. Bus/coaches accounted for [REDACTED] of passengers travelling to Dublin Airport, with taxi services accounting for [REDACTED]. International flights [REDACTED], Car Hire [REDACTED], and “Other (train [sic], walking, cycling etc)” [REDACTED] accounts for the other modes of transport availed of by passengers for Q1 2023.

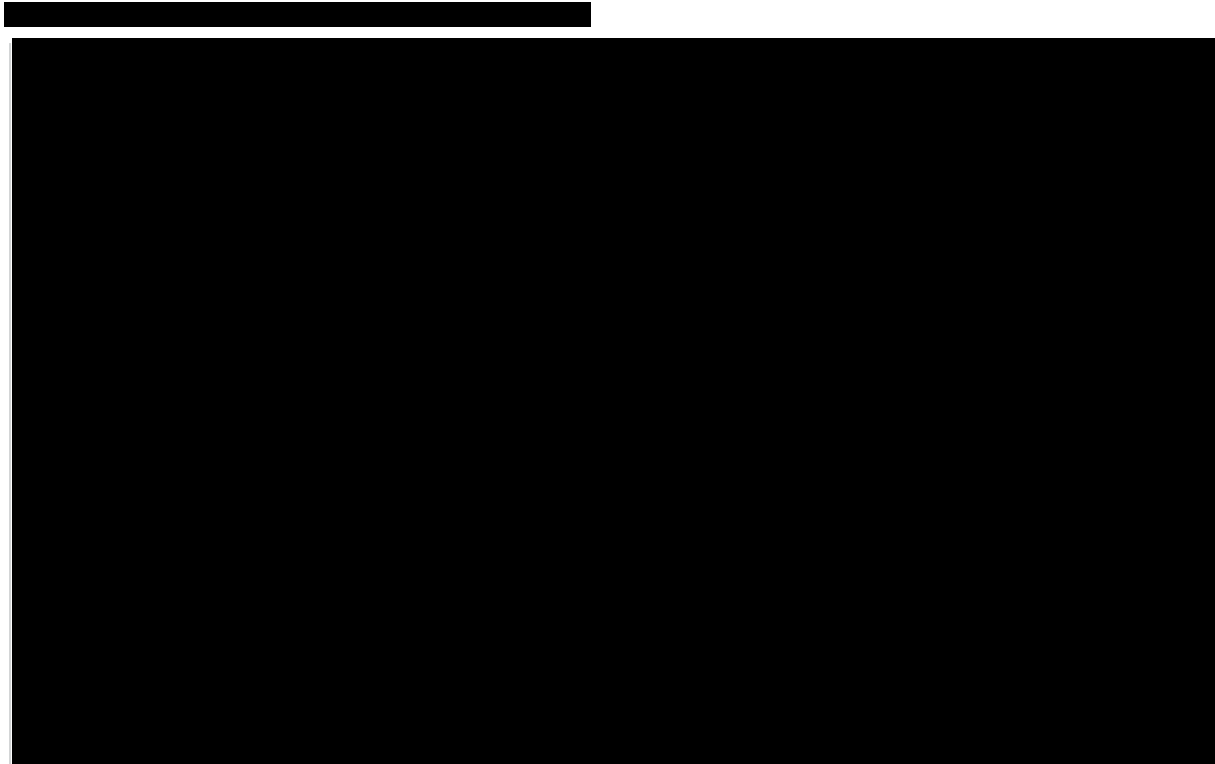
2.27 As a proportion of access mode, there was a slight [REDACTED] in the use of public transport (bus, coach) and taxi from 2019 to 2022, and a slight [REDACTED] in the use of private cars. In Q1 2023, the share of passengers travelling to Dublin Airport via public transport and taxi [REDACTED] returned to similar proportions seen pre-pandemic [REDACTED] bus/coach; [REDACTED] taxi). The share of passengers using a private car has remained [REDACTED] pre-pandemic levels ([REDACTED] total; [REDACTED] drop off; [REDACTED] car park).

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<sup>98</sup> DAA Phase 1 RFI Response, Question 2, document entitled [REDACTED]’.

<sup>99</sup> DAA Phase 1 RFI Response, Question 4, document entitled [REDACTED]’.

2.28 The Commission has also assessed whether there are differences in mode of access for resident passengers in the State/on the Island of Ireland compared with all passengers.<sup>100</sup> Figure 5 excludes [REDACTED] as these passengers are unlikely to have a car and will not generally be availing of parking services.<sup>101</sup> For context, [REDACTED] of passengers travelling through Dublin Airport in Q1 2023 [REDACTED].<sup>102</sup>



Source: DAA Phase 1 RFI Response<sup>103</sup>

2.29 A little over half of all Irish resident airport passengers (on an all-island basis) used [REDACTED] to travel to Dublin Airport with an approximately equal share [REDACTED]. As such, Irish resident passengers travelling to the airport rely to a greater extent on [REDACTED], when compared with the entire cohort of passengers set out in Figure 4 [REDACTED]. The share of Irish resident passengers using car parks has remained [REDACTED] during 2022 (with the exception of an increase in car parking in Q1 2022 when Covid restrictions were recently removed).

<sup>100</sup> The IAA describes such passengers as “origin-destination passenger” who fly directly from the airport of origin to the final airport of destination. When a passenger instead uses an airport as a hub, the passenger will not use a car parking space.

<sup>101</sup> In 2022, [REDACTED], per DAA Phase 1 RFI Response, Question 2, document entitled [REDACTED].

<sup>102</sup> DAA Phase 1 RFI Response, Question 4, document entitled [REDACTED], slide 2.

<sup>103</sup> DAA Phase 1 RFI Response, Question 2, document entitled [REDACTED]. Information is not provided for the period Q1 2020 – Q4 2021 due to a break in DAA data collection due to the pandemic.



2.30 Figures as of July 2023 show that more than [REDACTED] of domestic passengers travelling through Dublin Airport live outside of [REDACTED].<sup>104</sup> Some [REDACTED] of travellers were from County Dublin, while [REDACTED] resided in the rest of Leinster, [REDACTED] from Munster, [REDACTED] from Connacht and the remaining [REDACTED] were from Ulster.

#### Dublin Airport Car Park Churn Study

2.31 In 2017, DAA [REDACTED] of customers who had previously used DAA car parks.<sup>105</sup> The survey was conducted by [REDACTED] via online surveys between 20-29 June 2017. The survey consisted of [REDACTED] completed interviews of customers, based on [REDACTED] email addresses provided by the Dublin Airport Analytics team. DAA's objectives for the study were to:

*"Understand why [REDACTED]"*

*Understand their preferred [REDACTED]*

*Understand [REDACTED]*

*The outcome of the study will provide insight to the Dublin Airport Car Park team in*

*[REDACTED]."*<sup>106</sup>

2.32 The survey covered the following topics:

*"[REDACTED] while travelling to Dublin Airport (both for business and leisure purposes)*

*Reason for choosing this [REDACTED]*

*The reason for not preferring to [REDACTED]*

*Likelihood to use [REDACTED] in the future*

*Reason for not considering Dublin Airport car parks in the [REDACTED]"*<sup>107</sup>

<sup>104</sup> dublinairport.com (2023) *New Figures Confirm Dublin As The All-Ireland Winning Airport*. Available at: <https://www.dublinairport.com/latest-news/2023/07/27/new-figures-confirm-dublin-as-the-all-ireland-winning-airport#:~:text=The%20new%20figures%20show%20that,while%206%25%20came%20from%20Connaught.>

<sup>105</sup> DAA Phase 1 RFI Response, Question 3, document entitled [REDACTED], slide 2.

<sup>106</sup> DAA Phase 1 RFI Response, Question 4, document entitled [REDACTED], slide 2.

<sup>107</sup> DAA Phase 1 RFI Response, Question 4, document entitled [REDACTED], slide 3.

2.33 The Commission has examined the raw data from this survey. Figure 6 sets out a breakdown of respondents whose preferred mode of transport was ‘[REDACTED]’.<sup>108</sup>

Figure 6: [REDACTED]: Main reason for choosing mode of transport, passengers whose preferred mode of transport was [REDACTED]



Source: Commission analysis of evidence provided by the Parties, DAA Phase 2 RFI Response<sup>109</sup>

2.34 Figure 6 shows the “main reason for choosing mode of transport” for all passengers whose preferred mode of transport was [REDACTED] and non-business passengers with the same preferred mode of transport [REDACTED]<sup>110</sup>

2.35 Figure 6 shows that the primary reason for all passengers, and for non-business passengers to drive and park at Dublin Airport was that it was the [REDACTED] [REDACTED]. The second most common reason cited was that this mode is the only option [REDACTED] to that passenger [REDACTED]). The third most cited reason was that it is the [REDACTED] mode [REDACTED]). No other reason was cited by more than [REDACTED] of respondents.

## Overview of car parking at Dublin Airport

### Zoning, land use, and planning permission

2.36 This section describes the operation of the general planning environment. In general, planning permission is required in respect of any development of land<sup>111</sup> (with the exception of

<sup>108</sup> The dataset includes some respondents who had different preferred modes of transport, including public transport and taxi.

<sup>109</sup> DAA Phase 2 RFI Response, Question 50, document entitled [REDACTED].

<sup>110</sup> Note: some passengers cited more than one reason, so figures do not add to 100%.

<sup>111</sup> Pursuant to Section 32 of the Planning and Development Act 2000 as amended (the “Planning and Development Act”), with such permission being sought in accordance with Part III of the Planning and Development Act.

“exempted development”<sup>112</sup>) in the State.<sup>113</sup> Such permission is generally sought from the relevant local authority in whose jurisdiction the proposed development is to take place or, in certain cases, from An Bord Pleanála.<sup>114</sup> Planning permission may be granted or refused or granted subject to certain conditions (specified by the planning body) being complied with. Local authorities are required to prepare a “County Development Plan” for their respective area every six years.<sup>115</sup>

- 2.37 The County Development Plans (and Local Area Plans) aim to specify and control the types of development which may take place on certain land. They may specify the “Zone” or “Zoning Objectives” of particular areas of land which specify broad objectives of land use and use classes in that area<sup>116</sup>.
- 2.38 County Development Plans (and therefore the zoning and re-zoning of land) must be adopted by the elected members of local authorities whereas applications for planning permission are dealt with by officials of the local authorities as an administrative matter. This means that the need for re-zoning of land represents a high barrier for change of land use.

## Planning for car parks at Dublin Airport

### Planning rules

2.39 Dublin Airport and the Target Site are located in Fingal, which is administered by Fingal County Council (“FCC”). FCC’s 2023-2029 County Development Plan sets out the following Zoning Objectives which are relevant for this Determination:<sup>117</sup>

- **‘DA’ Dublin Airport**
  - Objective: “Ensure the efficient and effective operation and development of the Airport in accordance with an approved Local Area Plan.”

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<sup>112</sup> Planning and Development Act, section 4.

<sup>113</sup> The term “development” is defined in section 3 of the Planning and Development Act and includes, inter alia: “the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land”.

<sup>114</sup> In general, planning permission in respect of certain larger infrastructure or development projects is sought from An Bord Pleanála and permission for other development is sought from a local authority.

<sup>115</sup> Planning and Development Act, section 9(1).

<sup>116</sup> An example of land use is ‘Residential’ and use classes elaborate on land use objectives (for example, ‘Residential’ zoning may include housing, educational facilities, and retail spaces as related use classes permitted in principle).

<sup>117</sup> Fingal County Council (2023) *Fingal County Development Plan 2023 – 2029*, page 470 et seq. Available at: [https://www.fingal.ie/sites/default/files/2023-10/Fingal%20Development%20Plan%2030.08.23\\_V4\\_WEB.pdf](https://www.fingal.ie/sites/default/files/2023-10/Fingal%20Development%20Plan%2030.08.23_V4_WEB.pdf).

- Uses permitted in principle include: aerodrome/airfield, hotel, public house, public transportation station, and “car park – non-ancillary”.
- Uses not permitted include: aparthotel, burial grounds, farm shop, golf course, hospital, and garden centre.
- **‘GE’ General Employment<sup>118</sup>**
  - Objective: “Provide opportunities for general enterprise and employment”
  - Uses permitted in principle include: open space, road transport depot, petrol station, industry – general, industry – light, logistics, retail – local < 150 sqm nfa.<sup>119</sup>
  - Uses not permitted include: aparthotel, hotel, retail – comparison ≤ 500 sqm nfa, retail – comparison > 500 sqm nfa, retail – supermarket ≤ 2,500 sqm nfa, retail – superstore > 2,500 sqm nfa, retail – hypermarket, > 5,000 sqm nfa, retail – factory outlet centre retail warehouse.

*Cap on overall number of car parking spaces which may be developed serving Dublin Airport*

2.40 An Bord Pleanála has imposed an overall cap on the total number of car parking spaces which may serve Dublin Airport. Condition 23 of An Bord Pleanála’s 2007 decision which granted planning permission to DAA for the development of Dublin Airport Terminal 2 sets out the overall cap as follows:<sup>120</sup>

*“(a) The total number of long-term public car parking spaces serving [Dublin Airport] shall not exceed 26,800.*

*(b) The total number of short-term public car parking spaces shall not exceed 4,000.*

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<sup>118</sup> The Target Site is located on land zoned as General Employment.

<sup>119</sup> “nfa” stands for net floor area and “refers to net retail sales area and is the area of a shop or store which is devoted to the sale of retail goods (including the area devoted to checkouts)”. Fingal County Council (2011) *Fingal Development Plan 2011-2017 - TECHNICAL GUIDANCE NOTES FOR USE CLASSES*, page 11. Available at: [https://www.fingal.ie/sites/default/files/2019-04/technical\\_guidance\\_notes\\_for\\_use\\_classes.pdf](https://www.fingal.ie/sites/default/files/2019-04/technical_guidance_notes_for_use_classes.pdf).

<sup>120</sup> In this Determination, when the Commission refers to the ‘cap’ on car parking at Dublin Airport it’s referring to the maximum number of spaces permitted in accordance with this condition – in total (30,800); for long-term car parking (26,800); and for short-term car parking (4,000).

(c) *There shall be no material increase in the number of employee car parking spaces at [Dublin Airport].*<sup>121</sup>

*Development of car parks serving Dublin Airport within this cap*

- 2.41 An Bord Pleanála’s decision specified that planning permission for the development of specific car parks up to this limit *“shall be the subject of separate planning applications, as required”*.<sup>122</sup>
- 2.42 The cap specified by An Bord Pleanála therefore operates as an overall limit on the number of car parking spaces which could be developed to serve Dublin Airport – by DAA or any other party. Planning permission for the development of specific car parks may be granted by either An Bord Pleanála or FCC in accordance with the planning system discussed above,<sup>123</sup> but neither planning body can grant planning permission for development of a car park which would mean this overall cap of 30,800 is exceeded. Some car parks developed in the vicinity of Dublin Airport have been in existence since before this cap was set in 2007; however, the spaces they contain count towards those permitted under the overall cap.
- 2.43 FCC informed the Commission that it is bound by this cap and that it would not grant planning permission for a car park serving Dublin Airport if it led to this cap being exceeded. FCC noted that it has refused applications for planning permission to develop car parking serving Dublin Airport in the past.<sup>124</sup> FCC also informed the Commission that the only way this cap would be revised would be as a result of a successful planning application by DAA to increase the limit on the number of passengers permitted to travel through Dublin Airport annually and that this would be as a result of a larger planning application to increase capacity at Dublin Airport through developing new airport infrastructure (e.g., new hangars and extensions to both terminals).<sup>125</sup>
- 2.44 Furthermore, the Commission notes that Objective DAO6 of FCC’s 2023 – 2029 Fingal County Council Development Plan is to:

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<sup>121</sup> Condition 23 of An Bord Pleanála decision in case number PL 06F.220670. Available at: <https://archive.pleanala.ie/api/documents/Order/220/D220670.pdf>.

<sup>122</sup> Condition 23 of An Bord Pleanála decision in case number PL 06F.220670. Available at: <https://archive.pleanala.ie/api/documents/Order/220/D220670.pdf>.

<sup>123</sup> In most cases, FCC would be the planning body to which any application for development is made, but in some circumstances, applications may be made directly to An Bord Pleanála (which may also hear and decide an appeal of an FCC planning decision).

<sup>124</sup> FCC Call note, dated 29 September 2023, page 2.

<sup>125</sup> FCC Call note, dated 29 September 2023, page 3/

*“Control the supply of car parking at the Airport so as to maximize as far as is practical the use of public transport and sustainable transport modes (walking / cycling) by workers and passengers and to secure the efficient use of land and safeguard the strategic function of the adjacent road network.”<sup>126</sup>*

#### *Future expansion of Dublin Airport capacity*

2.45 On 15 December 2023, DAA submitted an infrastructure planning application to FCC:

*“for a 15-year permission to build a suite of 11 distinct infrastructure projects at Dublin Airport and the surrounding area as well as an increase in the passenger capacity at the airport from 32 to 40 million passengers per annum.”<sup>127</sup>*

2.46 As part of this application, DAA has sought permission for the development of an additional c.1,871 long-term car parking spaces<sup>128</sup> in the Express Red car park *“on a temporary basis for either 10 years, or once MetroLink becomes operational, whichever is the sooner”*.<sup>129</sup>

2.47 The Commission understands that, as part of this application, DAA is seeking for Condition 23 of An Bord Pleanála’s 2007 decision to be replaced by the following limit:

*“(a) The total number of long-term public car parking spaces serving the Airport shall not exceed 28,671 spaces.*

*(b) The total number of short-term public car parking spaces shall not exceed 4,654 spaces.*

*(c) The total number of staff car parking spaces shall not exceed 5,360 spaces.”<sup>130</sup>*

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<sup>126</sup> Fingal County Council (2023) *Fingal County Development Plan 2023 – 2029*, page 323. Available at: [https://www.fingal.ie/sites/default/files/2023-10/Fingal%20Development%20Plan%2030.08.23\\_V4\\_WEB.pdf](https://www.fingal.ie/sites/default/files/2023-10/Fingal%20Development%20Plan%2030.08.23_V4_WEB.pdf).

<sup>127</sup> www.fingal.ie (2023) *Council receives Dublin Airport planning application*. Available at: <https://www.fingal.ie/news/council-receives-dublin-airport-planning-application>.

<sup>128</sup> Fingal County Council (2023) Case reference F23A/0781, *“The proposed development relates to the entirety of the Airport...”*, Application Form - Part A, document entitled ‘00115700\_P001FK8H\_20231217\_0802.pdf’, page 16/17. Available at: <https://planning.agileapplications.ie/fingal/application-details/96644>.

<sup>129</sup> Fingal County Council (2023) Case reference F23A/0781, *“The proposed development relates to the entirety of the Airport...”*, Application Form - Part A, document entitled ‘00115700\_P001FK8H\_20231217\_0802.pdf’, page 16/17. Available at: <https://planning.agileapplications.ie/fingal/application-details/96644>.

<sup>130</sup> Fingal County Council (2023) Case reference F23A/0781, *“The proposed development relates to the entirety of the Airport...”*, Application Form - Part A, document entitled ‘00115700\_P001FK8H\_20231217\_0802.pdf’, page 16/17. Available at: <https://planning.agileapplications.ie/fingal/application-details/96644>.

2.48 The eventual outcome of the application process, and the implementation of any decision on foot of it is too uncertain to be taken into account in the Commission’s assessment of the Proposed Transaction. Therefore, for the purposes of this Determination:

- (a) Condition 23 of An Bord Pleanála’s 2007 decision will be considered the relevant car parking cap; and
- (b) the current capacity of the DAA Express Red car park will be used.

2.49 The following section details the car parks serving Dublin Airport for which permission has been granted by FCC or An Bord Pleanála.

### Car parks serving Dublin Airport

#### DAA car parks

2.50 Four of DAA’s car parks have planning permission for use as long-term car parks<sup>131</sup> and three of DAA’s car parks have planning permission for use as short-term car parks. Although a passenger’s choice of ‘long-term’ or ‘short-term’ car parking may correlate with the length of that passenger’s trip, it should be noted that a passenger can choose to park at either a long-term or short-term car park regardless of the length of their trip. In general, prices in ‘short-term’ car parks are higher than those in ‘long-term’ car parks.<sup>132</sup>

#### The Target Site

2.51 The Target Site has planning permission for the use of providing long-term car parking serving Dublin Airport. The Vendor has sought planning permission from both FCC and An Bord Pleanála on a number of occasions since 1999. These are set out and summarised below.

- (a) **August 1999:** [Ref: F99A/0376] Planning permission granted by FCC for 3,500 car parking spaces together with associated infrastructure (such as bus shelter, wastewater treatment, etc). Note this permission was granted for a fixed period, expiring on 1 June 2004. FCC’s decision was appealed by DAA’s predecessor Aer Rianta (hereinafter referred to as DAA in this Determination) to An Bord Pleanála [Ref: PL

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<sup>131</sup> The Commission understands that DAA’s Express Red car park was granted permission in August 2007 by An Bord Pleanála to provide 10,340 car parking spaces serving Dublin Airport. The Commission understands DAA’s Express Green car park was granted permission in March 1998 by Fingal County Council to provide 8,840 car parking spaces serving Dublin Airport. The Commission understands DAA’s Holiday Blue car park was granted permission in August 2007 by An Bord Pleanála to provide 8,930 car parking spaces serving Dublin Airport. The Commission understands DAA’s Terminal 1A and Terminal 1C car park was granted permission in May 1997 by Fingal County Council to provide approx. 2,000 car parking spaces serving Dublin Airport. The Commission understands DAA’s Terminal 2 Short Term car park was granted permission in March 2009 by An Bord Pleanála to provide 1,706 short-term car parking spaces serving Dublin Airport.

<sup>132</sup> Fingal County Council (2020) *Dublin Airport Local Area Plan*, page 68, section 8.6.1. Available at: <https://www.fingal.ie/sites/default/files/2020-01/dublin-airport-lap-2020.pdf>.

06F.112955]. On 9 March 2000, An Bord Pleanála granted planning permission for a fixed period until 31 December 2004.<sup>133</sup> DAA unsuccessfully sought judicial review in the High Court of An Bord Pleanála's decision.<sup>134</sup>

- (b) **October 2002:** [Ref: F02A/1110] Planning permission granted by FCC for the continued use of 3,500 car parking spaces together with associated infrastructure (such as bus shelter, wastewater treatment, etc.). Note this permission was granted for a fixed period until 1 January 2006.<sup>135</sup> An Bord Pleanála's website appears to state that an attempt was made by the Vendor to appeal FCC's decision to An Bord Pleanála, but that this was deemed an invalid application by An Bord Pleanála.<sup>136</sup>
- (c) **February 2006:** [Ref: F05A/1464] Planning permission granted by FCC for the continued use of 3,500 car parking spaces at the Target Site for a period of 5 years.
- (d) **September 2007:** [Ref: F06A/1746] Planning permission granted by FCC for 'phase 2' car park to adjoin formerly approved car park. Condition 2 of the permission stated that the use should cease after five years.<sup>137</sup> DAA appealed this permission to An Bord Pleanála [Ref: PL06F.225225], but the appeal was withdrawn.<sup>138</sup>
- (e) **October 2011:** [Ref: PL06F.PA0023] Planning permission granted by An Bord Pleanála for a Strategic Infrastructure Development for the continued operation of the overall car park. Permission was granted for a temporary period of 7 years until 4 October 2018 for 6,240 long-term car parking spaces.<sup>139</sup>
- (f) **May 2019:** [Ref: ABP-302651-18] Planning permission granted by An Bord Pleanála for a Strategic Infrastructure Development for the permanent continuation of use of the

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<sup>133</sup> An Bord Pleanála (2000) Case reference F99A/0376 (An Bord Pleanála Reference PL 06F.112955), "APPEAL by Aer Rianta cpt of Head Office, Dublin Airport, County Dublin against the decision made on the 16<sup>th</sup> day of August, 1999 by the Council of the County of Fingal to grant subject to conditions a permission to Gannon Homes Limited...". Available at: <https://archive.pleanala.ie/api/documents/Order/112/D112955.pdf>.

<sup>134</sup> *Aer Rianta Cpt v. An Bord Pleanála* [2002] IEHC 69 (25 June 2002).

<sup>135</sup> <https://planning.agileapplications.ie/fingal/application-details/13914>

<sup>136</sup> Fingal County Council (2002) Case reference F02A/1110 (An Bord Pleanála Reference PL06F.201114), "Car park, entry/exit control facilities bus shelters, hardstanding bicycle unit, demolition of house and conversion to office/staff facilities building new signal control junction". Available at: <https://archive.pleanala.ie/en-ie/case/201114>.

<sup>137</sup> DAA Phase 1 RFI Response, Question 1, document entitled '2.3a Marked Privileged Site Search Report - Project Leonard - DRAFT (2).docx', page 15, paragraph 3.4.3.

<sup>138</sup> Fingal County Council (2007) Case reference F06A/1746 (An Bord Pleanála Reference PL06F.225225), "Construction of an at-grade carpark with associated internal roads and bus shelters on lands adjoining an existing approved carpark...". Available at: <https://archive.pleanala.ie/en-ie/case/225225>.

<sup>139</sup> The relevant Strategic Infrastructure Decision of 2011 (Ref. 06F. PA0023) is provided as Annex 1 to the Planning Statement defined below at footnote 142. Following the end 7-year period, an application was made to continue the operation of the park, see An Bord Pleanála (2018) Case reference PC06F.300624, "Continued use of the car park (case reference number 06F.PA0023) and a new part three-storey car park entrance building". Available at: <https://www.pleanala.ie/en-ie/case/300624>.



existing long-term car park known as QuickPark, including construction of new entrance building with associated revised entrance layout resulting in 6,122 long-term car parking spaces, and all associated ancillary infrastructure and works. In the DAA Written Response, DAA noted that it did not object to this application for planning permission.<sup>140</sup>

### *Operation of a car park at the Target Site*

- 2.52 The car park at the Target Site first opened on 19 December 2003 with 3,500 available spaces offered to airport passengers. The Vendor had initially secured a UK operator to run the car park; however, after the arrangement did not proceed, the Vendor approached [REDACTED] (or companies owned and controlled by him) leased the Target Site from the Vendor and operated it under the trading name 'QuickPark' from its opening in 2003 until its closure in September 2020.<sup>141</sup>
- 2.53 As noted above, planning permission was granted to the Vendor by FCC to extend the Target Site car park through the integration of adjoining lands with the Target Site in September 2007. This granting of planning permission by FCC increased the number of car parking spaces at the Target Site by adding approximately 2,745 spaces to the existing 3,500 car parking spaces.<sup>142</sup> This decision was made in the context of planning permission being granted for the development of a new airport terminal (Terminal 2) which resulted in a wider provision for overall car parking at Dublin Airport.<sup>143</sup>
- 2.54 In terms of the commercial agreement between the Vendor and the operators of QuickPark, the first lease was for *“one or two years and then the site was leased to [QuickPark] until 2008”*.<sup>144</sup> Following the expiry of the lease in 2008, further lease agreements were signed between the Vendor and the operators of the QuickPark car park. The Commission

<sup>140</sup> An Bord Pleanála (2019) Case reference PA06F.302651, *“Permanent continuation of use of the existing long-term car park known as Quickpark, including construction of new entrance building with associated revised entrance layout resulting in 6,122 long-term car parking spaces, and all associated ancillary infrastructure and works.”*, granted with conditions on 3 May 2019. Available at: <https://www.pleanala.ie/en-ie/case/302651>.

<sup>141</sup> QuickPark call note, page 2.

<sup>142</sup> Submission by Downey Planning (CRO number: 486187) on behalf of Mr Gerard Gannon (2018) *Planning Statement - Lands at Quickpark Car Park, Turnapin Great, Swords Road (Old Airport Road), Santry, Co. Dublin*, dated September 2018 (the “Planning Statement”). Available at: <https://www.pleanala.ie/publicaccess/EIAR-NIS/302651/Planning/Planning%20Report.pdf>. This document was submitted in relation to the following planning application: An Bord Pleanála (2018) Case reference PA06F.302651, *“Permanent continuation of use of the existing long-term car park known as Quickpark, including construction of new entrance building with associated revised entrance layout resulting in 6,122 long-term car parking spaces, and all associated ancillary infrastructure and works”*, granted with conditions on 3 May 2019. Available at: <https://www.pleanala.ie/en-ie/case/302651>.

<sup>143</sup> DAA Phase 1 RFI Response, Question 1, document entitled ‘2.3a Marked Privileged Site Search Report - Project Leonard - DRAFT (2).docx’.

<sup>144</sup> QuickPark call note, page 5.

understands that, ultimately, the arrangement between the Vendor and the operators of QuickPark consisted of a series of lease agreements between the Vendor and Parkfly in respect of the car park site, and a licence agreement between the Vendor and Last Bus Limited (“Last Bus”) in respect of associated premises. Both Parkfly and Last Bus are owned and controlled by [REDACTED].

2.55 This commercial arrangement between the Vendor and the operators of QuickPark continued until relations broke down sometime in 2019-2020. In September 2020, the Vendor initiated High Court proceedings against Parkfly and Last Bus.<sup>145</sup> As part of these proceedings, Parkfly and Last Bus consented to possession orders in respect of the QuickPark car park site and associated premises. The Vendor sought and was granted summary judgment for approximately €2.18 million in rent payable by Parkfly. Following this judgment, and as noted above, the Target Site has been vacant since September 2020.

**Summary of car parks for which planning permission has been granted by FCC or An Bord Pleanála for the specific purpose of serving Dublin Airport**

2.56 Table 3 below sets out the various car parks for which planning permission has been granted by FCC or An Bord Pleanála for the specific purpose of serving Dublin Airport.

*Table 3: Developed car parking spaces in operation at Dublin Airport<sup>146</sup>*

Car park	Number of Spaces	% of developed long-term spaces	% of developed short-term spaces	% of total spaces
<b>Long-Term Spaces</b>				
Express Red (DAA)	8,000	32%		27.5%
Holiday Blue (DAA)	8,000	32%		27.5%
Express Green (DAA)	2,749	11%		10%
T2 Surface (DAA)	270	1%		1%
Target Site (Vendor)	6,122	24%		21%
<b>Total Long-Term</b>	<b>25,141</b>	<b>100%</b>		<b>87%</b>

<sup>145</sup> *Gerard Gannon v Parkfly Limited and Last Bus Limited* [2021] IEHC 36.

<sup>146</sup> Merger Notification Form, page 46.

Short-Term Spaces <sup>147</sup>				
Terminal 1A (DAA)	450 (approx.)		12% (approx.)	2%
Terminal 1C (DAA)	1,500 (approx.)		40% (approx.)	5%
Terminal 2 Short-Term (DAA)	1,800 (approx.)		48% (approx.)	6%
<b>Total Short-Term</b>	3,932		100%	13%
<b>Total</b>	29,073			100%

Source: Commission, based on figures provided in the Merger Notification Form by DAA

### Hotels providing car parking at Dublin Airport

2.57 A number of nearby hotels also offer car parking facilities which are available to airport passengers. In the Merger Notification Form, DAA claimed that as many as 13 hotels provide car parking facilities to airport passengers and thus compete with DAA.<sup>148</sup>

2.58 The Commission's view is that, while there are a number of hotels in the vicinity of Dublin Airport that offer parking to their guests, this is not the same service as offering parking to the public. Further, not all of the hotels identified by the Parties in the Merger Notification Form offer regular transport to the airport terminals, meaning that guests would still need to organise a means of accessing the airport. The Commission has identified six hotels in the vicinity of Dublin Airport which provide car parking to airport passengers, including passengers who are not guests of the hotel, and which offer regular transport (for example, shuttlebus services) to the airport terminals. Based on information gathered by the Commission during its investigation, these hotels control in total approximately 2,725 parking spaces.<sup>149</sup> Table 4 below sets out the hotels that the Commission has identified as providing car parking for airport passengers.

Table 4: Hotels providing car parking to Dublin Airport passengers

Hotel	Total number of car parking spaces	Approximate distance from Dublin Airport terminals
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<sup>147</sup> The breakdown figures for the short-term car parking spaces at Dublin Airport are based on the estimates provided on the DAA website as already stated in Footnote 1. The Commission will rely on the short-term car park total figure of 3,932 as provided in the Merger Notification Form.

<sup>148</sup> Merger Notification Form, pages 14 and 15, paragraph 18, bullet point 15.

<sup>149</sup> Merger Notification Form, page 22, paragraph 33; and calls with hotels and hotel websites.

Clayton Hotel	1,500	10-minute shuttle
Radisson Blu Hotel	305	2-minute shuttle
Carlton Hotel	250	5-minute shuttle
Hilton Hotel <sup>150</sup>	170	15-minute shuttle
Metro Hotel <sup>151</sup>	200	7-minute shuttle
Crowne Plaza Hotel <sup>152</sup> /Holiday Inn Express <sup>153</sup>	300	7-minute shuttle
<b>Total</b>	<b>2,725</b>	

Source: The Commission<sup>154</sup>

2.59 Hotels surrounding Dublin Airport comprise a relatively small proportion of overall parking in the proximity of Dublin Airport (approximately 8.6%). The largest of these hotels is the Clayton Hotel, which offers a total of 1,500 spaces.<sup>155</sup> It offers both a “*stay and fly*” option as well as a “*park and fly*” offering. The price charged varies depending on the type of parking, with those staying at the hotel charged €10 per day compared to €14 for non-hotel customers.<sup>156</sup> The Commission notes that the number of spaces indicated in Table 4 above is the maximum number of spaces in the hotel car park, and that not all of these spaces will be available to passengers who are not guests of the hotel, because generally, hotel guests will have priority for car parking at the hotel. For example, while the Carlton Hotel has a capacity of 250 parking spaces, the hotel has estimated that, typically, no more than 20 to 30 of its 250 car parking spaces are sold to non-residents.<sup>157</sup>

<sup>150</sup> Hilton Dublin Airport Hotel (the “Hilton Hotel”), CRO number 573869.

<sup>151</sup> Metro Hotel Dublin Airport (the “Metro Hotel”), CRO number 452351.

<sup>152</sup> The Commission notes that in the call note with the Crowne Plaza Hotel, they state that they [REDACTED]. However, the Commission notes that spaces can be booked for the Crowne Plaza Hotel car park via the following website: [airpark.ie](https://www.airpark.ie/) (2024) *Availability Check*. Available at: <https://www.airpark.ie/>. Therefore, the Commission includes the Crowne Plaza Hotel in their estimation of car park spaces provided by hotels.

<sup>153</sup> Express by Holiday Inn Dublin Airport (the “Holiday Inn Express”), CRO number 311284.

<sup>154</sup> The Commission used the information provided in the Notification Form and confirmed this information during calls with the Hotels and on their website. For some of these firms, approximate figures for all car parking at the hotel have been used as precise figures were not provided to the Commission. The Commission considers that any potential discrepancies between the estimated numbers set out above and any precise figures of spaces actually in existence at the hotel are likely to be immaterial.

<sup>155</sup> Merger Notification Form, page 22, paragraph 33.

<sup>156</sup> Clayton Hotel call note, page 2.

<sup>157</sup> Carlton Hotel call note, page 1.

- 2.60 The Commission notes that, according to FCC, hotels that are currently offering long-term parking to non-residents have different legacy planning permission from that which would apply to new hotels. FCC has stated that it has been more explicit in recent developments, whereby new hotels have been restricted in terms of who can park in their car parks.<sup>158</sup> Examples of these explicit restrictions can be found in a document entitled “*Planning Statement*”, which was prepared for Gannon Properties by Downey Planning, in relation to the Target Site being granted permanent permission to operate as a long-term car park and is available on An Bord Pleanála’s website.<sup>159</sup> Section 6.3 of the *Planning Statement* contains a table which “*clearly indicates that the permissions do not authorise long term car parking for Dublin Airport and car parking within developments in the vicinity of the airport is for ancillary use to the developments.*”<sup>160</sup>
- 2.61 However, despite FCC’s view that legacy planning permission was less explicit, the Commission notes that, in the table referenced above, the planning permission in respect of car parking at the Carlton Hotel is as follows:

*“The proposed Car parking shown within the area outlined in red and all existing car parking shall only be used for hotel related uses and not for long term airport related use ‘including park and fly facilities.’”<sup>161</sup>*

- 2.62 Furthermore, in the table referenced above, the planning permissions in respect of car parking at the Holiday Inn Express, the Premier Inn Hotel,<sup>162</sup> the Clayton Hotel and the Radisson Blu Hotel all state that the relevant planning permission requires that car parking spaces only be used for hotel-related parking and shall not be used for airport-only or airport-related parking.<sup>163</sup> It appears that, even in FCC’s legacy planning permissions, there is an explicit limitation that car parking at hotels shall only be used for hotel residents. However, in practice, the Commission understands that it is possible for non-residents to use the hotel car parks when travelling from Dublin Airport.

## Other car parking

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<sup>158</sup> FCC call note, dated 29 September 2023, page 4. This is discussed further in paragraph 5.205 below.

<sup>159</sup> Planning Statement (defined above at footnote 142).

<sup>160</sup> Planning Statement, page 18.

<sup>161</sup> Planning Statement, page 19, Table 2.

<sup>162</sup> Premier Inn Dublin Airport, CRO number 616629.

<sup>163</sup> Planning Statement, page 19, Table 2.

- 2.63 There are some independent car parking service providers, such as eXpresspark and Dublin Park and Fly, which provide valet parking services for Dublin Airport passengers. While these were not identified by the Parties in the Merger Notification Form, they offer passengers long-term parking close to Dublin Airport.
- 2.64 Dublin Park and Fly<sup>164</sup> offers a park-and-fly service, where customers bring their vehicles to the car park site<sup>165</sup> and from there are transported to and from the car park site via minibus.<sup>166</sup> Dublin Park and Fly has one car park which has a capacity of around 450-500 car parking spaces.<sup>167</sup> Dublin Park and Fly previously operated a meet and greet service, where it would meet the customer at Dublin Airport, collect the car and return the car when the customer arrived back in Dublin Airport. However, Dublin Park and Fly noted that it has reduced this service as of September 2023 due to preferring to operate the park-and-fly service.<sup>168</sup>
- 2.65 In the case of eXpresspark, the Commission understands that it offers a valet service similar to a service previously offered by QuickPark, whereby the passenger hands over the keys to their car at the terminal and the car is returned to them on their return. The Commission was not provided with reliable information regarding the scale of eXpresspark's operations.

### Car parking capacity issues at Dublin Airport

- 2.66 The absence of 6,122 car long-term parking spaces at the Target Site has meant that approximately 23% of the long-term car parking spaces permitted under An Bord Pleanála's cap on car parking serving Dublin Airport has not been available since September 2020. The Parties have noted that the inactivity of the Target Site since September 2020 resulted in "severe and undesirable pressure"<sup>169</sup> on car parking spaces at the airport leading to reputational damage for DAA.<sup>170</sup>
- 2.67 Over the last few years, DAA has taken the following steps in an effort to manage demand for DAA car parks:

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<sup>164</sup> The Commission's understanding is that Dublin Park and Fly is a different entity to ParkandFlyDublin.ie. The former operates the service described in this paragraph, whereas the latter appears to be a sales channel for car parking spaces in Crowne Plaza, Clayton, and Metro Hotels. See paragraph below for more information on ParkandFlyDublin.ie.

<sup>165</sup> Car park located at The White House, Newpark, The Ward, Co Dublin, D11 X8DH.

<sup>166</sup> Email correspondence with Dublin Park and Fly, page 1, dated 11 December 2023.

<sup>167</sup> Email correspondence with Dublin Park and Fly, page 1, dated 11 December 2023.

<sup>168</sup> Email from Dublin Park and Fly to CCPC dated 11 December 2023.

<sup>169</sup> Merger Notification Form, page 19, paragraph 22.

<sup>170</sup> Merger Notification Form, page 19, paragraph 20.

- (a) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>171</sup>
- (b) DAA sought a Ministerial Order for emergency and temporary car parking on DAA lands adjacent to the airport for summer 2022.<sup>172</sup> However, the Minister for Transport did not grant such an order, explaining to DAA that “An order of this kind is made sparingly and could only be considered in exceptional circumstances”.<sup>173</sup>
- (c) DAA has applied what it terms ‘dynamic pricing’. Under this model, prices have been increased (often significantly) for periods of high demand. Price increases were largest for longer duration stays.<sup>174</sup> DAA has told the Commission that this has been to manage occupancy/demand and to avoid circumstances where passengers arriving at a car park without a pre-booking were turned away due to lack of space.
- (d) Through various media campaigns, DAA notified passengers when DAA car parks were full and encouraged passengers to use alternative modes of transport when travelling to the airport.

Table 5: LT parking prices at Dublin Airport Easter 2019, 2022

Length of stay	Easter – Long-Term Pricing		
	DAA, <sup>175</sup> 2019	DAA, 2022	% Var in DAA prices
01 Day	■	■	■
02 Days	■	■	■
03 Days	■	■	■
04 Days	■	■	■

<sup>171</sup> DAA Phase 1 RFI Response, Question 21, document entitled [REDACTED].

<sup>172</sup> Pursuant to section 181(2) of the Planning and Development 2000 (as amended), with the Minister for Transport being the appropriate Minister. Available at: <https://revisedacts.lawreform.ie/eli/2000/act/30/section/181/revised/en/html>.

<sup>173</sup> DAA Phase 1 RFI Response, Question 6, ‘AD 21 FW\_Car Park Capacity Challenges at Dublin Airport.msg’.

<sup>174</sup> DAA Phase 1 RFI Response, Question 21, document entitled ‘Car Park Summer 2022 May 2022.pptx’.

<sup>175</sup> DAA Phase 1 RFI Response, document entitled [REDACTED], page 11. DAA long-term car parking prices are calculated as an average price across Express Red, Holiday Blue & Express Green.

05 Days	■	■	■
06 Days	■	■	■
07 Days	■	■	■
08 Days	■	■	■
09 Days	■	■	■
10 Days	■	■	■
11 Days	■	■	■
12 Days	■	■	■
13 Days	■	■	■
14 Days	■	■	■
15 Days	■	■	■

Source: [REDACTED] <sup>176</sup>

## Ownership of car parks at other airports

2.68 DAA owns and operates 22,951 car park spaces permitted under the cap of 30,800 car parking spaces at Dublin Airport. As such, DAA currently owns and operates 76% of the long-term car parking spaces which have been developed for the use of serving Dublin Airport.<sup>177</sup>

2.69 In the Merger Notification Form, the Parties claimed that Manchester Airport is comparable in size to Dublin Airport (in terms of passenger numbers), and that all 46,000 car parking spaces available at Manchester Airport are owned and operated by the airport and that *“it is perceived to work well and efficiently”*.<sup>178</sup>

2.70 The Commission’s research indicates that there are different models of car park ownership or car park operation prevalent in airports in Europe. There are examples of an airport owning car parks and leasing the operation to third party operators – for example, the CMA’s decision

<sup>176</sup> DAA Phase 1 RFI Response, Question 21, document entitled [REDACTED], page 11.

<sup>177</sup> Merger Notification Form, page 46, paragraph 102.

<sup>178</sup> Merger Notification Form, page 11, paragraph 18, bullet point 11.



in *Case 50523 – Conduct in the transport sector (facilities at airports)*<sup>179</sup> noted that the majority of car parking spaces at Heathrow Airport were owned by Heathrow Airport, but that the operation of parking facilities at Heathrow Airport were subcontracted to a third-party provider, APCOA.

- 2.71 The Commission has identified airports which have a mix of airport owned/operated car parks and privately owned/operated car parks. For example, Manchester Airport has at least six privately owned and operated car parks within a 10-15-minute shuttle service of the airport terminals; Glasgow Airport has at least 4 privately owned and operated car parks within a 5-minute shuttle service of the airport; and Brussels Airport has at least 5 privately owned and operated car parks within a 10-15-minute shuttle service of the airport.

## The economic regulation of Dublin Airport

### What is meant by the economic regulation of airports?

- 2.72 Economic regulation refers to sets of restrictions or rules imposed by government and policy makers to prevent situations in which markets do not efficiently allocate goods and services to consumers. This may be in the form of controls on the prices charged or levels of service provided by economic operators.

- 2.73 According to the Department of Transport:

*“[t]he primary purpose of effective economic regulation is to recreate the benefits to the consumer of a competitive market in circumstances where there is not sufficient competition because of the market dominance of one or a small number of service providers”.*<sup>180</sup>

- 2.74 The Department of Transport further explained, in respect of the *“Continued Rationale for Regulation of Airport Charges”*, that:

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<sup>179</sup> Competition and Markets Authority (2018) decision in Case 50523, *Conduct in the transport sector (facilities at airports)*, page 13, paragraph 3.13. Available at: [https://assets.publishing.service.gov.uk/media/5bf7c977e5274a3b2d4c837c/medway\\_full\\_text\\_decision.pdf](https://assets.publishing.service.gov.uk/media/5bf7c977e5274a3b2d4c837c/medway_full_text_decision.pdf).

<sup>180</sup> Department of Transport, Tourism and Sport (2019) *National Policy Statement on Airport Charges Regulation*, page 8. Available at: <https://assets.gov.ie/26680/9b68321ca33a4ed397f9b2094c7e6e33.pdf>.

*“In the absence of competition or economic regulation to replicate competition, consumer interests are not best served and prices are more likely to be higher than they should be and service levels are likely to be lower than they should be”.*<sup>181</sup>

2.75 The International Transport Forum at the OECD considers that economic regulation of airports may be required because, *“for most airports there are no close substitutes as attractive locations are limited”*, meaning airports can have a de facto monopoly within the aviation market due to planning and environmental restrictions and their market power in the provision of aviation services.<sup>182</sup>

2.76 For example, as noted by the International Air Transport Association, in most cases:

*“airlines do not have any countervailing power against the market power of airports, with no viable alternative airport to use if they wish to continue to serve the same market. The size, location and ownership of an airport ... , along with the nature of its main airline customers (e.g. network airlines or no-frills point-to-point operators), affect its ability to exploit its market power”.*<sup>183</sup>

2.77 In the State, airport charges have been subject to economic regulation since the enactment of the Irish Aviation Authority Act 1993<sup>184</sup> and the Aviation Regulation Act 2001<sup>185</sup> as well as through the Airport Charges Directive (Directive 2009/12).<sup>186</sup>

2.78 There are different regulatory models which may be implemented when regulating airports, including: (i) single-till mechanism; (ii) dual-till mechanism; or (iii) a hybrid approach, which all take account of service quality targets, price caps and cost-efficiency targets.<sup>187</sup> The single-till mechanism applies to Dublin Airport and is discussed further below.

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<sup>181</sup> Department of Transport, Tourism and Sport (2019) *National Policy Statement on Airport Charges Regulation*, page 8. Available at: <https://assets.gov.ie/26680/9b68321ca33a4ed397f9b2094c7e6e33.pdf>.

<sup>182</sup> The International Transport Forum (2020) *Airport Regulation Investment & Development of Aviation*, page 20. Available at: [https://read.oecd-ilibrary.org/transport/airport-regulation-investment-and-development-of-aviation\\_9789282102923-en#page18](https://read.oecd-ilibrary.org/transport/airport-regulation-investment-and-development-of-aviation_9789282102923-en#page18).

<sup>183</sup> International Air Transport Association (2007) *IATA Economic Briefing N°6: Economic Regulation*, page 9. Available at: <https://www.iata.org/en/iata-repository/publications/economic-reports/economic-regulation/#:~:text=For%20airports%2C%20independent%20economic%20regulation,if%20they%20face%20sufficient%20competitive>.

<sup>184</sup> Irish Aviation Authority Act 1993. Available at: <https://www.irishstatutebook.ie/eli/1993/act/29/enacted>.

<sup>185</sup> Aviation Regulation Act 2001. Available at: <https://www.irishstatutebook.ie/eli/2001/act/1/enacted/en/html>.

<sup>186</sup> Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (2009) OJ L70/11, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0012>.

<sup>187</sup> International Air Transport Association (2007) *IATA Economic Briefing N°6: Economic Regulation*, page 13. Available at: <https://www.iata.org/en/iata-repository/publications/economic-reports/economic-regulation/#:~:text=For%20airports%2C%20independent%20economic%20regulation,if%20they%20face%20sufficient%20competitive>.

2.79 Following a review and consultation on economic regulation at Dublin Airport in 2019, the Department of Transport concluded that Dublin Airport “*retains significant market power to a degree that makes continued economic regulation in excess of the minimum standards required by the 2009 Directive in the best interests of the consumer*”.<sup>188</sup> The IAA is responsible for regulating aeronautical charges at Dublin Airport in order to protect the best interests of current and future consumers who use Dublin Airport. Currently, Dublin Airport is the only airport in the State that is subject to economic regulation in respect of airport charges.

### The Irish Aviation Authority (IAA)

2.80 On 30 April 2023, as part of a Government reform and pursuant to the Air Navigation and Transport Act 2022,<sup>189</sup> and as mentioned in footnote 23 above, the CAR merged with the IAA to form a single national civil aviation regulator, the IAA. This merged the economic and consumer protection functions of the CAR with the aviation safety and security regulation functions of the IAA.<sup>190</sup>

2.81 The IAA is the Independent Supervisory Authority which is responsible under the Airport Charges Directive for the economic regulation of Dublin Airport in the State.<sup>191</sup> The IAA is also responsible for ensuring that Dublin Airport complies with IAA-set obligations regarding airport charges, service quality and the provision of information under the Airport Charges Directive.<sup>192</sup>

2.82 The IAA:

- (a) “*Sets and monitors a price cap limiting the revenue per passenger that [DAA] can collect from airport charges at Dublin Airport*”
- (b) “*Ensures compliance with the European Airport Charges Directive (2009/12/EC), which sets out minimum standards in relation to consultation and non-discrimination in an airport’s charging strategy.*”

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<sup>188</sup> Department of Transport, Tourism and Sport (2019) *National Policy Statement on Airport Charges Regulation*, page 3. Available at: <https://assets.gov.ie/26680/9b68321ca33a4ed397f9b2094c7e6e33.pdf>.

<sup>189</sup> Air Navigation and Transport Act 2022. Available at: <https://www.irishstatutebook.ie/eli/2022/act/40/enacted/en/print.html>.

<sup>190</sup> IAA.ie (2023) *CAR to merger with Irish Aviation Authority*. Available at: <https://www.iaa.ie/media/2023/04/26/car-merges-with-irish-aviation-authority>.

<sup>191</sup> The Airport Charges Directive (Directive 2009/12) is mentioned in paragraph 2.77 and provided in footnote 186 above.

<sup>192</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

- (c) Approves any new fees or changes to the existing fees charged by the airport authorities at Cork, Dublin and Shannon airports for access to installations needed to provide ground handling services.
- (d) Approves, as required, the charges airports levy on airlines to fund services for passengers with reduced mobility are reasonable, cost-related, transparent and established in cooperation with airport users. [sic]
- (e) Designates the scheduling status of Irish airports under the Slot Allocation Regulation, appointing a schedules facilitator or coordinator where necessary. Declares the coordination parameters for Coordinated airports- currently, Dublin Airport is Coordinated while the other Irish airports are Uncoordinated.
- (f) Sets and monitors the cost efficiency targets of the Performance Plans for air navigation services in Ireland under the performance and charging schemes of the Single European Sky.”<sup>193</sup>

2.83 One of the IAA’s main areas of responsibility is to set and monitor the price cap on airport charges at Dublin Airport, meaning that the IAA “regulate[s] the level of revenues that [DAA] may collect in airport charges levied on users at Dublin Airport”.<sup>194</sup>

#### What is regulated by the IAA?

2.84 The IAA regulates airport charges which comprise of:

- (a) runway landing and take-off charges;<sup>195</sup>
- (b) aircraft parking charges;<sup>196</sup>
- (c) charges for the use of an air bridge;<sup>197</sup>
- (d) passenger processing charges;<sup>198</sup> and,

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<sup>193</sup> IAA.ie (2023) *Economic Regulation*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation>.

<sup>194</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

<sup>195</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

<sup>196</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

<sup>197</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

<sup>198</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

(e) charges for transportation of cargo.<sup>199</sup>

2.85 These airport charges<sup>200</sup> are levied by DAA directly on the airlines using Dublin Airport. It is up to the airline whether it passes on all or some of an airport charge to passengers or freight customers.

#### What is not regulated by the IAA?

2.86 The IAA does not regulate non-aeronautical charges levied by DAA on airport users (e.g. car parking). As stated by the IAA, it:

*“has no power to regulate non-aeronautical charges, such as car-park charges, (except those levied for access to installations needed to provide ground handling services at Cork, Dublin and Shannon airports); and any charges at Knock, Kerry, Galway, Waterford, Donegal and Sligo airports.”<sup>201</sup>*

2.87 Similarly, the IAA does not have any power to regulate retail, food and beverage charges at Dublin Airport.<sup>202</sup>

#### The single-till mechanism

2.88 The single-till mechanism is an economic regulatory mechanism which attempts to mimic a situation where a regulated airport faces actual competition for air passengers. This is the regulatory mechanism used by the IAA when regulating airport charges at Dublin Airport. In 2010, the IAA issued a consultation paper with the purpose of reviewing “*whether there was merit in changing from the current use of single-till regulation*”.<sup>203</sup> In its 2019 Determination of the Maximum Level of Airport Charges at Dublin Airport 2020-2024, the IAA stated the following:

*“We continue with our single-till approach, as refined in 2014, under which the regulation of airport charges continues to have regard to the costs and revenues*

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<sup>199</sup> Commission for Aviation Regulation (2022) *Decision on an Interim Review of the 2019 Determination in relation to 2023-2026*, page 3, paragraph 1.1. Available at: [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3\\_1](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3_1).

<sup>200</sup> In this Determination, the charges listed in paragraph 2.84 are collectively referred to as “airport charges” or “aeronautical charges” with the revenues associated with these charges referred to as “aeronautical revenue”.

<sup>201</sup> IAA.ie (2023) *Economic Regulation*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation>.

<sup>202</sup> Commission for Aviation Regulation (2022) *Decision on an Interim Review of the 2019 Determination in relation to 2023-2026*, page 77. Available at: [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3\\_1](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3_1).

<sup>203</sup> Commission for Aviation Regulation (2010) *Defining the Regulatory Till*, page 2. Available at: [https://iaa.ie/docs/default-source/car-documents/2010\\_cp4-2010-defining-the-regulatory-till\(1\).pdf?sfvrsn=2bab14f3\\_0](https://iaa.ie/docs/default-source/car-documents/2010_cp4-2010-defining-the-regulatory-till(1).pdf?sfvrsn=2bab14f3_0).

*associated with commercial services at Dublin Airport. We continue to include commercial revenues in our building blocks calculations, but we may exclude some costs and revenues from the till where it protects current and prospective users from the risks associated with a commercial investment that daa wishes to undertake.”<sup>204</sup>*

2.89 In its Statement of Dublin Airport 2023 Final Price Cap, the IAA stated that *“the impact of both the Quality of Service rebate and bonus, along with a Consumer Price Index adjustment of €1.07, resulted in a final price cap for 2023 of €8.46 per passenger.”<sup>205</sup>*

2.90 The single-till mechanism is premised on a *“link between an airport’s aeronautical and commercial activities as well as an interdependency between the passengers that airlines transport to airports and the non-aeronautical revenues that they themselves generate there”*.<sup>206</sup> Regulation through a single-till means *“Dublin Airport is encouraged to perform as a competitive company would.”<sup>207</sup>*

2.91 The single-till mechanism at Dublin Airport covers:

- (a) *“All regulated activities: this includes all the activities for which charges are made, listed at 4.34 of CP4/2010”*;<sup>208</sup>
- (b) *“All non-regulated activities which are clearly a by-product of the aeronautical function of the airport. A by-product is a service which can be expected to increase in value as the number of passengers passing through the airport increases”*;<sup>209</sup> and
- (c) *“Any service provided by the airport whose costs are substantially shared in common with any of the services covered by”* (a) and (b) above.<sup>210</sup>

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<sup>204</sup> Commission for Aviation Regulation (2014) *Maximum Level of Airport Charges at Dublin Airport 2014 Draft Determination*, page 10. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2014-05-29-draft-determination-airport-charges.pdf?Status=Master&sfvrsn=84c214f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2014-05-29-draft-determination-airport-charges.pdf?Status=Master&sfvrsn=84c214f3_0).

<sup>205</sup> Irish Aviation Authority (2024) *Statement of Dublin Airport 2023 Final Price Cap*. Available at: [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/2023-final-price-cap-statement.pdf?sfvrsn=8c5eff3\\_4](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/2023-final-price-cap-statement.pdf?sfvrsn=8c5eff3_4).

<sup>206</sup> Airlines for Europe (2020) *A4E’s Position on Single Till*. Available at: <https://a4e.eu/publications/a4es-position-on-single-till/>.

<sup>207</sup> Commission for Aviation Regulation (2020) Commission Paper 5/2020, *Determination on the Maximum Level of Airport Charges at Dublin Airport 2020-2024*, paragraph 1.8. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3_0).

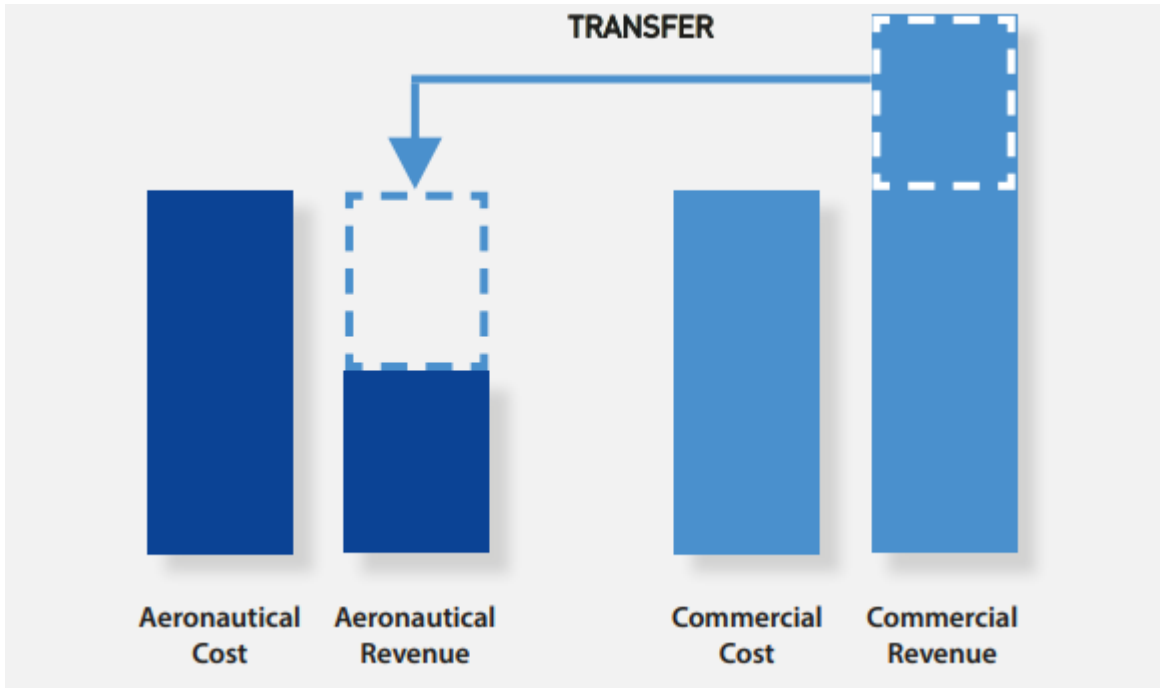
<sup>208</sup> Frontier Economics (2011) *Defining the Regulatory Till, A Response to CP4/2010*, page 9. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2011-03-23\\_aer\\_lingus.pdf?Status=Master&sfvrsn=13ab14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2011-03-23_aer_lingus.pdf?Status=Master&sfvrsn=13ab14f3_0).

<sup>209</sup> Frontier Economics (2011) *Defining the Regulatory Till, A Response to CP4/2010*, page 9. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2011-03-23\\_aer\\_lingus.pdf?Status=Master&sfvrsn=13ab14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2011-03-23_aer_lingus.pdf?Status=Master&sfvrsn=13ab14f3_0).

<sup>210</sup> Frontier Economics (2011) *Defining the Regulatory Till, A Response to CP4/2010*, page 9. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2011-03-23\\_aer\\_lingus.pdf?Status=Master&sfvrsn=13ab14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2011-03-23_aer_lingus.pdf?Status=Master&sfvrsn=13ab14f3_0).

2.92 Airports are free to choose the prices charged for commercial activities and services under a single-till mechanism: however, the revenues derived from such commercial activities is used to offset non-commercial or aeronautical costs.

Figure 7: How a single-till mechanism offsets commercial revenue against aeronautical costs



Source: Airports Council International<sup>211</sup>

2.93 The single-till mechanism:

*“effectively requires an airport to use its commercial profits to reduce the amount of aeronautical costs that can be charged to users by first deducting profits from an airport’s non-aeronautical business. Airport charges are not based on the cost of the aeronautical services, but on that cost minus any commercial revenues”.*<sup>212</sup>

2.94 The single-till mechanism treats an airport as a single business entity and aims to incentivise the airport operator to increase non-aeronautical revenues within an overall regulatory cap and to earn an appropriate return across the entire operation of an airport.

**How does the single-till differ from the dual-till?**

<sup>211</sup> Airports Council International (2018) *Behind the Regulatory Till Debate*, page 6. Available at: <https://www.aeroport.fr/uploads/documents/telecharger-le-document-en-anglais.pdf?v12.2>.

<sup>212</sup> Airports Council International (2018) *Behind the Regulatory Till Debate*, page 6. Available at: <https://www.aeroport.fr/uploads/documents/telecharger-le-document-en-anglais.pdf?v12.2>.

2.95 The single-till mechanism, as stated above at paragraphs 2.88 to 2.94, means that revenues derived from commercial business within the airport are used to contribute to the fixed costs associated with the airport’s aeronautical activities such as runways and terminals. In contrast, dual-till regulation separates aeronautical activities from commercial activities within an airport and assumes that aeronautical charges are set sufficiently high to cover the entire airport infrastructure costs.<sup>213</sup> This means that, under a dual-till approach, aeronautical and commercial costs and revenues are separated such that only aeronautical costs and revenues are taken into account in determining any price-cap for aviation regulation.<sup>214</sup>

### Comparison of economic regulation in other European airports

2.96 As illustrated in Table 6 below,<sup>215</sup> economic regulation is commonplace across the aviation industry. Table 6 illustrates the variation in regulatory models applied to large airports in Europe.

Table 6: Regulation of large airports in Europe

Rank	City	Code <sup>216</sup>	Pax Mio	Regulation Form	Single/dual till	Private Share %
1	London (Heathrow)	LHR	68,1	Incentive	Single-till	100
2	Paris (Charles de Gaulle)	CDG	60,0	Incentive	Single-till	32.5
3	Frankfurt	FRA	54,2	Cost-based	Dual-till	47.2
4	Madrid	MAD	52,1	Cost-based	Single-till	0
5	Amsterdam	AMS	47,8	Cost-based	Single-till	0
6	London (Gatwick)	LGW	35,2	Incentive	Dual-till	100
7	Munich	MUC	34,0	Cost-based	Single-till	0

<sup>213</sup>Czerny, A. I., Guiomard, C., and Zhang, A. (2016) ‘Single-till Versus Dual-till Regulation of Airports: Where Do Academics and Regulators (dis)agree?’, *Journal of Transport Economics and Policy*, 50(4), page 3. Available at: <https://www.readcube.com/articles/10.2139/ssrn.2734643> .

<sup>214</sup> Czerny, A. I. (2004) ‘Price-cap Regulation of Airports: Single-Till Versus Dual-Till’, *Technische Universität Berlin, School of Economics and Management*, 2004/14, pages 3-4. Available at: <https://www.econstor.eu/bitstream/10419/36411/1/394761030.pdf> .

<sup>215</sup> The Commission noted that Table 6 is a 2007 publication. The Commission has confirmed whether the single/dual-till statement still holds true. See: United Kingdom, Civil Aviation Authority (2022) *Heathrow’s CAP2265 Response [Redacted]*; Oxera Consulting (2013) *Regulatory regimes at airports: an international comparison*, pages 37-41; Aena (2022) *Strategic Plan 2022-2026*; Royal Schiphol Group (2023) *AirportCity-formula*; Dirección General de Aviación Civil (2017) *Airport Regulation Document 2017 – 2021*; York Aviation (2017) *The Cost and Profitability of European Airports, How Effective is Regulation under the Airport Charges Directive?*.

<sup>216</sup> Three letter International Air Transport Association (“IATA”) location identifier.



8	Rome	FCO	32,9	Cost-based	Single-till	97
9	Barcelona	BCN	32,8	Cost-based	Single-till	0
10	Paris (Orly)	ORY	26,4	Incentive	Single-till	32.5
11	Istanbul	IST	25,6	Cost-based	n/a	14
12	Milan (Malpensa)	MLX	23,9	Cost-based	Dual-till	0.88
13	London (Stansted)	STN	23,8	Incentive	Single-till	100
14	Dublin	DUB	23,3	Incentive	Single-till	0
15	Palma de Mallorca	PMI	23,2	Cost-based	Single-till	0
16	Manchester	MAN	22,7	Incentive	Single-till	0
17	Copenhagen	CPH	21,4	Incentive	Dual-till	77.3
18	Zurich	ZRH	20,7	No regulation	n/a	42
19	Oslo	OSL	19,0	Incentive	Single-till	0
20	Vienna	VIE	18,8	Incentive	Dual-till	50

Source: ACI-EUROPE, GAP data base (2007)<sup>217</sup>

## How are airport charges regulated by the IAA?

### The price cap

2.97 As part of its role in regulating Dublin Airport, the IAA sets and monitors a price cap—setting the maximum levels of airport charges that Dublin Airport may levy. The price cap is a form of incentive regulation. According to the IAA, the price cap “*incentivises DAA to perform better than the price control assumptions*” and simulates a competitive outcome, in turn, incentivising DAA to “*spend less and make more on its commercial revenues within the relevant period*” in relation to commercial revenues such as car parking revenues.<sup>218</sup>

<sup>217</sup> International Transport Forum (2010) *Airport Regulation Investment & Development of Aviation*, page 25. Available at: [https://read.oecd-ilibrary.org/transport/airport-regulation-investment-and-development-of-aviation\\_9789282102923-en#page23](https://read.oecd-ilibrary.org/transport/airport-regulation-investment-and-development-of-aviation_9789282102923-en#page23).

<sup>218</sup> IAA call note, page 3.

- 2.98 Typically, the IAA's price cap determination is made for a period of 5 years. The IAA can adjust the price cap within its regulatory period due to: (i) inflation; (ii) quality of service rebates or bonus; and (iii) the triggering<sup>219</sup> of capital investment projects which are capacity related such as the opening of a new runway or new terminal. The current regulatory period was set to last from 2020 until the end of 2024. However, due to the effects of the Covid-19 pandemic, on 23 December 2022, the IAA determined that the regulatory period would be extended to the end of 2026 and determined a new price cap for the period 2023-2026.<sup>220</sup>
- 2.99 Within the price cap regulatory period, the IAA can adjust the price cap upward or downward in response to DAA's quality of service performance. The IAA has identified 12 quality of service metrics, with a range of targets. Penalties in the form of a reduction in the permitted airport charge may be imposed if DAA fails to meet these targets. For example, in 2023, the IAA adjusted the price cap on airport charges upward from €8 to €8.46 per passenger due to the impact of both the Quality of Service rebate and bonus, along with a Consumer Price Index adjustment of €1.07.<sup>221</sup> The IAA informed the Commission that *"this system [of quality-of-service metrics] does not include a car park satisfaction metric."*<sup>222</sup> However, the IAA suggested that *"the general passenger satisfaction may capture some of the car park satisfaction"*.<sup>223</sup> The Commission's understanding is that, while passengers may wish to comment on car parking in the general context of their satisfaction with services at Dublin Airport, the quality of car parking services is not specifically taken into account by the IAA when considering any adjustments to the price cap.
- 2.100 The price cap is determined by the IAA from multiple inputs which it terms 'regulatory building blocks', consisting of:

*"The regulatory asset base ("the RAB") which in any given years is the sum of existing capital stock and a forecast of efficiently incurred new capital stock; A return on an efficient capital stock; Plus a depreciation charge on that capital stock; Plus an*

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<sup>219</sup> In this instance, trigger refers to the point in time when planning permission has been granted and the capital investment project is on site at Dublin Airport.

<sup>220</sup> Commission for Aviation Regulation (2022) *Decision on an Interim Review of the 2019 Determination in relation to 2023-2026*. Available at: [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3\\_1](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3_1).

<sup>221</sup> Irish Aviation Authority (2024) *Statement of Dublin Airport 2023 Final Price Cap*. Available at: [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/2023-final-price-cap-statement.pdf?sfvrsn=8c5eff3\\_4](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/2023-final-price-cap-statement.pdf?sfvrsn=8c5eff3_4).

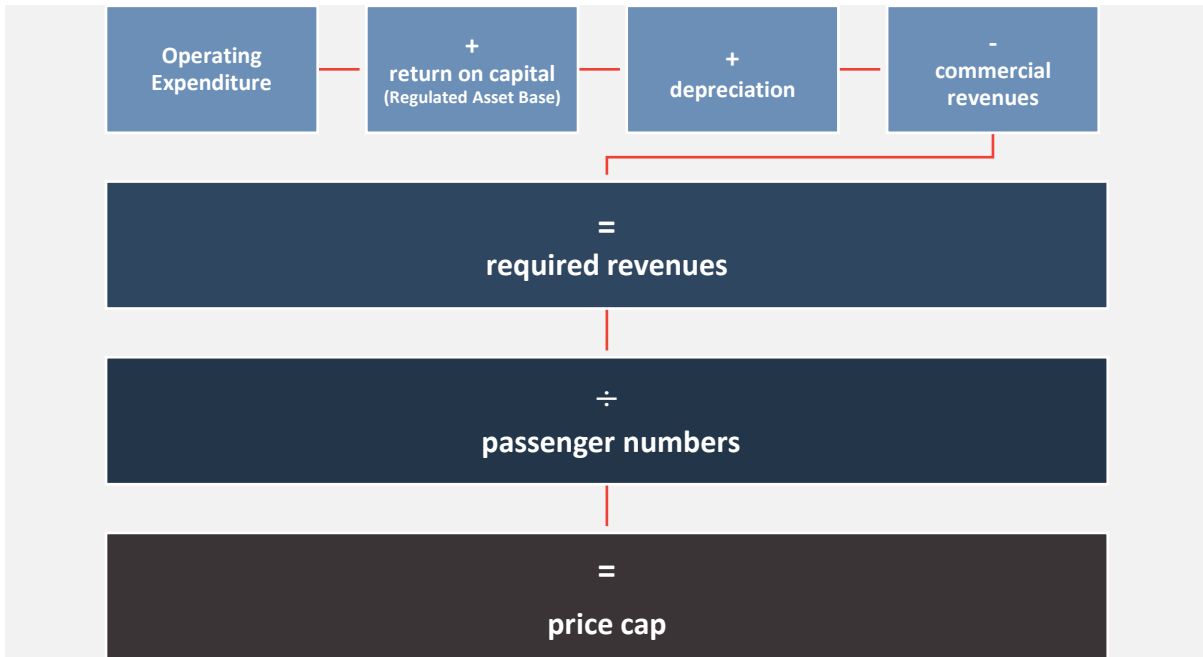
<sup>222</sup> IAA call note, page 4.

<sup>223</sup> IAA call note, page 4.

estimate of efficiently incurred future operating expenditures; [and] Less an estimate of future commercial revenues”.<sup>224</sup>

2.101 The sum of this figure is then divided by passenger number forecasts to provide a figure for the maximum airport charge per passenger.<sup>225</sup>

Figure 8: The building blocks for price cap calculation



Source: Commission for Aviation Regulation<sup>226</sup>

#### Treatment of commercial revenues within the price cap

2.102 As noted above, the IAA employs a single-till model. This means that the calculation of the cap on airport charges takes account of commercial revenues as well as aeronautical costs and revenues. Commercial revenues are forecast using previous years’ revenue as baselines, and applying ‘elasticities’ (such as, e.g., forecasts of GDP and passenger growth). These are done for each revenue category.<sup>227</sup>

2.103 The IAA collects information on a number of commercial activities. These are:

<sup>224</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

<sup>225</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

<sup>226</sup> Commission for Aviation Regulation (2022) *Decision on an Interim Review of the 2019 Determination in relation to 2023-2026*, page 77. Available at: [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3\\_1#:~:text=Accordingly%2C%20the%20Commission%20has%20carried,consequently%20sets%20out%20new%20maximum](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3_1#:~:text=Accordingly%2C%20the%20Commission%20has%20carried,consequently%20sets%20out%20new%20maximum).

<sup>227</sup> Commission for Aviation Regulation (2020) Commission Paper 5/2020, *Determination on the Maximum Level of Airport Charges at Dublin Airport 2020-2024*, section 7. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3_0).

- Retail;
- Car parking;
- Commercial property;
- Commercial concessions;
- Lounges etc;
- Advertising; and,
- US Pre-clearance.

2.104 For each of these activities, IAA forecasts revenue for the period of the price cap. IAA also undertakes benchmarking for each commercial activity against comparator airports. However, for the calculation of the price cap, the IAA considers a basket of commercial revenues—that is, revenue from the commercial activities listed above is aggregated.<sup>228</sup> The Commission’s understanding is that, while the IAA forecasts revenue specifically associated with car parking, this forecast is used to build the aggregated forecast of commercial revenues to be taken into account in setting the price cap.<sup>229</sup> In 2022, the IAA forecast that the revenue per passenger for 2023-2026 associated with car parking would be €1.76 out of a total commercial revenue of €8.98 per passenger, or 20% of total commercial revenue.<sup>230</sup>

2.105 The IAA monitors Dublin Airport’s price-cap compliance annually by comparing DAA’s performance in that regulatory year against the IAA’s assumptions for that year as set out in its determination.<sup>231</sup> The IAA also summarises, on a quarterly basis, how DAA is progressing against quality-of-service metrics which the IAA sets out in its regulatory period determination.<sup>232</sup>

2.106 Where Dublin Airport outperforms the IAA’s revenue targets, DAA retains the revenue attributable to outperforming the IAA’s targets.<sup>233</sup> The current regulatory period began in 2020

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<sup>228</sup> IAA call note, page 3.

<sup>229</sup> IAA call note, page 2.

<sup>230</sup> See paragraph 9.8 of the IAA’s Decision on an Interim Review of the 2019 Determination in relation to 2023-2026. Available at: [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3\\_1](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3_1)

<sup>231</sup> IAA call note, page 4.

<sup>232</sup> IAA.ie (2023) *Airport Charges*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation/airport-charges>.

<sup>233</sup> IAA call note, page 2.

and will last until 2026. At the time of the next price-cap determination, the IAA will consider the level of costs and revenues which DAA was able to collect when forecasting revenues for the subsequent price cap.<sup>234</sup> This means that, come the end of the current regulatory period, if DAA outperforms the IAA's price-cap forecasts, this could result in a lower price-cap in the following regulatory period.

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<sup>234</sup> IAA call note, page 3.

### 3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

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#### Introduction

3.1 In this section, the Commission identifies the potential product and geographic markets that are relevant for the assessment of the likely competitive effects of the Proposed Transaction. This section sets out:

- (a) relevant principles that apply to market definition;
- (b) horizontal and vertical overlaps between the activities of the Parties;
- (c) potential relevant product markets;
- (d) potential relevant geographic markets; and,
- (e) the Commission's conclusions on relevant market definition.

3.2 Market definition provides a framework for assessing the competitive effects of a merger; it is a means to an end. The boundaries of a market do not in themselves determine the outcome of the analysis of competitive effects to be assessed by the Commission in its merger review, as there may be competitive constraints on the merging parties from outside the relevant market or segmentation within the relevant market or other ways in which some constraints will be more significant than others.<sup>235</sup> The Commission takes such factors into account in its assessment of competitive effects, where relevant.

#### Relevant principles

3.3 The role of market definition is explained in the Commission's Merger Guidelines as follows:

*"Market definition is a conceptual framework within which relevant information can be organised for the purposes of assessing the competitive effect of a merger. Identifying the precise relevant market involves an element of judgement. It is often not possible or even necessary to draw a clear line around the fields of rivalry. Indeed, it is often possible to determine a merger's likely impact on competition without precisely defining the boundaries of the relevant market."*<sup>236</sup>

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<sup>235</sup> The Commission's Merger Guidelines, paragraphs 2.1 and 2.3.

<sup>236</sup> The Commission's Merger Guidelines, paragraph 2.3.

*“...if an SLC [substantial lessening of competition] can be shown when a merger is evaluated with respect to a number of alternative markets, there is no need to choose between them; it will be sufficient to show that the merger will result in an SLC regardless of the choice of market definition.”<sup>237</sup>*

3.4 According to the Commission’s Merger Guidelines:

*“The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered.”<sup>238</sup>*

3.5 The relevant market contains the most significant alternatives available to the customers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.<sup>239</sup>

3.6 The Commission’s Merger Guidelines note that:

*“Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question”.<sup>240</sup>*

3.7 The standard economic test for defining the relevant market is the small but significant non-transitory increase in price (“SSNIP”) test.<sup>241</sup> The SSNIP test seeks to identify the smallest group of products and geographic areas within which a hypothetical monopolist could profitably impose a SSNIP (usually 5-10%), or an equivalent decrease in quality, without a sufficient number of consumers/service purchasers switching to alternative products to render the price increase non-profitable. However, the Commission notes that the SSNIP test is just

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<sup>237</sup> The Commission’s Merger Guidelines, paragraph 2.4.

<sup>238</sup> The Commission’s Merger Guidelines, paragraph 2.8.

<sup>239</sup> The Commission’s Merger Guidelines, paragraph 2.2.

<sup>240</sup> The Commission’s Merger Guidelines, paragraph 2.9.

<sup>241</sup> The SSNIP test is discussed in detail in the Commission’s Merger Guidelines, paragraphs 2.9-2.14.

one of the tools used in defining the relevant product market, and its applicability varies depending on pricing practices in the market. A substantial emphasis should also be placed on product characteristics, price and intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.

- 3.8 As noted in the Commission’s Merger Guidelines: *“Market definition should not restrict the range of competitive effects to be assessed by the Commission in its merger review.”*<sup>242</sup> In coming to a view of the relevant product and geographic markets, the Commission may therefore *“consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market.”*<sup>243</sup>
- 3.9 Ultimately, the Commission’s definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger or acquisition under investigation.<sup>244</sup>

## Horizontal and vertical overlaps

### Horizontal overlaps

- 3.10 In the Merger Notification Form, the Parties have addressed the horizontal overlaps between their respective activities as follows:

*“The Proposed Transaction involves a horizontal overlap between the parties in relation to the ownership and operation of car parking facilities. In particular, [DAA] owns and operates a number of car parks in the vicinity of Dublin Airport.”*<sup>245</sup>

- 3.11 The Commission notes the Parties’ view that they overlap in the ownership and operation of car parking facilities but considers that this view is incomplete. As stated in paragraph 1.7, the Commission notes that the Vendor was not involved in the operation of the former QuickPark car park at the Target Site, although he remained the owner of it. This suggests that the overlap between the Parties’ activities has more to do with the ownership of car parking facilities than with the operation of car parking facilities. Thus, while the activities of the Parties overlap in respect of the ownership of car parking facilities, the relevant area of overlap for the purposes

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<sup>242</sup> The Commission’s Merger Guidelines, paragraph 2.1

<sup>243</sup> The Commission’s Merger Guidelines, paragraph 2.1.

<sup>244</sup> The Commission’s Merger Guidelines, paragraph 2.6.

<sup>245</sup> Merger Notification Form, page 45, section 4.1.



of the Commission's review is between DAA and the business carried out on the Target Site<sup>246</sup> in respect of the provision of long-term car parking spaces to the public.

3.12 The Target Site currently has planning permission to operate as a long-term car park serving Dublin Airport. Prior to the bidding process, the Target Site was described by Knight Frank<sup>247</sup> and Colliers (the "Agents of the Vendor") as "[t]he only privately owned car park serving Dublin Airport."<sup>248</sup> Over the course of the Commission's review of the Proposed Transaction, the Commission identified a number of bidders for the Target Site and each bidder stated that, had its bid been successful, it intended to operate the Target Site as a car park.<sup>249</sup> During the Commission's subsequent engagement with three of the bidders, each bidder described its operational plan for the car park at the Target Site, and did not refer to the possibility of operating anything other than a car park at the Target Site.<sup>250</sup> Furthermore, DAA has stated that its motivation for purchasing the Target Site is to increase the supply and availability of car parking spaces to best serve its passengers,<sup>251</sup> and to return long-term car parking capacity to the level it was at prior to the closure of the QuickPark car park.<sup>252</sup>

3.13 Therefore, the Commission considers the following horizontal overlap to be relevant for its assessment of the Proposed Transaction:

- the provision of long-term car parking spaces to the public in the vicinity of Dublin Airport.

### Vertical overlaps

3.14 With respect to vertical overlaps between their respective activities, the Parties stated that:

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<sup>246</sup> For the purposes of this Determination, the defined term "Target Site" is taken to mean the physical site and the business carried out there.

<sup>247</sup> HT Meagher O'Reilly Limited Company, CRO number 385044, PSR number 001266 and HT Meagher O'Reilly New Homes Limited, CRO number 428289, PSR number 001880, together trading as 'Knight Frank' ("Knight Frank").

<sup>248</sup> Merger Notification Form, Annex 7, page 5.

<sup>249</sup> [REDACTED] call note, page 1; [REDACTED] call note, page 1; [REDACTED] call note, page 1; Call Note with [REDACTED], page 1; and Call Note with [REDACTED] page 1.

<sup>250</sup> [REDACTED] call note, pages 1 and 5; [REDACTED] call note, page 2; [REDACTED] call note, page 1.

<sup>251</sup> Merger Notification Form, section 2.7, page 40; DAA Written Response, page 12, paragraphs 45 and 46; Oral Submission Transcript, page 82, lines 4-16.

<sup>252</sup> Smyth, R. (2023) 'Dublin Airport could have car park open "in a week" if sale is approved by CCPC', *Irish Examiner*, 14 June 2023. Available at: <https://www.irishexaminer.com/business/companies/arid-41162374.html>.

*“The Proposed Transaction does not give rise to any vertical relationship between the parties.”<sup>253</sup>*

3.15 The Commission has concluded that there is no current vertical relationship between the Parties, nor would the Proposed Transaction give rise to one. For this reason, vertical relationships and potential vertical effects are not discussed further in this Determination.

## Potential relevant product markets

### Previous decisions of the Commission and European Commission

3.16 The Commission and European Commission have previously considered mergers and acquisitions in the car parking sector. The following is included as background to the current analysis.

3.17 The Commission recently considered an acquisition in the car parking sector in M/22/040 – *Q-Park / Tazbell Services* (“*Q-Park/Tazbell*”). In defining the relevant product markets in that case, the Commission considered two potential product markets:

- the provision of car parking management services; and
- the provision of off-street car parking spaces to the public.

3.18 In its determination in *Q-Park/Tazbell*, the Commission noted that it did not need to determine the precise boundaries of the market for the provision of car parking management services. In assessing the market for the provision of off-street car parking spaces to the public, the Commission: (i) did not include public transport in the market; (ii) did not segment the market based on customer types; and (iii) left open the question of whether to include on-street car parking.<sup>254</sup>

3.19 The European Commission has considered the car parking sector in several merger investigations.

3.20 In M.2825 – *FORTIS AG SA/BERNHEIM-COMOFI SA*,<sup>255</sup> while ultimately leaving the precise market definition open, the European Commission assessed the transaction by reference to

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<sup>253</sup> Merger Notification Form, page 45, section 4.2.

<sup>254</sup> M/22/040 – *Q-Park / Tazbell Services*, paragraphs 3.164-3.166.

<sup>255</sup> Case No COMP/M.2825 - *FORTIS AG SA / BERNHEIM-COMOFI SA*, paragraphs 10-12.

car parking management and car parking ownership (a single potential market termed “*car parking*”).

- 3.21 In M.4613 – *Eurazeo S.A./ Apcoa Parking Holdings Gmbh*, while ultimately leaving the precise market definition open, the European Commission assessed the transaction by reference to three potential product markets, one of which was the supply of parking space to car rental companies at airports.<sup>256</sup>
- 3.22 In M.9367 – *Mirova/Predica/Indigo*, while ultimately leaving the precise market definition open, the European Commission assessed the transaction by reference to the operation of paid car parking services.<sup>257</sup>

### Decision of another national competition authority

- 3.23 The New Zealand national competition authority, the Commerce Commission, has also considered the car parking sector under its merger review powers. In *Wilson Parking New Zealand*,<sup>258</sup> the Commerce Commission considered two product markets in its Investigation Closure Report:

- the market for acquiring public car parking leases and management agreements; and
- the market for public car parking.

- 3.24 In that case, the Commerce Commission further segmented the market for public car parking by type of parking or customer type:

- casual parking (customers who park for less than four hours and are charged by the hour); and,
- daily and monthly parking (customers who park from early in the morning to the end of the day, and customers who park regularly over the course of a month. Casual parkers can be charged a daily rate, while monthly parkers tend to enter a contract and pre-pay).<sup>259</sup>

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<sup>256</sup> Case No COMP/M.4613 - *EURAZEO SA / APCOA PARKING HOLDINGS GMBH*, paragraphs 11-14.

<sup>257</sup> Case No COMP/M.9367 - *MIROVA / PREDICA / INDIGO*, paragraphs 14-17.

<sup>258</sup> New Zealand, Commerce Commission (2015) *Wilson Parking New Zealand Limited: Investigation Closure Report*. Available at: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0032/94379/Wilson-Parking-Limited-Investigation-closure-report-20-March-2015.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0032/94379/Wilson-Parking-Limited-Investigation-closure-report-20-March-2015.pdf).

<sup>259</sup> The New Zealand Competition Commission’s approach to product market definition depended on the specific area being assessed.

## Views of the Parties

3.25 In the Merger Notification Form, the Parties stated that “[a]ll car parks could be used for short or long term parking but the prices is [sic] geared to give passengers a choice. For example, it would be cheaper per day to park in the Blue than the Red or Green and then, in turn, the short term parks [sic].”<sup>260</sup>

3.26 In the Merger Notification Form, the Parties stated that:

*“The evidence demonstrates that the relevant market is for overall airport access for passengers / customers on the island of Ireland”.<sup>261</sup>*

3.27 In the Merger Notification Form, the Parties identified “multi-modal airport access” as the relevant, “broadly-defined” product market.<sup>262</sup>

3.28 In this regard, the Parties stated that “[t]he different modes of transport to access Dublin Airport include private car drop offs / collections, taxis, airport bus / coach services, Dublin bus services, private car hire, as well as car, motorcycles and bicycle parking.”<sup>263</sup>

3.29 In the DAA Economics Report, DAA stated that:

*“It seems clear that the relevant market definition should centre upon, but not necessarily be restricted to, public car parking in the vicinity of Dublin Airport. In particular, a narrow approach to product market definition would focus on public car parks, including for example nearby hotel car parks which explicitly advertise the availability of their facilities to airport users and who transport customers to and from the airport terminals.*

*A somewhat broader approach to product market definition would likely focus upon public transport options including taxis and buses (as well as drop offs/pick-ups).”<sup>264</sup>*

3.30 The Parties also stated that, in their view, “[t]he costs of switching from one mode of transport to another is typically low, and the customer’s choice depends on their preference and willingness to pay for convenience. For example, a taxi drop off may be more convenient but

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<sup>260</sup> Merger Notification Form, page 31, paragraph 63(e).

<sup>261</sup> Merger Notification Form, page 49, paragraph 117.

<sup>262</sup> Merger Notification Form, page 49, paragraph 116.

<sup>263</sup> Merger Notification Form, page 50, paragraph 130.

<sup>264</sup> DAA Economics Report, page 5.

*more expensive (depending on the origination point) than car parking, whereas a public bus or coach service is likely to be more affordable but (on average) less convenient in terms of collection locations and timetabling.”<sup>265</sup>*

3.31 Furthermore, the Parties stated that “[DAA] is working with the likes of TII [Transport Infrastructure Ireland], the National Transport Authority, and Fingal County Council to incentivise greater use of public transport by users of Dublin Airport.”<sup>266</sup> This is, in the Parties’ view, in line with government policy on greater public transport use.<sup>267</sup>

3.32 The Vendor Written Response stated that *“the Assessment incorrectly applies the Small but Significant Non-transitory Increase in Price (SSNIP) test which when combined with a more appropriate application of the SSNIP test results in a wider product (but not geographic) market definition than that employed in the Assessment”*.<sup>268</sup> The Vendor Written Response criticised the Commission’s application of the SSNIP test in the Assessment as follows:

- The SSNIP test used to determine whether public transport forms part of the relevant product market does not account for structural changes in: (i) demand for car parking; and (ii) demand for public transport, between 2018 and 2022;
- The SSNIP test does not consider whether public transport prices increased, decreased or remained constant when car parking prices increased. The Commission’s reference to a 20% reduction of some public transport fares in May 2022 is only valid for the minority of passengers who travel to Dublin Airport on transport subject to Public Service Obligation (“PSO”) subsidies – *“the majority of passengers using the bus as the preferred mode of transport to reach Dublin Airport do so on commercial bus routes that do not receive a PSO subsidy and hence are not subject to the 20 per cent fare reduction for much of 2022”*.<sup>269</sup>

3.33 The Vendor Written Response stated that the pattern of share changes between car parking and taxi is *“consistent with taxis being in the same market as car parking”*, because *“[a]s the relative price of car parking increases, the share of passengers using car parking declines, especially in 2022 compared with 2018 and 2019. In contrast, the share of passengers using*

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<sup>265</sup> Merger Notification Form, page 47, paragraph 106.

<sup>266</sup> Merger Notification Form, page 55, paragraph 139, bullet point 16.

<sup>267</sup> Merger Notification Form, page 49, paragraph 116.

<sup>268</sup> Vendor Written Response, page 4.

<sup>269</sup> Vendor Written Response, page 21.

*taxis to access Dublin Airport steadily increases over those years, especially in 2022, particularly during Q2-Q3. Comparing, for example, Q2-Q3 2022 with the same period in 2018 the share of passengers accessing Dublin Airport using taxis increased from 16 per cent to 21 per cent.*<sup>270</sup>

- 3.34 The DAA Written Response stated that “[t]he Assessment misapplies the SSNIP test. If daa were to own all the car parks and raised prices, would passengers switch to other parties? The relevant metric to look at is car parking charges to assess a SSNIP. In this case, they are looking at an increase in car park charges, not public transport. The Assessment refers to Public Service Obligation routes getting a 20% reduction but these are essential commercial / private / profitable bus routes.”<sup>271</sup> The Commission considers that its analysis of the SSNIP test addresses the substantive points raised in the Vendor Written Response and DAA Written Response in this regard.
- 3.35 In the DAA Written Response, DAA stated that it “offers concessions arrangements for a very significant number of bus services to all parts of the island – in fact, there are so many concessions, daa has converted the airport into the busiest bus station on the island. No rational monopolist would seek to cannibalise its market position in car parking by offering the opportunity to provide substitutable bus services to third parties.”<sup>272</sup> Although its reasoning for identifying the relevant product market is set out comprehensively below, the Commission believes it useful to address this point directly.
- 3.36 First, the argument put forward by DAA in this quote is at odds with arguments put forward by the Parties elsewhere. These arguments include, but are not limited to, the view that DAA: (i) is supervised by the Department of Transport and, therefore, could not actively ignore public transport policies being promoted by that Department; and (ii) is ultimately motivated by maximising the number of passengers who can access Dublin Airport.
- 3.37 Second, the Commission believes that, to suggest DAA is not a monopolist simply because it encourages airport passengers to utilise many different modes of transport to access Dublin Airport is unconvincing. Such an approach disregards the effect of the cap on the number of car parking spaces in the vicinity of the airport. As a result of the cap on the number of car parking spaces available to the public at Dublin Airport, there is also a cap on the total number

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<sup>270</sup> Vendor Written Response, page 24.

<sup>271</sup> DAA Written Response, page 91, paragraph 404.

<sup>272</sup> DAA Written Response, page 53, paragraph 220.

of passengers able to avail of car parking, even if that were the preference of all Dublin Airport passengers. Therefore, the availability of public transport options in this context —even if it were feasible for DAA to limit or remove them— is not a useful indicator of whether DAA has market power or the incentive to exercise it.

3.38 Therefore, it may be possible for DAA to charge car park prices that are higher than they would be if there was a competitor in the market, and to maintain a high level of occupancy in the car parks due to demand for car parking exceeding supply of car parking spaces, whilst simultaneously promoting public transport options. This point is illustrated by the lack of evidence of switching between car parking and public transport, which is discussed in detail as an element of the Commission’s consideration of whether public transport is part of the relevant product market from paragraphs 3.83 to 3.107 below. As such, the Commission is of the view that, for the purposes of its merger review, the fact that DAA has “*turned Dublin Airport into the busiest bus station on the island of Ireland*” would not in itself be to the detriment of DAA’s ability to maximise revenues and charge supra-competitive prices in its car parks, nor would it be to the detriment of its market position in the provision of car parking spaces to the public.

### Views of third parties

3.39 As noted in Section 1, the Commission received several third-party submissions in relation to the Proposed Transaction. Furthermore, the Commission engaged with a number of third parties in relation to the relevant market definition. The Commission’s engagement with third parties is outlined at paragraphs 1.20 to 1.27.

#### Compecon Submission

3.40 In its submission to the Commission dated 30 August 2023, Compecon provided its views on whether other modes of transport constitute a viable alternative to the use of DAA car parks:

*“For those living outside of the Dublin area, at least, taking a taxi or getting a lift from a friend or relative would not appear to be a viable option. This is compounded by the fact that only a limited number of taxis are authorised to pick up passengers at the airport while the evidence suggests that people living outside Dublin account for a high proportion of passengers at Dublin Airport. While there are bus services between the*

*airport and many parts of the island, again these would not appear to represent close substitutes for driving one's own car and parking it at the airport.”<sup>273</sup>*

- 3.41 In applying a SSNIP test, Compecon argued that, for the purposes of defining the relevant product market, other modes of transport were not viable alternatives:

*“It therefore seems highly unlikely that a 5% increase in car park charges at Dublin Airport would cause sufficient numbers of consumers to switch to other transport modes as to render such a price increase unprofitable. There is no evidence that there are alternatives to parking at the airport which exercise a significant competitive constraint on airport car park charges.”<sup>274</sup>*

- 3.42 Compecon further argued that, in relation to the relevant market definition, *“there is no need to reach a conclusion as to whether short-term and long-term car parking constitute a single market or two separate markets, as this will not affect the analysis of likely competitive effects.”*

- 3.43 Compecon submitted the following conclusion in relation to the relevant product market:

*“In our opinion the relevant market is the market for car parking services at or close to Dublin Airport. This includes the [DAA] and QuickPark facilities as well as a number of hotel car parks located close to Dublin Airport. Whether short-term and long-term parking are defined as separate markets or part of the same market will not affect the competitive assessment of the [Proposed Transaction].”<sup>275</sup>*

#### **Stakeholders of the car parking industry**

- 3.44 As discussed in paragraph 1.20 above, the Commission received two third-party submissions from entities that were involved in the public bidding process for the Target Site, one of which was ██████████. In its submission dated 6 April 2023, ██████████ distinguished between long-term and short-term car parks, and submitted that the relevant product market was *“the market for long stay car parking within the vicinity of Dublin Airport.”<sup>276</sup>*

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<sup>273</sup> Compecon Submission, page 26, paragraph 3.15.

<sup>274</sup> Compecon Submission, pages 26 and 27, paragraph 3.16.

<sup>275</sup> Compecon Submission, page 4, paragraph 4.

<sup>276</sup> ██████████ submission, page 2.



3.45 In a submission dated 5 April 2023, [REDACTED] provided the following views on the relevant product market:

*“As regards product market, it is clear that there is limited substitutability between airport car parking and other access modes to the airport. In particular, alternative access modes provide a limited constraint given that Dublin Airport is not served by any form of rail link and public transport is provided exclusively by bus, and there is a significant shortage in the availability of taxis in Dublin. In this regard, it is notable that 53.4 per cent of cars accessing the airport originate from outside Dublin,<sup>277</sup> from which travel by alternative access modes may not be possible. As regards the distinction between short-term car parking, valet car parking and long-term car parking, it is submitted that long-term car parking is the appropriate product market relevant to the Proposed Transaction as, taking into account the specific circumstances of the Proposed Transaction, this is the area of overlap between the [Parties].”<sup>278</sup>*

#### **Hotels in the vicinity of Dublin Airport**

3.46 The Commission has considered below whether hotels that provide car parking spaces to Dublin Airport passengers form part of a potential relevant market for the provision of long-term car parking spaces to the public. As discussed in paragraphs 1.21 to 1.27, the Commission engaged with a number of hotels in the vicinity of Dublin Airport during its review of the Proposed Transaction.

3.47 During the Commission’s engagement with the various hotels, Radisson Blu Hotel stated that *“it does not see itself as a competitor to DAA in relation to car parking at Dublin Airport.”<sup>279</sup>* The Carlton Hotel stated that it *“has to price its car parking spaces higher than DAA’s to offset demand”<sup>280</sup>* and the Crowne Plaza Hotel stated that it did not believe *“it is relevant in the [Commission’s] review of the Proposed Transaction because it is not a big player in the supply of car parking near Dublin Airport.”<sup>281</sup>*

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<sup>277</sup> This percentage is taken from an Irish Times article, Quinlan, R. (2022) ‘Sale of Dublin Airport car park cleared for take-off at €70m’, *Irish Times*, 6 July 2022. Available at: <https://www.irishtimes.com/property/commercial-property/2022/07/06/sale-of-dublin-airport-car-park-cleared-for-take-off-at-70m/>.

<sup>278</sup> Euro Car Parks submission, pages 3 and 4.

<sup>279</sup> Radisson Blu Hotel call note, page 2.

<sup>280</sup> Carlton Hotel call note, page 2.

<sup>281</sup> Crowne Plaza Hotel call note, page 1.

3.48 During its engagement with the Commission, while not explicitly stating whether it believes it competes with DAA in respect of the provision of long-term car parking to the public, the Clayton Hotel stated that it has *“noticed increased demand for its car park since news of the shortage of supply of car parking at Dublin Airport has become widespread.”*<sup>282</sup>

#### QuickPark

3.49 The Commission also engaged with QuickPark, which previously operated a car park at the Target Site. When asked by the Commission whether it had considered the price of hotels or other modes of transport when determining its own prices, QuickPark stated that:

*“hotels were somewhat insignificant, as the scale of their volume didn’t impact upon [QuickPark]’s business... it knew it would not succeed if it were to chase the prices that hotels were charging for car parking... sometimes hotels may offer free car parking just to sell a bedroom; so, it wasn’t feasible for [QuickPark] to attempt to compete with hotel car park pricing... it did not consider public transport when setting its prices, as it considered this to be a different market.”*<sup>283</sup>

### Commission’s analysis of relevant product markets

3.50 In the following section, the Commission has taken the core horizontal overlap between the activities of DAA and the Target Site as the starting point for identifying the scope of the appropriate potential product market for the purposes of assessing the competitive effects of the Proposed Transaction. The narrowest core overlap is the provision of long-term car parking spaces to the public in the vicinity of Dublin Airport.

3.51 Taking account of the Commission’s past findings, and the views of the Parties, and considering all information available to it, the Commission has considered the following questions in reaching its views on the relevant product market(s):

- Is the provision of short-term car parking spaces to the public in the vicinity of Dublin Airport in the same market as the provision of long-term car parking spaces to the public in the vicinity of Dublin Airport?

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<sup>282</sup> Clayton Hotel call note, page 2.

<sup>283</sup> QuickPark call note, pages 6-7.

- Are hotels that provide long-term car parking spaces to Dublin Airport passengers part of a potential market for the provision of long-term car parking spaces to the public?
- Is public transport to/from Dublin Airport in the same market as the provision of long-term car parking spaces to the public in the vicinity of Dublin Airport?
- Is travelling to Dublin Airport by taxi in the same market as the provision of long-term car parking spaces to the public?
- Should the potential market for the provision of long-term car parking spaces to the public be further segmented by customer types?

3.52 The Commission has not considered other potential modes of access to Dublin Airport (including for instance by bicycle or motorcycle) individually in detail as potential demand or supply side substitutes. The Commission considers that these modes are not effective substitutes for long-term parking, as reflected in their persistently small share of all forms of access, as shown in Figures 4 to 6. Furthermore, the Commission considers the competitive constraint imposed by private car drop offs in Section 5.

**Is the provision of short-term car parking spaces to the public in the same market as the provision of long-term car parking spaces to the public?**

*Demand side substitution*

3.53 In accordance with the Commission's Merger Guidelines, the Commission begins by considering demand side substitution, that is whether a user of a car park space in a long-term public car park in the vicinity of Dublin Airport would consider alternative services to be a close substitute for this service, such that they would switch to an alternative service and render a price increase in long-term car parking unprofitable. The Commission has noted in paragraph 2.40 that separate planning caps apply to long-term and short-term car parking.

3.54 In principle, the provision of short-term public car parking spaces and the provision of long-term public car parking spaces would be in the same market if customers considered both types of parking to have sufficiently similar characteristics, functionality and pricing such that they would be willing to switch from long-term public car parking to short-term public car parking in response to a SSNIP or equivalent decrease in quality of service in long-term public car parking.

- 3.55 The Commission is of the view that the function of short-term and long-term parking is similar, in that both facilitate parking at Dublin Airport for a period of time, but that there may be differences in the characteristics and pricing between short-term and long-term public car parking.
- 3.56 In terms of characteristics, the designation of short-term and long-term parking is generally based on proximity of the car park to the terminals at Dublin Airport. There is no minimum stay duration to qualify for parking in the long-term car park and no maximum stay duration to qualify for parking in the short-term car park. The primary means of travelling from short-term car parks to the terminals at Dublin Airport is walking, whereas the primary means of travelling from long-term car parks to the terminals at Dublin Airport is via shuttle bus. The distinction between a short-term car park and a long-term car park is defined by DAA as the provider of these car parks, as it is DAA that designates whether a car park will be managed as a short-term or a long-term parking facility.
- 3.57 In considering differences in the characteristics between long-term and short-term car parking, based on documents submitted by DAA in the DAA Phase 1 RFI Response and the DAA Phase 2 RFI Response,<sup>284</sup> it appears that DAA does not routinely collect information which would show the extent of any differences in use or switching between long- and short-term car parking.
- 3.58 However, a PowerPoint presentation submitted to the Commission as part of the DAA Phase 2 RFI Response,<sup>285</sup> comprises the results of seven focus groups conducted by Coyne Research, on behalf of DAA, on 2 February 2023 and 7 February 2023 (the “Focus Group Presentation”). According to the Focus Group Presentation, the primary objective of the research was “[t]o understand the passenger experience of the car parks in Dublin Airport and to identify key pain/passion points through the physical journey end to end for all Dublin Airport car parks.”<sup>286</sup>
- 3.59 In the Focus Group Presentation, short-term public car park customers are described as including business passengers or people collecting passengers from Dublin Airport. Furthermore, based upon the results of the focus groups, it appears to the Commission that the majority of business customers who park in DAA’s short-term public car parks would

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<sup>284</sup> See, for instance, the document submitted in response to Question 50 of the DAA Phase 2 RFI, entitled ‘Churn Questionnaire February 2017 (2).docx’, which only asks respondents whether they drove to, and parked at, Dublin Airport, as opposed to asking whether they parked in a short-term public car park or a long-term public car park.

<sup>285</sup> DAA Phase 2 RFI Response, Question 47, document entitled ‘C23-017 Dublin Airport - Car Parks Experience - Research Report - Final.pdf’ (the “Focus Group Presentation”).

<sup>286</sup> Focus Group Presentation, page 3.

consider parking in the Express Red car park when they are travelling for leisure, and long-term public car park customers would only consider parking in one of the short-term public car parks if they were driving someone to, or collecting someone from, Dublin Airport. These results suggest that the choice of car park is mainly to do with the duration of parking required, and with proximity to the terminals. Long-term public car park customers do not view short-term public car parks as substitutable for long-term public car parks because each type of car park fulfils a different requirement.

3.60 This point is reinforced by the fact that one of the “*pain points*” identified by the focus groups is that the prices of the short-term public car parks are “*prohibitive for short term leisure use*” and that “[s]hort term [is] felt to be aimed at business users who are not price sensitive.” Finally, on a slide towards the end of the Focus Group Presentation, entitled “*Short Term Car Park – Key Recommendations*”, the point is made that there would need to be a “*significant price cut to attract [Express] Red/ [Holiday] Blue users.*”

3.61 A document submitted by DAA in response to the DAA Phase 1 RFI provided the average price of a one-day stay in each of DAA’s public car parks for each month during the period from 2017 to the first three months of 2023.<sup>287</sup> Using this data, the Commission has created Table 7 below, which sets out the average price of a one-day stay in each of DAA’s car parks in 2022.

Table 7: Average price of a one-day stay in each of DAA’s public car parks in 2022.

DAA Car Park	Average Price of a One-Day Stay, 2022
Terminal 1 Car Park A (Short-Term)	■
Terminal 1 Car Park C (Short-Term)	■
Terminal 2 Short Term	■
Terminal 2 Surface (Short-Term)	■
Express Red (long-term)	■
Express Green (long-term)	■
Holiday Blue (long-term)	■

Source: Commission analysis of evidence provided by the Parties, DAA Response to the DAA Phase 1 RFI.

3.62 Table 7 shows that the average price of a one-day stay in DAA’s short-term public car parks is around three times the average price of a one-day stay in DAA’s long-term public car parks.

<sup>287</sup> DAA Phase 1 RFI Response, Question 13, document entitled [REDACTED].

Given the current pricing discrepancy between DAA's short-term public car parks and DAA's long-term public car parks it seems to the Commission unlikely that a customer of, for example, the Express Red long-term car park would switch to one of the short-term public car parks in the event of a SSNIP. While the price per day does not necessarily reflect the ways in which customers make choices about where to park (for example, the length of their stay is determined by the length of their ultimate travel duration), it does provide a point of comparison between long-term and short-term parking. According to the pricing in Table 7 above, a price increase of █████ in the average price of the █████ car park in 2022 would have meant that it cost █████ per day to park in the █████ car park – still more than █████ than the average daily price of DAA's lowest-priced short-term public car park █████).

3.63 While the analysis of pricing shows clear differentiation between long-term and short-term parking, the Commission recognises that there may be substitutability at the margins. Short-term car parks have no limitation on how long a passenger can park there, and it is likely that a passenger's choice will take into account convenience and price sensitivity.

3.64 The Commission's view is that the above evidence indicates that, due to differences in the characteristics and pricing of long-term and short-term public car parking, it is unlikely that there would be a sufficient number of long-term public car parking customers who would switch from long-term public car parking to short-term public car parking in response to a SSNIP in long-term public car parking, to make this price increase profitable for a hypothetical monopolist. However, given the functional similarities, and the possibility of substitutability at the margins, the Commission proposes to leave open at this point whether short-term parking is in the same market as long-term parking.

#### *Supply side substitution*

3.65 In setting out the Commission's approach to assessing potential supply side substitution, the Commission's Merger Guidelines state that:

*“The boundaries of the relevant product market are generally determined by reference to demand-substitution alone. The reaction of suppliers to price changes is generally considered in the analysis of the competitive effects of the merger, either under rivalry or potential new entry, rather than as part of market definition. However, there may be circumstances where the Commission will consider the responses of suppliers to changes in price.*”

*A product is a supply-side substitute for another in cases where the capacity for producing that product could profitably be switched to supply the other product quickly and without significant investment in response to a small price increase by the hypothetical monopolist. The precise period for determining whether suppliers would switch to supplying the relevant products will vary from market to market.”<sup>288</sup>*

3.66 In the Merger Notification Form, the Parties noted that:

*“There do not appear to be fundamental differences between different categories of car parks (i.e. short term and long term) other than in terms of price and proximity to the terminal. In general, therefore, it is possible to shift capacity and adapt pricing accordingly from offering one sort of parking to another at any car park.”<sup>289</sup>*

3.67 While the boundaries of the relevant product market are generally determined by reference to demand-substitution alone, for completeness the Commission has also considered the extent to which a supplier of short-term car parking would switch to supply long-term car parking in response to a SSNIP in the price of long-term car parking. A supplier of short-term car parking would need to cut the price of short-term car parking significantly in order to attract customers of long-term car parking. A supplier of short-term car parking would also need to remain within the cap on the number of each type of parking space imposed by FCC, as caps on short-term and long-term car parking spaces are set individually by FCC. For all of these reasons, it is difficult to see how such a switch could be profitable for the supplier. For this reason, the Commission’s view is that supply side substitution is unlikely.

#### *Views of the Commission*

3.68 The Commission is of the view that, due to differences in characteristics and pricing, the provision of short-term car parking spaces to the public in the vicinity of Dublin Airport may not be part of the same potential market as the provision of long-term car parking spaces to the public in the vicinity of Dublin Airport. However, the Commission leaves open the possibility that there may be a single market for all parking in the vicinity of Dublin Airport, not differentiated by short-term or long-term car parking.

3.69 As outlined in Section 5, the Commission’s view is that including the provision of short-term car parking spaces to the public in the relevant product market for the provision of long-term

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<sup>288</sup> The Commission’s Merger Guidelines, paragraphs 2.15-2.16

<sup>289</sup> Merger Notification Form, page 50, paragraph 127, section 5.1.

car parking spaces to the public would not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction.

**Are hotels that provide long-term car parking spaces to Dublin Airport passengers part of a potential market for the provision of long-term car parking spaces to the public?**

*Demand side substitution*

3.70 The Commission has considered the extent to which customers of one of DAA's long-term public car parks would switch to park in a hotel car park in response to a SSNIP or equivalent decrease in quality of service in DAA's long-term public car parks.

3.71 In considering the characteristics and functionality of hotel car parks compared with long-term car parking in the vicinity of Dublin Airport, the Commission considers that access to the airport is a key characteristic. If a car park is too far from the terminals for passengers to walk to the terminals, and does not offer a shuttle service, then it is unlikely to offer similar functionality as long-term car parking in the vicinity of the airport. A passenger availing of such parking would still need to use an additional mode of public or private transport to access the airport. The Commission's view is that, in order to offer similar functionality and characteristics as a long-term car park in the vicinity of Dublin Airport, a hotel car park would need to offer car parking to the public (i.e., non-residents as well as residents), and would need to offer appropriate access to Dublin Airport terminals (for example via a regular shuttle service).

3.72 In the Merger Notification Form, the Parties stated that:

*"There are 13 Hotels in the catchment area of the airport which offer car parking to passengers."*<sup>290</sup>

3.73 However, as discussed in Section 2, based upon the Commission's research, seven of these thirteen hotels offer parking only to their residents.

3.74 The six hotels which offer long-term car parking to non-residents and access to the airport via regular airport shuttle services account for a maximum possible total of approximately 2,725 long-term car parking spaces. The service offered by such hotels is similar in function and characteristics to the provision of long-term car parking at Dublin Airport. As indicated in

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<sup>290</sup> Merger Notification Form, page 52, paragraph 139.



paragraph 3.76 below, the prices charged by most hotels for public car parking for Dublin Airport passengers are broadly similar to prices charged in DAA's long-term car parks.<sup>291</sup>

- 3.75 The number of car park spaces which the hotels have available will fluctuate according to demand from residents because the hotels will give priority to residents' parking over public parking by passengers who are not resident in the hotel, even though a hotel may charge a higher price for non-residents' parking. The estimate of 2,725 spaces is therefore the maximum number of spaces that could be available for all hotel parking and does not take into account the impact of demand from residents of the hotel.
- 3.76 The Commission collected evidence from hotels offering long-term car parking to the public in the vicinity of Dublin Airport. Some examples are summarised as follows:
- a) the Radisson Blu Hotel stated that it does not see itself as a competitor to DAA in relation to the provision of long-term public car parking spaces at Dublin Airport and noted that it charges €20 per day to park in its car park. Radisson Blu Hotel added that it is "*disconnected from what is happening in DAA's car parks*" and it does not consider the prices of DAA's public car parks when setting its own car parking prices;<sup>292</sup>
  - b) the Clayton Hotel stated that the first 90 minutes of parking are free and, after that, the price is €3 per hour. The Clayton Hotel stated that the price it charges for parking is capped at €14 per day for non-residents and €10 per day for hotel residents;<sup>293</sup>
  - c) the Crowne Plaza Hotel stated that it does not believe it is relevant in the Commission's review of the Proposed Transaction because it is not a big player in the provision of long-term public car parking spaces near Dublin Airport. The Crowne Plaza Hotel also stated that it views parking as [REDACTED], and the price is decided accordingly;<sup>294</sup> and
  - d) the Carlton Hotel estimated that 20 to 30 of its 250 long-term car parking spaces are generally sold to non-residents. The Carlton Hotel stated that parking is not a business line it pursues, but "*that doesn't stop the public from parking there if there is a free space*". The Carlton Hotel stated that its car park could easily be filled if it were to fully open to Dublin Airport passengers,

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<sup>291</sup> Although some hotels note that they increase prices to manage demand.

<sup>292</sup> Radisson Blu Hotel call note, page 2.

<sup>293</sup> Clayton Hotel call note, page 2.

<sup>294</sup> Crowne Plaza Hotel call note, page 1.

and it has increased the price of its car parking to try to reduce demand. The Carlton Hotel stated that higher prices in DAA's car parks are a concern for the Carlton Hotel as it has to charge higher prices for its car parking spaces than DAA charges for its long-term public car parking spaces to offset demand and ensure there is a sufficient number of car parking spaces left for hotel residents.<sup>295</sup>

- 3.77 The Commission's view is that, considering the characteristics, functionality and pricing of hotel car parks in the vicinity of Dublin Airport, where hotels offer parking to the public (i.e., not limited to residents) and offer regular access to the terminals via a shuttle service, then such parking would form part of a potential market for long-term car parking at Dublin Airport.

#### *Supply-side substitution*

- 3.78 The Commission has considered the extent to which a hotel which did not currently offer long-term parking spaces to residents and non-residents, and did not offer access to the Dublin Airport terminals, would switch its capacity to offer long-term car parking spaces to Dublin Airport passengers in response to a SSNIP in DAA's provision of long-term car parking spaces to the public.<sup>296</sup>

- 3.79 The Commission's view is that a hotel would not be able to do this quickly or without significant investment in the infrastructure required to offer public parking and airport transfers by shuttle bus.

- 3.80 The Commission also notes that hotels seeking to offer long-term car parking to airport passengers must seek planning permission from FCC. The Commission notes that hotel car parking spaces are not included in FCC's licensing of long-term car parking for Dublin Airport, and that FCC has said that it will not permit any new hotels to offer parking for the airport to non-residents. Further, the conditions of the planning permission granted for Terminal 2 imposes an overall cap on the number of car parking spaces at Dublin Airport.<sup>297</sup>

- 3.81 The Commission's view is that it is unlikely that a hotel would be successful in a planning application for long-term car parking. FCC has informed the Commission that it has required stricter planning conditions in recent developments, meaning that new hotels have been more

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<sup>295</sup> Carlton Hotel call note, pages 1-2.

<sup>296</sup> The approach to supply-side substitution in market definition is distinct from the approach to the analysis of potential competition carried out in Section 5.

<sup>297</sup> As discussed in paragraph 2.40 above, this cap imposes a limit of 26,800 on the total number of long-term public car parking spaces serving Dublin Airport and a limit of 4,000 on the total number of short-term public car parking spaces serving Dublin Airport.

explicitly restricted in the customers to whom they can offer car parking facilities. The Commission notes that, according to FCC, hotels that are currently offering long-term parking to non-residents have different planning permission which is not as explicit as that applied to new hotels. Furthermore, FCC has expressly stated that *“the level of car-parking spaces provided by hotels at the moment is minimal”* and it *“does not see hotels being able to expand their offering under FCC’s planning policies.”*<sup>298</sup>

#### *View of the Commission*

3.82 The Commission’s view is that, where a hotel in the vicinity of Dublin Airport offers long-term car parking to the public (that is, to both residents and non-residents), and offers a regular means of access to Dublin Airport terminals (for example, by running a shuttle service) it would be considered part of a potential market for long-term car parking. The extent to which hotel car parks meet these criteria and constrain DAA will be examined further in the assessment of competitive effects in Section 5.

#### **Is public transport in the same market as the provision of long-term car parking spaces to the public?**

##### *Demand side substitution*

3.83 The Commission has noted above in paragraphs 3.26 to 3.30 that the Parties have identified a broad product market that includes *“multi-modal airport access.”* The Commission notes that the Parties have identified alternative modes of access as including: *“private car drop offs / collections, taxis, airport bus / coach services, Dublin bus services, private car hire, as well as car, motorcycles and bicycle parking.”*<sup>299</sup>

3.84 As discussed in paragraph 2.27, in 2023 just under one third of all passengers accessed Dublin Airport using public transport in the form of bus or coach travel. As noted earlier, the Commission considers that the mere existence of different modes of access to the airport does not in itself suggest that these would be in the same market as long-term car parking. The Commission considers that, for public transport to be in the same market as the provision of long-term car parking spaces to the public, customers would need to regard both long-term public car parking and public transport as having sufficiently similar characteristics, functionality, and pricing such that they would switch to use public transport in response to a SSNIP in the price of long-term car parking.

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<sup>298</sup> FCC Call note, dated 29 September 2023, page 4.

<sup>299</sup> Merger Notification Form, page 50, paragraph 130.

- 3.85 As described in paragraphs 2.13 to 2.15, bus and coach services connect many large towns and cities across the State and in Northern Ireland to Dublin Airport. The volume of passengers currently using bus or coach services to access Dublin Airport indicates that this mode of access is popular. Bus and coach services are more likely to be an option for passengers who can readily access the origination or stopping points of the service, and who are travelling relatively independently with no additional requirements for support with mobility, young children, luggage etc. The price of bus and coach services is generally significantly cheaper for an individual passenger than long-term parking but may not be significantly cheaper for a group of passengers who could travel together in a car and pay a single parking fee.<sup>300</sup>
- 3.86 The Commission has considered whether, in response to a SSNIP in long-term car parking, a sufficient number of customers would switch to use public transport (i.e., airport bus/coach services, or Dublin bus services)<sup>301</sup> to access the airport so as to render a price increase of long-term car parking unprofitable. The Commission's view is that there are differences in the characteristics, function and pricing between long-term public car parking and public transport.
- 3.87 The degree to which consumers can and would substitute alternative transport methods for driving and parking at the airport may depend on several factors such as availability, convenience, and price. For bus or coach services, these factors may include the passenger's proximity to suitable service links, frequency of service, number of passengers, and passenger type (for example, families travelling with small children).
- 3.88 In fact, analysis carried out by DAA on modal choice and changes in car park use in 2019 and after the Covid-19 pandemic noted that *"While some passengers switched to taxis, for many, private car is the only reasonable mode for them to use to access the airport. They may have bulky luggage to bring, have mobility challenges, be travelling with young children, not live near a bus route etc., all of which means using public transport is more challenging"*.<sup>302</sup>
- 3.89 As this quote suggests, there may be a range of non-price factors which would affect consumer preferences of access modes to the airport, and so affect passengers' decisions to switch from long-term car parking to public transport in response to a SSNIP. The importance of factors

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<sup>300</sup> The comparison is dependent on duration of travel because the price of bus or coach services is not affected by how long the passenger is away, whereas the price of long-term parking depends on the duration of stay. See Table 2.

<sup>301</sup> The Commission has described the types of public transport available to access Dublin Airport in Section 2.

<sup>302</sup> DAA Phase 2 RFI Response, Question 40, document entitled 'LouiseB re Dublin Airport Modal Choice Review Sept 2023.docx'.

affecting passengers' choices was analysed in market research carried out by DAA with the goal of understanding why customers of DAA car parks chose to park at the airport and what their future behaviour was likely to be. As discussed in paragraphs 2.31 to 2.35, a survey carried out on behalf of DAA in 2017 included questions for DAA customers who had used car parks at Dublin Airport about their preferred mode of access to the airport, and about the reasons for their choices. The survey found that the primary reason for passengers to drive and park at Dublin Airport was that it was the quickest mode of access to the airport (55.2% of respondents). The second most common reason cited was that this mode was the only option available to that passenger (19.53% of respondents). The third most cited reason was that it was the cheapest mode (14.16% of respondents). No other reason was cited by more than 10% of respondents.

3.90 Reliance on public transport as a means of accessing Dublin Airport depends first on the availability of public transport options. Dublin Airport is a major hub serving a wide geographical area, and so passengers may be travelling to the airport from across the State. As noted in paragraph 2.5, in 2019, 86% of air passengers in Ireland travelled through Dublin Airport. Of these passengers, more than half were travelling to Dublin Airport from outside Dublin.

3.91 In the Merger Notification Form, the Parties noted that:

*“..it would be difficult to grow passenger numbers at Dublin Airport from customers in parts of Ulster and Leinster without affordable and reliable long term car parks – passengers from Munster and Leinster might well opt instead for Cork, Ireland West or Shannon”<sup>303</sup>*

3.92 At this point, the Parties recognised that passengers travelling to Dublin Airport from parts of Ulster and Leinster may have no option but to drive and park when flying from Dublin Airport, and that if they were to switch away from parking, the switch may be to a different airport.

3.93 In the DAA Written Response, DAA stated that it is “*patently wrong*” for the Commission to say that public transport does not compete with car parking at Dublin Airport. DAA stated that “[c]onsumers can, and do, switch between the two. daa believes, based on its experience that when public transport comes on stream from a particular place then a material number of those who would have travelled to and park [sic] at the Airport by car would now take public

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<sup>303</sup> Merger Notification Form, page 56.

transport. The CCPC has conducted no surveys and has no evidence on the File to deny this belief.”<sup>304</sup> However, DAA does not provide evidence of such switching, and merely references the percentage breakdown of the modal mix of how passengers travelled to Dublin Airport in 2019 and 2022/2023. Furthermore, the Commission has not seen any evidence that supports DAA’s belief that switching occurs when new public transport routes come on stream.

3.94 In order to examine the propensity of customers of long-term car parking to switch to public transport in response to a SSNIP, the Commission has assessed actual customer behaviour during a period when the price of long-term car parking increased.<sup>305</sup> As shown in Table 8 below, the price of parking in a long-term car park at Dublin Airport has increased since 2018.

3.95 A document submitted by DAA in response to the DAA Phase 1 RFI provided the average price of a one-day stay in each of DAA’s public car parks for each month during the period from January 2017 to March 2023, inclusive.<sup>306</sup> Using this data, the Commission has created Table 8 below, which sets out the average price of a one-day stay in the Express Red and Holiday Blue car parks in 2018, 2019 and 2022,<sup>307</sup> and the percentage change in prices over this period.

Table 8: Average price of a one-day stay in the Express Red and Holiday Blue car parks in 2018, 2019 and 2022

Long-Term Car Park	Average price of a one-day Stay, 2018	Average price of a one-day Stay, 2019	Average price of a one-day Stay, 2022
Express Red	████	████	████
Holiday Blue	████	████	████

Source: Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response<sup>308</sup>

Table 9: Percentage █████ in average price of a one-day stay in the Express Red and Holiday Blue car parks in 2018, 2019 and 2022

Long-Term Car Park	Percentage increase in average price of a one-day stay between 2018 and 2019	Percentage increase in average price of a one-day stay between 2019 and 2022	Percentage increase in average price of a one-day stay between 2018 and 2022
Express Red	████	████	████

<sup>304</sup> DAA Written Response, page 49, paragraph 197.

<sup>305</sup> The Commission notes that this analysis is indicative and does not include detailed modelling of changes in public transport prices. The available data would not allow the Commission to undertake a full SSNIP test; the use of price data is part of the Commission’s overall analysis rather than the main point of it.

<sup>306</sup> DAA Phase 1 RFI Response, Question 13, document entitled █████’.

<sup>307</sup> The Commission has used data from 2019 and 2022 in order to exclude the period during which there were Covid travel restrictions and Dublin Airport was operating at very reduced capacity.

<sup>308</sup> Commission analysis of DAA Phase 1 RFI Response, Question 13, document entitled █████’.

Holiday Blue	██████	██████	██████
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Source: Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response<sup>309</sup>

3.96 As shown above, the average price of a one-day stay in both the Express Red and Holiday Blue car parks was ██████ in 2022 than in 2019 and ██████ in 2019 than in 2018.<sup>310</sup> Furthermore, the average price of a one-day stay in each of DAA’s long-term public car parks was ██████ in each month of 2022 than the average price of a one-day stay in each of DAA’s long-term public car parks in each corresponding month of 2019.<sup>311</sup>

3.97 The Commission notes that inflation would likely contribute to the ██████. Therefore, the Commission has used the prices provided by DAA in the document entitled ██████<sup>312</sup> and data from the Consumer Price Index, available on the CSO’s website, in order to calculate the ██████ in real terms.<sup>313</sup> December 2016 was chosen as the base reference period for these calculations.

Table 10: Average price of a one-day stay in the Express Red and Holiday Blue car parks in 2018, 2019 and 2022, adjusted for inflation

Long-Term Car Park	Average price of a one-day stay, 2018	Average price of a one-day stay, 2019	Average price of a one-day stay, 2022
Express Red	██████	██████	██████
Holiday Blue	██████	██████	██████

Source: Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response, adjusted for inflation using the Consumer Price Index.<sup>314</sup>

Table 11: Percentage increase in average price of a one-day stay in the Express Red and Holiday Blue car parks in 2018, 2019 and 2022, adjusted for inflation.

Long-Term Car Park	Percentage increase in average price of a one-day	Percentage increase in average price of a one-day	Percentage increase in average price of a one-day
Express Red	██████	██████	██████
Holiday Blue	██████	██████	██████

<sup>309</sup> Commission analysis of DAA Phase 1 RFI Response, Question 13, document entitled ██████’.

<sup>310</sup> Commission analysis of Commission analysis of DAA Phase 1 RFI Response, Question 13, document entitled ██████.

<sup>311</sup> Commission analysis of Commission analysis of DAA Phase 1 RFI Response, Question 13, document entitled ██████.

<sup>312</sup> Commission analysis of DAA Phase 1 RFI Response, Question 13, document entitled ██████’.

<sup>313</sup> Central Statistics Office (2023) *Releases and Publications*. Available at: <https://www.cso.ie/en/releasesandpublications/ep/p-cpi/consumerpriceindexoctober2023/>.

<sup>314</sup> Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response, Question 13, document entitled ‘1 ██████. Adjusted for inflation using the Consumer Price Index. cso.ie (2023) *Consumer Price Index*. Available at: <https://www.cso.ie/en/statistics/prices/consumerpriceindex/>.





<b>Express Green</b>	██████	██████	██████
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Source: Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response<sup>317</sup>

3.100 As with the Express Red and Holiday Blue car parks, the Commission recalculated the average prices of seven-day stays in the Express Green car park in real terms, adjusting for inflation.

Table 14: Average price of a seven-day stay in the Express Green car park between June and September 2018, June and September 2019, and June and September 2022, adjusted for inflation.

Long-Term Car Park	Average price of a seven-day stay, June 2018 - September 2018	Average price of a seven-day stay, June 2019 - September 2019	Average price of a seven-day stay, June 2022 - September 2022
<b>Express Green</b>	██████	██████	██████

Source: Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response, adjusted for inflation using the Consumer Price Index.<sup>318</sup>

Table 15: Percentage ██████ in average price of a seven-day stay in the Express Green car park between June and September 2018, June and September 2019, and June and September 2022, adjusted for inflation.

Long-Term Car Park	Percentage increase in average price of a seven-day stay between June 2018-September 2018 and June 2019-September 2019	Percentage increase in average price of a seven-day stay between June 2019-September 2019 and June 2022-September 2022	Percentage increase in average price of a seven-day stay between June 2018-September 2018 and June 2022-September 2022
<b>Express Green</b>	██████	██████	██████

Source: Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response, adjusted for inflation using the Consumer Price Index.<sup>319</sup>

3.101 Therefore, in both nominal and real terms, the average price of a one-day stay in the Express Green car park was higher in 2022 than in 2019 and higher in 2019 than in 2018.

3.102 The Commission’s view is that the evidence shows actual price increases for DAA’s long-term car parks that are at least similar to and mostly greater than the level of increase that would normally be considered as a SSNIP. Figure 5 above (see Industry Background) shows the distribution of passengers by mode of access to Dublin Airport for the period from Q1 2018 to

<sup>317</sup> Commission analysis of DAA Phase 1 RFI Response, Question 13, document entitled ██████’.

<sup>318</sup> Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response, Question 13, document entitled ██████. Adjusted for inflation using the Consumer Price Index. cso.ie (2023) *Consumer Price Index*. Available at: <https://www.cso.ie/en/statistics/prices/consumerpriceindex/>.

<sup>319</sup> Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response, Question 13, document entitled ██████. Adjusted for inflation using the Consumer Price Index. cso.ie (2023) *Consumer Price Index*. Available at: <https://www.cso.ie/en/statistics/prices/consumerpriceindex/>.

Q1 2023, with a break in the data for 2020 and 2021 (due to the Covid-19 pandemic). The proportion of passengers driving to the airport and parking is slightly lower than it was pre-Covid while the proportion of passengers using public transport has remained broadly constant.

- 3.103 The Commission's view is that there is no evidence that passengers of long-term car parking have switched in any significant number to any means of public transport in response to the actual price increases in long-term car parking. The main increase in mode of access appears to be in the use of drop offs, and it is likely that the number of passengers being dropped off at the airport includes passengers who may otherwise have parked or used alternative transport. The Commission notes the limitations of the use of a SSNIP test in this context. However, the Commission has examined the effects of an actual price increase in car parking and emphasises that this observation on the impact of increases in car parking prices forms only part of the Commission's overall assessment of the extent to which public transport competes with the provision of long-term car parking spaces to the public. The Commission strongly disagrees with the view expressed in the Vendor Written Response that the Commission "*has not, on the balance of probabilities, demonstrated to the requisite standard that public transport is not part of the relevant product market*".<sup>320</sup>
- 3.104 The Commission notes that some public transport fares were reduced by an average of 20% in May 2022. This fare reduction applied to all PSO services<sup>321</sup> but not to commercial bus routes (which account for most bus and coach travel to Dublin Airport). There was, however, no discernible switching from long-term car parking to the use of public transport in response to this price decrease. Furthermore, DAA did not respond to the decrease in public transport pricing by reducing its prices for long-term car parking. Rather, DAA oversaw price increases in each of its long-term public car parks during 2022. Again, this observation is illustrative of the competitive dynamics rather than determinative of the Commission's views.

#### *Supply side substitution*

- 3.105 The Commission's view is that there is no need to consider the possibility of an operator of public transport services switching to offer long-term car parking in response to a SSNIP in the price of long-term car parking, because this would not be possible in the short term and in any

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<sup>320</sup> Vendor Written Response, page 21.

<sup>321</sup> Namely Dublin Bus, Iarnród Éireann, Luas light rail, as well as bus services operated by Go Ahead Ireland in Dublin & Kildare; Waterford city services operated by Bus Éireann and all other tendered PSO bus services operated under contract to the National Transport Authority. See [nationaltransport.ie](https://www.nationaltransport.ie/public-transport-services/fares-determination/) (2024) *Fares Determination*. Available at: <https://www.nationaltransport.ie/public-transport-services/fares-determination/>.

case not without planning permission and significant investment, for example in property, infrastructure, staff and expertise.

#### *View of the Commission*

- 3.106 The Commission's view is that, in terms of functionality and characteristics, for customers of long-term car parking, an insufficient number are likely to find bus or coach travel to be a functional substitute for driving their own car and parking at the airport such that bus and coach services are considered in the same market as the provision of long-term car parking spaces to the public. While bus and coach travel do offer access to the airport, for most customers of long-term car parking they do not offer the convenience of driving to the airport and parking at a time of the customer's choosing, with the ability to manage their travel group and luggage.
- 3.107 Considering functionality, characteristics and pricing, the Commission's view is that public transport is not part of the potential market for the provision of long-term car parking spaces to the public. This view is supported by the evidence of actual customer behaviour in response to an increase in the price of long-term car parking. When DAA increased the price of long-term car parking, there was no discernible switching to any alternative form of access to the airport, including public transport. Further, DAA's price increases were implemented over a time that included a period when some public transport prices were reduced by an average of 20%. Nonetheless, the Commission has briefly considered whether public transport acts as a potential competitive constraint from outside the relevant product in the discussion of competitive effects in Section 5.

#### **Is travelling to Dublin Airport by taxi in the same market as the provision of long-term car parking spaces to the public?**

##### *Demand side substitution*

- 3.108 As noted in paragraphs 3.26 to 3.30, the Parties have identified a broad product market that includes "*multi-modal airport access.*" In the Parties' view, multi-modal airport access would include access to Dublin Airport by taxi.
- 3.109 As discussed in paragraphs 2.24 to 2.30, in Q1 2023, 22% of All Passengers and 16% of passengers who are Irish-resident accessed Dublin Airport by taxi. This proportion was higher during the peak summer months of 2022, (during which time there were well-publicised alerts regarding parking capacity constraints at Dublin Airport) but by Q1 2023, the proportion was consistent with pre-Covid levels. As noted earlier, the Commission considers that the mere

existence of different modes of access to the airport does not in itself suggest that these would be in the same market as long-term car parking. The Commission considers that, for travel by taxi to be in the same market as the provision of long-term car parking spaces to the public, customers would need to regard both long-term public car parking and transport by taxi as having sufficiently similar characteristics, functionality, and pricing such that they would switch to use taxis in response to a SSNIP in the price of long-term car parking.

- 3.110 The Commission has considered whether, in response to a SSNIP in long-term car parking, a sufficient number of customers would switch to use taxis<sup>322</sup> to access the airport and render a price increase in long-term car parking unprofitable. The Commission's view is that while travel by taxi may be functionally similar and share characteristics with long-term car parking (in that both entail travel to the airport by car) there are differences in the characteristics and pricing between long-term public car parking and travel by taxi.
- 3.111 The degree to which consumers can and would substitute taxi services for driving and parking at the airport may depend on several factors such as availability (this may be a particular issue where passengers are travelling long distances to access the airport), convenience and price. Taxi services would more closely align with the functionality and characteristics of driving to the airport and parking than would bus or coach services. However, there may be some limitations on availability. While taxis from any location can drop off passengers at Dublin Airport without any need for a permit, collection from Dublin Airport by taxis is limited to licensed taxis.<sup>323</sup>
- 3.112 The Commission's view is that, for some customers living in certain parts of Dublin, travel to Dublin Airport by taxi would be a functional substitute for long-term car parking. For this cohort of passengers, the price of a taxi to Dublin Airport may be comparable with the cost of long-term car parking, such that some passengers may switch to travel by taxi in response to a SSNIP in the price of long-term car parking.
- 3.113 The Commission's view is that the cohort of passengers who may switch to travel by taxi in response to a SSNIP in the price of long-term car parking is likely to be limited. Noting that more than half of passengers are travelling to Dublin Airport from outside Dublin, the Commission examined the price of travelling to Dublin Airport by taxi from various locations

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<sup>322</sup> The Commission has described the types of public transport available to access Dublin Airport in Section 2.

<sup>323</sup> As discussed in paragraph 2.17 above, DAA announced that it had issued an additional 300 taxi permits in June 2023. Even taking into account the 300 additional permits issued by DAA in June 2023, the Commission's assessment of the competitive effects of the Proposed Transaction would be unaffected.

across the island of Ireland.<sup>324</sup> While the Commission acknowledges that, for passengers travelling from within Dublin or from one of the counties close to Dublin Airport, it may be feasible to switch from car parking to travelling by taxi, the Commission considers that the substitutability of car parking and travelling by taxi decreases as the passengers' point of origin moves further and further away from Dublin. In order to illustrate this point, the Commission has considered the average price of a taxi from various counties that do not border Dublin. For passengers travelling from Belfast, the average price of a taxi to Dublin Airport was €175 one-way, although the actual price may vary according to time of travel and demand for taxis. For travellers from Cork, the average price was €500, with a 20% increase for travel after 8pm. From Galway, a taxi to Dublin Airport costs €380 on average, often with an increase for travel after 8pm. Bearing in mind that for the taxi service to be equivalent to long-term parking the passenger would need to pay for a return journey, the price of travel by taxi to Dublin Airport for passengers outside of Dublin is significantly more expensive than long-term parking.

3.114 In paragraphs 3.94 to 3.104 above, the Commission assessed actual customer behaviour in order to examine the propensity of customers of long-term car parking to switch away from long-term car parking in response to a SSNIP in long-term car parking. As shown in Figures 4 and 5, the proportion of passengers travelling to Dublin Airport by taxi has remained broadly consistent both pre- and post-pandemic. The exception to this pattern is in summer 2022, when the use of taxis increased. However, at that time the proportion of passengers availing of long-term car parking remained constant. The Commission notes also that taxi fares are regulated,<sup>325</sup> and this will limit the extent to which taxi fares could respond to a change in the price of long-term car parking.

3.115 The Commission notes the Vendor's view set out in paragraph 3.33 above that the pattern of share change between car parking and taxis "*is consistent*" with taxis being in the same market as car parking. However, "*being consistent with*" does not provide strong evidence to support a view that taxis and car parking are in the same market. As the Commission has explained in paragraph 3.7 above, the consideration of potential demand side substitution does not rely solely on a SSNIP test, but rather takes account of various factors including product characteristics and intended use as well as price. For instance, the growth in the number of

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<sup>324</sup> Pricing information was gathered on 30 November 2023. All estimates provided relate to a standard taxi from the named city centre to Dublin Airport.

<sup>325</sup> S.I. No. 293/2022 - Taxi Regulation (Maximum Fares) Order 2022.

customers using taxis at certain times may be driven by a tendency to avoid using public transport in the wake of the Covid-19 pandemic.

- 3.116 In any case, as the Vendor Written Response acknowledges, even if taxis were included, the market would still be highly concentrated, and would become more concentrated as a result of the transaction, with HHI and Delta exceeding the thresholds outlined in the Commission's Merger Guidelines.<sup>326</sup>

#### *Supply side substitution*

- 3.117 The Commission's view is that there is no need to consider the possibility of an operator of taxi services switching to offer long-term car parking in response to a SSNIP in the price of long-term car parking, because this would not be possible in the short term and in any case not without planning permission and significant investment in the infrastructure required to offer public car parking and airport transfers by shuttle bus.

#### *View of the Commission*

- 3.118 The Commission's view is that accessing the airport by taxi could be a substitute for long-term car parking because they are functionally similar, i.e., getting people to the airport. However, travelling to the airport by taxi becomes more expensive the further the passenger lives from Dublin Airport. Particularly for passengers travelling from outside Dublin, it would be considerably more expensive and indeed prohibitive for most people to travel to Dublin Airport by taxi. As noted earlier, over half of passengers travel to Dublin Airport from outside Dublin. Further, collection from the airport is limited to licensed taxis. For these reasons, the Commission's view is that a 5-10% increase in the price of long-term parking would not lead to sufficient switching to taxis to render a price increase unprofitable to the car park provider. Therefore, access to Dublin Airport by taxi is not likely to be in the same market as the provision of long-term car parking to the public.

#### **Should the potential market for the provision of long-term car parking spaces to the public be segmented by customer type?**

#### *Demand side substitution*

- 3.119 The Commission has considered whether the potential market for the provision of long-term car parking spaces to the public should be further segmented by customer type. This could

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<sup>326</sup> Vendor Written Response, page 26.

arise, for example, if there are differences within the potential market for the provision of long-term car parking spaces to the public in demand or supply by different customer groups.

3.120 As outlined in Section 2 at paragraph 2.31 onwards, different types of car park customers can and do use car parks for different purposes. The purpose of travel is often linked to the duration of travel, with, for example, business travel typically involving shorter trips than leisure travel.

3.121 In the Focus Group Presentation, short-term public car park customers are described as being either business passengers or people collecting passengers from Dublin Airport, while long-term public car park customers are described as being leisure passengers. This characterisation highlights that the key functionality required by customers of short-term car parking is proximity and ease of access to the terminals, whether the customer is meeting passengers or travelling for business. The pricing structure (typically priced by hour rather than by day) reflects this. For example, a customer collecting passengers from the airport would not be likely to pay for a day's parking in a long-term car park when they expect to be in the airport for less than an hour. In the case of business passengers choosing to use short term car parking, there may be less price sensitivity, with the proximity and ease of access of short-term car parking being more important than price.

#### *Supply side substitution*

3.122 The Commission's view is that there is no need to consider supply side substitution relating to different customer types because the relevant factors are already considered in terms of short-term and long-term car parking.

#### *View of the Commission*

3.123 The Commission is of the view that the market for the provision of long-term car parking spaces to the public should not be further segmented by customer type. The key factors determining customer choice of parking are duration of stay and proximity to the terminals, and these factors have already been captured in the assessment of short-term and long-term car parking. The Commission's view is therefore that further segmentation by customer type is not necessary.

### **Commission's conclusion on the relevant product markets**

3.124 The Commission has considered both demand-side and supply-side substitution with respect to the provision of car parking spaces to the public traveling through Dublin Airport. While

there are a range of different modes of accessing Dublin Airport, this does not mean that any or all of them would be demand side substitutes for long-term car parking. Having considered the views of the Parties and third parties, the Commission has identified the provision of long-term car parking spaces to the public as the relevant product market for purposes of assessing the Proposed Transaction which:

- (a) may include the provision of short-term car parking spaces to the public;
- (b) includes hotels that offer long-term car parking spaces and access to Dublin Airport for passengers, including those who are not resident in the hotel;
- (c) does not include public transport, i.e., buses/coaches;
- (d) does not include travel by taxi; and,
- (e) should not be segmented by customer type.

3.125 Therefore, based on the reasons outlined above, the Commission's view is that the relevant product market is for:

- the provision of car parking spaces to the public, which may include short-term and long-term parking.

## Relevant Geographic Markets

### Relevant principles

3.126 The role of geographic market definition is explained in the Commission's Merger Guidelines as follows:

*"The product market(s) affected by a merger may be geographically bounded if geography limits some customers' willingness or ability to switch products or some suppliers' willingness or ability to supply to customers. The relevant geographic market is usually defined in terms of the location of suppliers and it includes those suppliers that customers consider to be feasible substitutes. The relevant geographic market may be local, regional, national or wider."<sup>327</sup>*

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<sup>327</sup> The Commission's Merger Guidelines, paragraph 2.19.



*“The approach to defining the relevant geographic market is similar to that of product market definition. Both can use the SSNIP test as an analytical tool.”<sup>328</sup>*

3.127 According to the Commission’s Merger Guidelines:

*“The relevant geographic market consists of all supply locations that would have to be included for the hypothetical monopolist to find it profitable to impose a small but significant non-transitory increase in price. Beginning with the location of each of the merging parties, the SSNIP test is applied by considering what would happen if a hypothetical monopolist of the relevant product at that location imposed a small but significant non-transitory increase in price. If enough customers switch to suppliers in other locations, the next closest location where customers can purchase the relevant product is included. The SSNIP test is thus iteratively applied until a hypothetical monopolist could profitably increase the price of the relevant product in a location or group of locations by a small but significant non-transitory amount. This location or group of locations is thus defined as the relevant geographic market.”<sup>329</sup>*

### Previous decisions

3.128 Neither the Commission nor its predecessor, the Competition Authority, have previously considered an acquisition of a car park in the vicinity of an airport.

3.129 In M.4164 – *Ferrovial / Quebec / GIC / BAA*, the European Commission considered the relevant geographic market for the provision of commercial services associated with operating an airport to be *“limited to a specific airport or its immediate surroundings.”*<sup>330</sup>

### Views of the Parties

3.130 In the Merger Notification Form, the Parties stated the following in respect of geographic market definition:

*“The evidence demonstrates that the relevant market is for overall airport access for passengers / customers on the island of Ireland. However, the parties submit that it is not necessary for the [Commission] to reach a definitive conclusion on the definition of the relevant product and geographic markets in this case, as the Proposed*

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<sup>328</sup> The Commission’s Merger Guidelines, paragraph 2.20.

<sup>329</sup> The Commission’s Merger Guidelines, paragraph 2.21.

<sup>330</sup> Case No COMP/M.4164 – *Ferrovial / Quebec / GIC / BAA*, paragraph 24.

*Transaction will not lead to a SLC in markets for goods or services in the State (or the island of Ireland), regardless of how the market is defined.”<sup>331</sup>*

3.131 Furthermore, the Parties noted that:

*“Customers (i.e., passengers and those collecting passengers) travel to Dublin Airport from all over the island of Ireland. The car parking facilities need to be at, or close to, the Airport. QuickPark demonstrates and at least one or more of [DAA] car parks that the spaces do not have to be at the Airport but within a short bus ride would be sufficient.”<sup>332</sup>*

3.132 During the DAA Oral Response, DAA referenced the relevant geographic market considered by the Commission in *Q-Park/Tazbell*, which is discussed in greater detail in paragraph 3.139 below, and noted that the definition of the relevant geographic market adopted in the Assessment, by comparison, was “*not very precise*”.<sup>333</sup>

3.133 Additionally, during the DAA Oral Response, DAA noted that, in paragraph 2.70 of the Assessment, the Commission identified that Manchester Airport “*has at least six privately owned and operated carparks within a 10-to-15-minute shuttle service of the airport terminals*” and Brussels Airport “*has at least five privately owned and operated carparks within 10 to 15 minutes shuttle service of the airport.*”<sup>334</sup> The DAA Oral Response stated that, by applying this 15-minute drive-time analysis to Dublin Airport, it is clear that it is possible for Dublin Airport passengers to park in places such as Malahide or Donabate and travel to the airport by taxi from these locations.

3.134 The Vendor Written Response states that “*in defining the relevant market, the Assessment incorrectly applies the Small but Significant Non-transitory Increase in Price (SSNIP) test which when combined with a more appropriate application of the SSNIP test results in a wider product (but not geographic) market definition than that employed in the Assessment*”<sup>335</sup> (emphasis added).

## Views of third parties

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<sup>331</sup> Merger Notification Form, paragraph 49, paragraph 117.

<sup>332</sup> Merger Notification Form, page 51, paragraph 137.

<sup>333</sup> Oral Submission Transcript, page 38, line 6.

<sup>334</sup> Oral Submission Transcript, page 38, lines 11-17.

<sup>335</sup> Vendor Written Response, page 4.

3.135 As noted in Section 1, the Commission received several third-party submissions in relation to the Proposed Transaction. Furthermore, the Commission engaged with a number of third parties in relation to the definition of the relevant geographic market. The Commission's engagement with third parties is outlined in Section 1.

#### Compecon Submission

3.136 In a submission to the Commission dated 30 August 2023, Compecon submitted that the relevant geographic market as *"the market for car parking at or close to (within 6km) of Dublin Airport"*<sup>336</sup>

#### Stakeholders of the car parking industry

3.137 In a submission dated 5 April 2023, Euro Car Parks submitted the following description of the relevant geographic market:

*"From a geographic perspective, it is evident that long-term car parking must bear a close geographic relationship with the airport in question. In this regard, it is clear that, from a demand-side perspective, car parks that do not provide access to the airport (e.g. either directly or via a shuttle bus) cannot be considered in the same geographic market as car parks located at or around Dublin Airport."*<sup>337</sup>

### Commission's analysis of the relevant geographic market

3.138 The Commission's view on the geographic scope of the market accords with that of the Parties as presented in the Merger Notification Form, in that a public car park must be within a short distance of Dublin Airport, as the Commission considers that Dublin Airport passengers need to be close enough to either walk or get a shuttle bus to the airport terminals.

3.139 In *Q-Park/Tazbell*, the Commission concluded that it was necessary to define a radius of *"800 metres walking distance"* around each off-street car park considered in its analysis of potential competitive effects arising from the acquisition. The Commission considered whether it should adopt a similar approach in defining the relevant geographic market in respect of the Proposed Transaction. Ultimately, the Commission's view is that it is not necessary to define a specific geographic radius around Dublin Airport.

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<sup>336</sup> Compecon Submission, section 5, page 46.

<sup>337</sup> Euro Car Parks submission, pages 3 and 4.

3.140 As stated above, in order for a public car park to be utilised by Dublin Airport passengers for the purposes of accessing Dublin Airport, the public car park must either be within walking distance of, or a short shuttle bus journey from, Dublin Airport. As such, the Commission disagrees with DAA's view (raised in the DAA Oral Response, described in paragraph 3.133 above) that parking further from Dublin Airport – including at “*derelict*”<sup>338</sup> sites in Malahide or Donabate – and getting a taxi from these locations to Dublin Airport could be a viable alternative to driving to, and parking in, a public car park in the immediate vicinity of Dublin Airport from which a regularly-scheduled shuttle transfer to Dublin Airport is available.

3.141 The Commission considers it appropriate to leave open the question of whether the provision of short-term car parking (generally within walking distance of Dublin Airport terminals) is in the same market as the provision of long-term car parking. Shuttle bus services to Dublin Airport only operate from long-term car parks in the immediate vicinity of Dublin Airport (i.e., DAA's long-term public car parks and certain hotel car parks). Therefore, for the purposes of reviewing the potential competitive effects arising from the Proposed Transaction, the Commission considers that it is sufficient to define the relevant geographic market as being “in the vicinity of Dublin Airport”, meaning within walking distance or a short shuttle bus journey of the airport.

### **Overall conclusion on relevant market definition**

3.142 Having regard to the evidence available to it, the Commission concludes that the relevant market for the competitive assessment of the Proposed Transaction (“Relevant Market”) is:

- the provision of car parking spaces to the public in the vicinity of Dublin Airport.

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<sup>338</sup> Oral Submission Transcript, page 38, line 21.

## 4. RELEVANT COUNTERFACTUAL

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### Introduction

4.1 Under section 22(3) of the Act, the Commission must consider whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State. In assessing the likely effects of a merger on competition, the Commission typically compares the competitive situation that may be expected to arise following the merger with the competitive situation which would have prevailed without the merger. The competitive situation without the merger is referred to as the “*counterfactual*”.<sup>339</sup>

### Approach to establishing the counterfactual

4.2 The sole purpose of establishing the counterfactual is to provide a point of comparison for assessing the competitive effects arising from a given merger.<sup>340</sup> The “actual” situation for the purposes of assessing the competitive effects of a notified merger is that particular merger coming into effect, i.e., being implemented. This is compared with the “counterfactual” situation which identifies the most plausible conditions of competition which would have arisen in the **absence** of the notified merger. The absence of the notified merger is not the same as the notified merger not being implemented.<sup>341</sup> Rather, the absence of the notified merger assumes that the notified transaction had not been in the contemplation of the vendor, i.e., what would have happened if the vendor could not have proposed the sale to that particular purchaser?

4.3 This approach has been set out in several recent Commission determinations. In its determinations in each of M/21/040 – *AIB/Certain Assets of Ulster Bank*, M/21/021 – *Bank of Ireland/Certain Assets of KBC* and M/21/076 – *PTSB/Certain Assets of Ulster Bank*, the Commission stated that:

*“In other words, a counterfactual is a hypothesis as regards the facts by reference to which an alleged effect on competition is to be tested. It involves considering **what***

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<sup>339</sup> The Commission’s Merger Guidelines, paragraph 1.12.

<sup>340</sup> The Commission’s Merger Guidelines, paragraph 1.12. As DAA’s legal advisor acknowledged during the Oral Submission, by reference to the judgement of the UK’s Court of Appeal of England and Wales in *BSkyB Plc, Virgin Media Inc v Competition Commission, SS for Business Enterprise and Regulatory Reform* [2010] EWCA Civ 2, “it must be kept in mind that the counterfactual is not a statutory test. It is an analytical tool used to assist in answering the question of whether the creation of the merger undertaken may be expected to result in a SLC”, see the Oral Submission Transcript, page 70, lines 29-31.

<sup>341</sup> The CCPC’s approach to establishing the counterfactual is consistent with that of other merger control authorities. The CCPC’s perspective is *ex ante* (as opposed to *ex post*) in the sense that it examines the situation absent the proposed transaction the time frame of which can begin before the transaction in question was proposed. Ultimately, these labels do not alter the fact that the Commission is following the approach in its Merger Guidelines.

*would have happened if the proposed merger had not taken place.*<sup>342</sup> (emphasis added).

4.4 The Commission's approach is consistent with that of other merger control authorities. For example, the European Commission's *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*<sup>343</sup> (the "EC Horizontal Merger Guidelines") set out that:

*"In assessing the competitive effects of a merger, the [European] Commission compares the competitive conditions that would result from the notified merger with the conditions **that would have prevailed without the merger.**"*<sup>344</sup> (emphasis added).

4.5 The actual outcome of this merger would be that the Proposed Transaction is implemented i.e. DAA acquires the Target Site and operates it as a car park serving Dublin Airport, and this is the situation which will be examined in the assessment of competitive effects in Section 5 of this Determination. In the absence of the Proposed Transaction, DAA's acquisition of the Target Site would not have been in the Vendor's contemplation, nor in the contemplation of the Vendor's advisors, nor that of NAMA. In the Oral Submission, the economic representatives of DAA<sup>345</sup> and the Vendor<sup>346</sup> agreed that this was the appropriate conceptual framework for the purposes of establishing the counterfactual.<sup>347</sup>

4.6 The Commission generally adopts the prevailing conditions of competition as the counterfactual against which it assesses the impact of the merger, i.e., the situation prior to the merger or acquisition. However, as the counterfactual is necessarily forward-looking, this will not always be the case.<sup>348</sup> The Commission will consider whether the prevailing conditions of competition would likely have continued<sup>349</sup> in the absence of the notified merger.

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<sup>342</sup> M/21/040 - AIB/Certain Assets of Ulster Bank, paragraph 4.3; M/21/021 - Bank of Ireland/Certain Assets of KBC, paragraph 5.3; and, M/21/076 - PTSB/Certain Assets of Ulster Bank, paragraph 4.3.

<sup>343</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings [2004] OJ C 31, 5.2.2004, pages 5-18.

<sup>344</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings [2004] OJ C 31, 5.2.2004, paragraph 9.

<sup>345</sup> Oral Submission Transcript, page 52, line 5-6.

<sup>346</sup> Oral Submission Transcript, page 21, lines 22-34; page 22, lines 1-3, 8-12.

<sup>347</sup> As discussed further in paragraph 4.14(k) below, it is worth noting that DAA's legal representatives did not agree with the Commission's approach for the purposes of establishing the counterfactual.

<sup>348</sup> The Commission's Merger Guidelines, paragraph 1.14. Typically, the prevailing conditions of competition involve the merging parties continuing to compete independently in the relevant market(s) identified by the Commission.

<sup>349</sup> This approach is consistent with that of other merger control authorities. See, for example, the UK CMA's decision of 16 February 2021 in relation to Adevinata ASA's proposed acquisition of eBay Classifieds Group from eBay Inc, in which the CMA stated at paragraph 54, "For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the

case, the situation prior to the Proposed Transaction was that the Target Site was not operational and so was not competing in the relevant market. Given the Vendor's decision to take steps to sell the Target Site, and specifically to sell the Target Site as a car park, the Commission's view is that the prevailing conditions of competition (i.e., in which the Target Site was not operational as a car park since September 2020 and was therefore not competing in the Relevant Market) would not be an appropriate counterfactual. Rather, in the Commission's view, the most credible starting point in establishing the counterfactual in this case is that the Target Site would be present on the Relevant Market, i.e., operating as a car park. As the counterfactual must envisage the situation absent the Proposed Transaction (i.e., the situation where DAA's acquisition of the Target Site was not in the contemplation of the Vendor, the Vendor's advisors or NAMA), the Target Site would be owned and operated by an entity other than DAA.

- 4.7 The time horizon that the Commission considers when describing the counterfactual will be generally consistent with the time horizon used in the Commission's competitive assessment. However, the Commission is not limited to considering alternative scenarios that would have occurred at exactly the same time as the developments that give rise to the merger under review.<sup>350</sup>
- 4.8 The very act of the relevant parties agreeing to the merger and actions taken in pursuance of a merger may affect the competitive conditions arising on a given market.<sup>351</sup> For this reason, the Commission must distinguish between competitive effects that are specific to the merger, and other effects that may occur during the relevant period but which are not specific to the merger. As set out in recent determinations, the Commission's position is that:

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*impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions". Available at: [https://assets.publishing.service.gov.uk/media/606de119d3bf7f401046b6ae/210216\\_-\\_Adevinta-eCG-eBay\\_-\\_FINAL\\_-\\_Official-Sensitive\\_.pdf](https://assets.publishing.service.gov.uk/media/606de119d3bf7f401046b6ae/210216_-_Adevinta-eCG-eBay_-_FINAL_-_Official-Sensitive_.pdf).*

<sup>350</sup> This approach is consistent with that of other merger control authorities. For example, in its recent merger inquiry in *Cellnex / CK Hutchison UK towers*, in its Final Report, dated 3 March 2022, the CMA states that "while there is a need for overall consistency between the time horizon for assessing the counterfactual and competitive effects of a merger, the CMA is not limited to considering alternative scenarios that would have occurred at exactly the same time as the developments that give rise to the merger under review", see paragraph 5.22. Available at: [https://assets.publishing.service.gov.uk/media/62221304d3bf7f4f0ec9b75e/Cellnex\\_CK\\_Hutchison\\_-\\_Final\\_Report.pdf](https://assets.publishing.service.gov.uk/media/62221304d3bf7f4f0ec9b75e/Cellnex_CK_Hutchison_-_Final_Report.pdf).

<sup>351</sup> For instance, one of the parties to a given merger (or indeed competitors of the parties to a merger) may put business plans into abeyance in anticipation of the merger being put into effect which they may not have done if the merger had never been contemplated in the first place. As these events are a consequence of the agreeing of a merger, they cannot be taken into account by the Commission.

*“[a]ctions that are directly related to a merger or arise as a consequence of a merger would not have occurred in the absence of the merger. They are therefore irrelevant to the counterfactual assessment.”<sup>352</sup>*

- 4.9 For the purposes of this merger review, the actual situation is that the Vendor sold the Target Site to DAA, subject to the Commission’s approval at the conclusion of the merger review process, which at the time the Proposed Transaction was entered into could have been anticipated to involve an extended investigation to address competition concerns.<sup>353</sup>
- 4.10 The Proposed Transaction would then be implemented and DAA would operate the Target Site as a car park serving Dublin Airport. The counterfactual involves the Vendor seeking to sell the Target Site, but without DAA in its contemplation (i.e., absent the Proposed Transaction).
- 4.11 The Commission notes that its assessment of the counterfactual does not require a specification of the exact route the Vendor would have taken absent the Proposed Transaction.<sup>354</sup> Rather, the counterfactual should consider the credibility of the alternative options available to the Vendor based on an assessment, in the round, of all the evidence available to the Commission.<sup>355</sup>
- 4.12 In relation to the evidence the Commission considers most probative and pertinent to its identification of the relevant counterfactual, as set out in the Commission’s Merger

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<sup>352</sup> Commission’s determination in merger notification M/21/079 – *Uniphar/NaviCorp*, paragraph 4.27 (a) and (b); M/21/021 – *Bank of Ireland/Certain Assets of KBC*, paragraphs 5.13 and 5.14.

<sup>353</sup> In fact, that the Proposed Transaction would warrant an extended investigation by the Commission is clearly envisaged by both Parties since the beginning of the bidding process. In their letter of recommendation of 4 November 2022, the Agents of the Vendor noted that DAA’s bid was conditional on “*Competition Authority [sic] approval to the transaction. Their timeline for approvals, would be approximately three months but would require a six-month drop-dead date if approval had not been received.*” See Vendor Phase 1 RFI Response, document entitled ‘1E (i) – 04.11.22 DACP – Recommendation Letter.pdf’, page 1. [REDACTED]

<sup>353</sup> Vendor Phase 1 RFI Response, document entitled ‘Dublin Airport Car Park - [REDACTED] 08.06.2022.pdf’, pages 1-2, attached to document entitled ‘3 (x) 08.06.2022 re Dublin Airport Car Park’.

<sup>354</sup> This approach is consistent with that of other merger control authorities. For example, the CMA’s Final Report in *PayPal Holdings, Inc / iZettle AB*, dated 12 June 2019, in which it states that “*We did not consider it necessary to assess the likelihood of each alternative option occurring, and we have sought to avoid any spurious claims to accurate prediction or foresight on the exact path PayPal might have chosen and its impact. Rather, we consider that the evidence, when viewed in the round, supports the finding that the most likely scenario absent the Merger, is that PayPal would have sought to improve its offline payment service capabilities through one, or a mix of, these potential measures, within the UK and abroad*”, see paragraph 7.35. Available at: [https://assets.publishing.service.gov.uk/media/5cffa74440f0b609601d0ffc/PP\\_iZ\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/media/5cffa74440f0b609601d0ffc/PP_iZ_final_report.pdf).

<sup>355</sup> In its Final Report in respect of its merger enquiry into Amazon’s proposed acquisition of a minority shareholding and certain rights in Deliveroo, dated 4 August 2020, the CMA again made the point that, in arriving at the appropriate counterfactual, it considers the evidence in the round, stating, “*the counterfactual is an analytical tool and we are not required to separately consider, on the balance of probabilities, whether Amazon has each of (i) the intention, (ii) the incentive and (iii) the ability to re-enter. In our assessment, we have considered all of the evidence in the round (including Amazon’s commercial strategy, the international nature of its business and the nature of the online restaurant platform market) to determine the most likely counterfactual*”, see paragraph 6.81. Available at: [https://assets.publishing.service.gov.uk/media/5f297aa18fa8f57ac287c118/Final\\_report\\_pdf\\_a\\_version\\_----.pdf](https://assets.publishing.service.gov.uk/media/5f297aa18fa8f57ac287c118/Final_report_pdf_a_version_----.pdf).



Guidelines<sup>356</sup> and recent Determinations,<sup>357</sup> the Commission generally places more weight on documents produced by the undertakings involved in a merger or acquisition prior to that merger being in contemplation than on those produced after the merger or acquisition is contemplated. This is because the former category of documents normally better indicates the intentions of the undertakings involved in relation to their respective commercial strategies and objectives in the absence of any particular transaction being achieved. However, once the merger or acquisition is under contemplation, it often becomes difficult for the Commission to separate intentions, decisions and steps taken in the absence of the proposed merger from intentions, decisions, and steps taken in pursuance of, or as a consequence of, the proposed merger.

4.13 Paragraph 1.15 of the Commission’s Merger Guidelines explains that:

*“[T]he Commission will expect the merging parties to substantiate any counterfactual they propose with objective evidence supported, where necessary, by independent expert analysis. Such evidence and analysis should obviously be consistent with the parties’ own internal pre-merger assessments of the likely counterfactual.”*

#### **Views of the Parties on the approach to establishing the counterfactual**

4.14 The Commission notes that during the course of the merger review process, the Parties’ positions on the appropriate approach to establishing the relevant counterfactual evolved, including in response to engagement with the Commission. Set out below are the main points made by the Parties in each submission, noting that their positions have not been aligned:

- (a) The Merger Notification Form (23 March 2023): The counterfactual put forward in the Notification is that “(i) the Target Site **would remain vacant** and not operate as a car park at all, or (ii) another entity **would buy the Target Site** – who may or may not use it as a car park (or perhaps only use it as a car park in the short term), and / or for for [sic] an alternative use (which could be more commercially desirable (for another entity) than as a car park) and the problems encountered since 2022 would be replicated and multiplied.”<sup>358</sup>(emphasis added).

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<sup>356</sup> The Commission’s Merger Guidelines, paragraph 9.8.

<sup>357</sup> Paragraph 5.6 of M/21/021 - Bank of Ireland/Certain Assets of KBC, paragraph 4.6 of M/21/040 - AIB/Certain Assets of Ulster Bank, paragraph 4.6 of M/21/076 - PTSB/Certain Assets of Ulster Bank, paragraph 4.6 of M/21/079 - Uniphar/NaviCorp.

<sup>358</sup> Merger Notification Form, page 26, paragraph 47.

- (b) The Vendor Counterfactual Submission (9 November 2023): The Vendor’s economic expert asserted that *“If a one-phase bidding process **were held for the Target Site today or in the near future** there would be few if any bids for the Target Site compared to those received in September 2022”*<sup>359</sup> (emphasis added).
- (c) Vendor Economic Report (7 December 2023): Following engagement with the Commission’s case team on 30 November 2023, a revised approach to the counterfactual was adopted by the Vendor’s economic expert, asking *“were there viable alternative bidders for the Target Site at the time that the daa signed a contract to buy the Target Site from the Vendor on 21 December 2022?”*<sup>360</sup>
- (d) DAA Economic Report (07 December 2023): This submission from the DAA’s economic expert notes that *“For the avoidance of doubt, and following on from the Teams call with the [Commission] of Thursday 30th November 2023, it is the author’s position that if the [Commission’s] (and/or in particular its case team) counterfactual is that the car park would be bought or leased and then operated by some entity other than [DAA] as quickly as it would have been by [DAA] under the actual then: (i) The [Commission’s] case team understanding of the concept of the counterfactual is incorrect; and/or, (ii) The [Commission’s] case team understanding of the concept of the counterfactual is correct but it is being applied to the current context incorrectly. The author hastens to add that the author has no difficulty in accepting all content referring to the counterfactual in the [Commission’s] merger guidelines (2014), namely, paragraphs 1.12 to paragraph 1.15, inclusive.”*<sup>361</sup>
- (e) Vendor Economic Report Update (13 December 2023): In this third submission, the Vendor’s economic expert continued to acknowledge that *“one needs to consider what the Vendor would have done if the [DAA] bid was withdrawn or not made in the first place.”*<sup>362</sup>
- (f) A&L Goodbody 13 December Letter (13 December 2023): The submission states that for the purposes of establishing the relevant counterfactual, *“The most appropriate starting point is the date of notification, but then circumstances after the date of*

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<sup>359</sup> Vendor Counterfactual Submission, dated 9 November 2023, page 5, paragraph 5.2.

<sup>360</sup> Vendor Economic Report, dated 7 December 2023, page 33.

<sup>361</sup> DAA Economic Report, dated 7 December 2023, page 4.

<sup>362</sup> Vendor Economic Report Update, dated 13 December, page 3.

*notification need to be taken into account such that the decision made by the [Commission], including what constitutes the counterfactual, is by reference to the date of the Determination.”<sup>363</sup> This submission further states that, “The date of the bidding process is categorically the wrong moment in time to assess the counterfactual. There was a change in circumstances (i.e. rising interest rates and the consequent increase in the cost of borrowing) [which] meant that bidders who might have been in a position to acquire the car park were not in a position to do so at the time the contract was signed. This change to economic conditions fundamentally altered the economic context of the sale of the Target Site and that economic context still prevails to today (meaning the same counterfactual applies as of today).*

*Therefore, on the basis of the above, it is clear that the role of a competition authority is to assess a proposed merger from the date of the determination, not the date of the bidding process, the opening of bids, or even the date of notification. Of course, the date of notification is a useful starting point, because it is the earliest date from which a competition authority can meaningfully assess the market conditions, but of course it should not be the final date for analysis.”<sup>364</sup>*

- (g) Vendor Written Response (17 January 2024): This submission noted that *“The appropriate framework for determining the relevant counterfactual is thus the answer to the following question: given the competitive conditions at the time of the Proposed Transaction, what would have happened in H2 2022 had the [DAA] not bid for the Target Site as part of the 2022 Bidding Process?”<sup>365</sup>*
- (h) DAA Written Response (17 January 2024): In this submission, DAA argued that *“Assuming the [Commission] follows the same approach to the counterfactual as it did in BOI / KBC and AIB / Ulster Bank, then the starting point for the analysis of the counterfactual in the present merger would have to be, at the earliest, March 2023 (the date of notification). Using that as a starting point, it would also be incumbent on the [Commission] to consider any relevant changes in the market from that date.”<sup>366</sup>*

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<sup>363</sup> A&L Goodbody 13 December Letter, dated 13 December, page 4.

<sup>364</sup> A&L Goodbody 13 December Letter, dated 13 December, page 5.

<sup>365</sup> Vendor Written Response, dated 17 January 2024, page 30.

<sup>366</sup> DAA Written Response, dated 17 January 2024, page 65, paragraph 291.

- (i) DAA Economic Response (16 January 2024): DAA’s economic expert stated that *“For the avoidance of doubt it is crucial to note that the author is not against the use of the ex-ante approach in non-standard counterfactuals in principle or even in this specific case, the problem is with how it is implemented in the Assessment.”*<sup>367</sup>
- (j) Vendor Oral Response (29 January 2024): The Vendor’s economic expert stated that *“I think there’s an agreement on the definition and the approach to the counterfactual, what would have happened had DAA not bid for the target site, which is a little difficult to work out but nevertheless that’s the test, would it have been sold to an alternative purchaser and if so when, and this approach is sometimes referred to as the Ex-Ante approach.”*<sup>368</sup> The following exchange is also illustrative in setting out the views of the Vendor’s economic expert on the counterfactual:<sup>369</sup>
- (i) Commission: *“So, the actual situation obviously is that the DAA acquires the target site and operates it as a carpark serving Dublin Airport. And having listened to your presentation, just for the avoidance of doubt, do you accept that for the counterfactual, the CCPC has to imagine or consider a world absent the proposed transaction? In other words, a world in which DAA didn’t bid, was not a participant in the bidding process. In other words, DAA wasn’t in the vendor’s contemplation”.*
- (ii) Vendor’s Expert: *“...I understood that that was the Ex-Ante counterfactual that was being put forward by the Commission.....So, I think that that was the slide that I presented, which talked about the counterfactual was consistent with that particular point where it says: “The state of competition without the merger, the starting point for identifying the appropriate counterfactual, other conditions existing at the time parties entered into the merger”. So, I was accepting that was the appropriate counterfactual. [...]”*
- (iii) Commission: *“So, I suppose we’re imagining this world, this conceptual world that we have for the purposes of the counterfactual. So, as you’ve said, that imagines that ... we’re looking at what would have happened if DAA had not*

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<sup>367</sup> DAA Economic Response, dated 17 January 2024, page 2.

<sup>368</sup> Oral Submission Transcript, Page 7, lines 14-18.

<sup>369</sup> Oral Submission Transcript, Page 21 lines 22-34, Page 22, lines 1-12.

*bid and in other words, DAA aren't in the contemplation of the agents, the vendor or NAMA?"*

(iv) Vendor's Expert: *"Yes, I guess that would follow, yes"*.

(k) DAA's Oral Response (29 January 2024): DAA's economic expert stated in the Oral Hearing that *"I certainly am more than happy to accept the use of the Ex-Ante non-standard counterfactual."*<sup>370</sup> When asked by the Commission, *"does DAA accept that for the purposes of the counterfactual, we have to imagine a world in which DAA is not in the mix?"*,<sup>371</sup> the legal representatives of DAA answered *"[...] I can talk to the case team tomorrow if that would help -- but the short answer is no, I don't think ..."*<sup>372</sup>

#### Views of the Commission

4.15 The counterfactual is the situation absent the Proposed Transaction, which involves a scenario whereby the Proposed Transaction was not in the contemplation of the Vendor or its agents.

4.16 The Commission considers that the appropriate starting point for the "counterfactual" is the point at which the Vendor took steps to sell the Target Site. That provides the appropriate framework for assessing the likely scenarios if the Proposed Transaction is excluded from consideration. Moreover, although the Parties have suggested that the starting point may be the notification (23 March 2023), at the time of the notification the Proposed Transaction was already in contemplation. For that reason, taking the date of the notification is less probative of the likely scenarios if the Proposed Transaction is excluded from consideration. The Commission considers that it is not necessary to reach a definitive view on an exact date when the "counterfactual", starts.

4.17 The end point for the "actual" would be the Proposed Transaction coming into effect. That could not take place until the merger review process was complete, as the Parties understood at the time.<sup>373</sup> The Commission takes the view that the time frame for the counterfactual should be the same.

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<sup>370</sup> Oral Submission Transcript, page 52, lines 5-6.

<sup>371</sup> Oral Submission Transcript, page 84, lines 11-12.

<sup>372</sup> Oral Submission Transcript, page 85, lines 16-17. It is noted that the legal representatives of DAA did not seek to engage further with the case team in this regard.

<sup>373</sup> The fact that the Parties anticipated an [REDACTED] process is clear from the letter of recommendation from the Agents of the Vendor of 4 November 2022 in relation to the Proposed Transaction (Vendor Phase 2 RFI Response, document entitled [REDACTED] page 2), but also from the letter of recommendation from the Agents of the Vendor in respect of DAA's [REDACTED] which stated that [REDACTED]

- 4.18 The Commission notes that, as set out above in paragraph 4.14, the Parties have suggested that the Vendor may have an option to sell the Target Site for use as something other than a car park. While this is of course possible, evidence provided to the Commission indicates that the Vendor did not attempt to sell the Target Site for use as anything other than a car park,<sup>374</sup> and none of the bidders who engaged in the bidding process for the Target Site which took place between 4 July 2022 and 29 September 2022 (the “2022 Bidding Process”) sought to use the land for anything other than car parking.
- 4.19 Furthermore, on balance, the Commission considers that planning represents a barrier to the use of the Target Site for alternative purposes. As discussed in Section 2, the planning permission of the Target Site means that, in theory, some viable alternative uses (within the scope of the *General Employment* zoning objective) for the Target Site could be pursued.<sup>375</sup> The approved use for the Target Site under its planning permission is as a car park and the requirement to apply for planning permission for that use to be changed represents a barrier to change in use. This is noted in the Vendor Counterfactual Submission.<sup>376</sup> For all of these reasons, in establishing the counterfactual, the Commission does not consider the possibility that the Target Site would have been used for some purpose other than car parking.

#### **Conclusion on the approach to establishing the counterfactual**

- 4.20 In establishing the appropriate counterfactual in this case, the Commission has considered what, on the balance of probabilities, the Vendor would have done with the Target Site in the absence of the Proposed Transaction.
- 4.21 In its assessment, the Commission has taken, as a starting position, the point at which the Vendor took steps to sell the Target Site, i.e., the 2022 Bidding Process, and has then excluded the presence of DAA from its consideration. The timeline over which the Commission has considered non-merger specific market developments in connection with the counterfactual is the same as in the actual, i.e., up to the point of the Commission’s determination.
- 4.22 In the sections below, the Commission sets out its reasoning on what it considers to be, on the balance of probabilities and taking into account the evidence available to it, the most plausible

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DAA Phase 1 RFI Response, document entitled [REDACTED] pages 1 and 2.

<sup>374</sup> For instance, the Commission notes that the marketing material in the Sales Brochure for the Target Site describes its key value proposition as the “*Only Privately owned Airport Car Park in Dublin – Further car parks are not permitted under Airport planning conditions*”. The Sales Brochure was provided as Annex 7 of the Merger Notification Form.

<sup>375</sup> FCC call note, dated 29 September 2023, page 3.

<sup>376</sup> Vendor Counterfactual Submission, page 13, paragraph 5.37.

counterfactual for the purposes of its assessment of the Proposed Transaction. Specifically, the Commission considers the three main options that were available to the Vendor absent the Proposed Transaction. These options are:

- (a) abandon the sale of the Target Site;
- (b) sell the Target Site to an alternative purchaser as part of the 2022 Bidding Process; or
- (c) sell the Target Site to an alternative purchaser through a revised sales process.

### **In the absence of the Proposed Transaction, is it likely that the sale of the Target Site would have been abandoned?**

#### **Views of the Parties**

4.23 In the Vendor Phase 2 RFI, the Commission asked if the Vendor had any documents from 1 July 2022 to the date of the Vendor Phase 2 RFI which assessed, analysed, discussed, or otherwise referred to any alternative plans, arrangements, or contingencies under consideration by the Vendor in the event that no acceptable bids were submitted following the Bidding Process for the Target Site. The Vendor responded:

*“No contingency plans were considered for an event where no acceptable bids were submitted. In the event no acceptable bids were submitted, the options would have been explored at that point in conjunction with NAMA as secured lender and the sales agents, Knight Frank and Colliers. As we received more than one acceptable bid, we engaged in that process that culminated in the current [Commission] review.*

*There are no further documents in existence as no alternative plans, arrangement or contingencies were considered by the Vendor should an acceptable bid not be submitted.”<sup>377</sup>*

4.24 As noted in paragraph 1.13 above, the Vendor provided the following rationale as to why the Vendor sought to sell the Target Site:<sup>378</sup>

*“The Target Site is an asset owned by [the Vendor] and secured by mortgage to NAMA against his debt obligations as acquired by NAMA from a participating institution as defined under the NAMA Act 2009. [REDACTED]*

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<sup>377</sup> Vendor Phase 2 RFI Response, Question 3, page 3.

<sup>378</sup> Vendor Phase 1 RFI Response, document entitled ‘Signed Response Document.pdf’ page 10.

[REDACTED]

#### Views of the Commission

4.25 In considering whether the Vendor would have been likely to abandon the sale of the Target Site absent the Proposed Transaction, the Commission has considered the Vendor’s rationale and incentives for concluding the sale of the Target Site. The timeline set out in paragraph 4.44 below shows that the Vendor has sought to explore the sale of the Target Site since at least late 2019. Email correspondence between the Vendor and Knight Frank in January 2020 notes that the Vendor sought to have a sale concluded in June 2020.<sup>379</sup>

4.26 The internal Vendor documents provided to the Commission in the Vendor Phase 1 RFI Response indicate that the time period was elongated between these initial discussions on the sale of the Target Site between the Vendor and Knight Frank and the ultimate 2022 Bidding Process. [REDACTED].<sup>380</sup> The Vendor also believed that a higher price was likely once the restrictions in relation to the Covid-19 pandemic had been eased.<sup>381</sup>

4.27 The Commission sought information from NAMA regarding the Vendor’s obligations to NAMA in respect of the Target Site. The Commission held a call with NAMA on 24 November 2023, during which NAMA explained that:

- [REDACTED]<sup>382</sup>

<sup>379</sup> Vendor Phase 1 RFI Response, document entitled ‘(i) a 07.01.2020 Email Sale PRSA – Airport Car Park’ and Vendor Phase 1 RFI Response, document entitled ‘(i) b 28.01.2020 Car Park email.msg’.

<sup>380</sup> Vendor Phase 1 RFI Response, document entitled ‘(i) b 28.01.2020 Car Park email’.

<sup>381</sup> Vendor Phase 1 RFI Response, document entitled ‘(i) g 21.02.2022 Airport Car Park eLetter’.

<sup>382</sup> [REDACTED] call note, page 1.



- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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<sup>383</sup> [REDACTED] call note, page 1.

<sup>384</sup> [REDACTED] call note, page 1.

<sup>385</sup> [REDACTED] call note, page 1.

<sup>386</sup> [REDACTED] call note, page 1.

<sup>387</sup> [REDACTED] call note, page 2. The Commission notes that Section 10(2) of the NAMA Act (entitled “Purposes of NAMA”) states:

*“So far as possible, NAMA shall, expeditiously and consistently with the achievement of the purposes specified in subsection (1), obtain the best achievable financial return for the State having regard to*

*(a) the cost to the Exchequer of acquiring bank assets and dealing with acquired bank assets,*

*(b) NAMA’s cost of capital and other costs, and*

*(c) any other factor which NAMA considers relevant to the achievement of its purposes.”*

<sup>388</sup> [REDACTED] call note, page 5.

<sup>389</sup> [REDACTED] call note, page 2. The Commission understands this to mean that in the abstract, there is no set minimum price that must be achieved for the Target Site in any and all circumstances.

[REDACTED]  
[REDACTED].<sup>390</sup>

4.28 The Commission understands that, while the Vendor does not have a specific obligation to sell the Target Site, he is expected to [REDACTED]  
[REDACTED]  
[REDACTED]. The Commission considers that the Vendor would be highly motivated to realise value from the Target Site [REDACTED]. Further, the Commission is not aware of any reason why the Vendor would be reluctant to dispose of that particular [REDACTED].

4.29 NAMA explained to the Commission that it makes its decisions regarding the disposal of assets based on market conditions at the time.<sup>391</sup> This is a statutory obligation on NAMA. Section 10(2) of the NAMA Act states that:

*“NAMA shall, expeditiously and consistently with the achievement of the purposes specified in subsection (1), obtain the best **achievable** financial return for the State”* (emphasis added).

4.30 This is reiterated by NAMA in its “Annual Statement 2023” which states that:

*“The [NAMA] Board’s primary commercial objective is to generate the largest surplus that can feasibly be achieved, subject to prevailing market conditions, by the time NAMA completes its work.”<sup>392</sup>* (emphasis added).

4.31 The reference to “the time NAMA completes its work” means the end of 2025.<sup>393</sup> NAMA’s “Annual Statement 2023” states:

4.32 *“In the context of progressing the phased and orderly wind down of the Agency [NAMA], the NAMA Board submitted a **Strategic Plan for the dissolution of NAMA by end-2025** ... to the*

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<sup>390</sup> [REDACTED] call note, page 5.

<sup>391</sup> [REDACTED] call note, page 3.

<sup>392</sup> National Asset Management Agency (2023) *Section 53 Annual Statement 2023*, page 2. Available at: <https://www.nama.ie/uploads/documents/Section-53-Annual-Statement-Final.1.pdf>.

<sup>393</sup> Section 227 of the NAMA Act requires the Department of Finance to assess NAMA’s progress periodically and to decide whether continuation of NAMA is necessary. The Minister for Finance recommended in his *Section 227 review (2014 – 2018)*, published in July 2019, that NAMA be permitted to continue to work out its residual loans for a limited period beyond 2021. The Minister for Finance instructed that a detailed plan for the ultimate dissolution of NAMA be submitted to him before the end of 2021. A detailed plan for the period 2022 – 2025 was submitted to the Minister for Finance on 19 November 2021, this was set out as a key priority. See: National Asset Management Agency (2023) *Progress on achievement of objectives as at end 2021*, paragraph 1.7 et seq. Available at: <https://www.nama.ie/uploads/documents/Special-Report-116-Progress-on-achievement-of-objectives-as-at-end-2021.pdf>.

Minister [for Finance] in November 2021.”<sup>394</sup> The Commission considers it reasonable to infer that this would have been likely to influence [REDACTED]. In the Commission’s engagement with NAMA, NAMA [REDACTED].<sup>397</sup>

4.33 The timing of NAMA’s wind-down was confirmed in March 2024 in the Minister for Finance’s Section 227 Review:

*“NAMA is on target to conclude its work by the end of 2025 through a phased and orderly wind down.....Given NAMA is expected to conclude it [sic] operations by end-2025, it follows that this report will be the final such review undertaken pursuant to section 227 of the Act.”<sup>398</sup>*

4.34 The Minister noted that a Resolution Unit would be established to deal with “some residual NAMA assets and activity unresolved at the end of 2025.”

4.35 The Vendor’s legal advisors argued, in the Oral Submission, that the date of 2025 (i.e., the date NAMA will be wound up) [REDACTED].<sup>399</sup> While the Commission recognises that mechanisms will have to be put in place to deal with outstanding assets held by NAMA at the

<sup>394</sup> National Asset Management Agency (2023) *Section 53 Annual Statement 2023*, page 9. Available at: <https://www.nama.ie/uploads/documents/Section-53-Annual-Statement-Final.1.pdf>

<sup>395</sup> [REDACTED] call note, page 5.

<sup>396</sup> Section 10 of the NAMA Act.

<sup>397</sup> [REDACTED] call note, page 3.

<sup>398</sup> National Asset Management Agency (2024) *Section 227 Review 2019 – 2023*, published on 6 March 2024. Available at: <https://www.gov.ie/en/publication/d2f37-national-asset-management-agency-section-227-review/>.

<sup>399</sup> Oral Submission Transcript, page 95, lines 7-8.

end of its existence, it seems reasonable that NAMA would expect parties to proceed with [REDACTED].

4.36 In addition to the obligations the Vendor has [REDACTED], the Commission considers the refusal of the Vendor and the Agents of the Vendor to [REDACTED] [REDACTED]<sup>400</sup> acts as a good indicator that the Vendor prioritised the [REDACTED] [REDACTED]. In a letter dated 8 June 2022 to the Vendor explaining the reasons for [REDACTED] [REDACTED]<sup>401</sup>

(a) [REDACTED]  
[REDACTED]  
[REDACTED];

(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED];

(c) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED];

(d) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>400</sup> See paragraph 2.67 above.

<sup>401</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] page 2, attached to document entitled [REDACTED].

[REDACTED]  
[REDACTED]”.

4.37 [REDACTED]

[REDACTED]  
[REDACTED]

4.38 The Commission considers that the letter of 8 June 2022 from [REDACTED] to the Vendor demonstrates that the Vendor’s intention with respect to the Target Site was the [REDACTED]  
[REDACTED]  
[REDACTED]. Furthermore, the decision of the Vendor [REDACTED]  
[REDACTED] does not constitute evidence that [REDACTED]. Indeed, it suggests the opposite – [REDACTED]  
[REDACTED].

4.39 In establishing the most plausible counterfactual, the Commission has to consider whether, absent the Proposed Transaction, it is likely that the Vendor would have abandoned the sale of the Target Site. The Commission does not consider it plausible that the Vendor would have abandoned the sale of the Target Site for the reasons set out above.

**Conclusion on whether, in the absence of the Proposed Transaction, it is likely that the sale of the Target Site would have been abandoned**

4.40 There was no indication in the evidence seen by the Commission that the sale of the Target Site would have been abandoned in the absence of the sale to DAA. In fact, the Commission considers that such assertions in the Vendor Counterfactual Submission, the Vendor Economic Report, and the DAA Economic Report are contradicted by the evidence seen by the Commission over the course of its review of the Proposed Transaction. In summary, as discussed above, the Vendor is obliged to [REDACTED] and it can be assumed that this provides a strong motivation to proceed with the sale of the Target Site; this obligation to [REDACTED]  
[REDACTED]  
[REDACTED].

4.41 Based on the above, the Commission considers that if there were credible alternative purchasers for the Target Site it is not likely that the Vendor would have abandoned the sale

absent the Proposed Transaction. The evidence demonstrates that the Vendor had the incentive and commercial rationale to sell the Target Site. The Commission now considers whether there were credible alternative purchasers for the Target Site.

**Is it likely that, absent the Proposed Transaction, the Vendor would have sold the Target Site to an alternative purchaser through the 2022 Bidding Process?**

4.42 To provide context for considering whether, in the absence of the Proposed Transaction, it is credible that the Target Site would have been sold to an alternative purchaser through the 2022 Bidding Process, the Commission sets out below:

- (a) the timeline of events from late 2019 up to the notification of the Proposed Transaction to the CCPC in March 2023;
- (b) the 2022 Bidding Process; and,
- (c) the events following the withdrawal of the initial preferred bidder.

**Timeline of events leading up to the notification of the Proposed Transaction**

4.43 In establishing this timeline, the Commission has reviewed documents and information provided to the Commission in the Vendor Phase 1 RFI Response and the Vendor Phase 2 RFI Response, and information provided to it by third parties.

4.44 Table 16 below illustrates this timeline of events from the initial stages of exploring the sale of the Target Site to the notification of the Proposed Transaction to the Commission.

*Table 16: Timeline of events leading up to the Proposed Transaction*

	Date	Event
1.	Late 2019	Vendor begins exploring potential sale of Target Site
2.	23/09/2020	QuickPark ceases operation of the Target Site
3.	29/09/2020	Order of possession made by consent against QuickPark for the Target Site
4.	15/01/2021	Judgment in <i>Gannon v Parkfly &amp; Anor</i> delivered by the High Court
5.	04/04/2021	[REDACTED]
6.	05/04/2022	[REDACTED]

7.	08/04/2022	[REDACTED]
8.	17/05/2022	[REDACTED]
9.	18/05/2022	[REDACTED]
10.	19/05/2022	[REDACTED]
11.	27/05/2022	Knight Frank gives a pitch presentation for the disposal of the Target Site to the Vendor and NAMA
12.	w/c 30/05/2022	[REDACTED]
13.	04/07/2022	Stage 1 of the bidding process is launched, Knight Frank begins marketing campaign for the sale of the Target Site
14.	31/08/2022	Stage 2 of the bidding process is launched, Bid Guidelines are issued
15.	29/09/2022	[REDACTED]
16.	04/10/2022	[REDACTED]
17.	05/10/2022	[REDACTED]
18.	06/10/2022	[REDACTED]
19.	07/10/2022	[REDACTED]
20.	11/10/2022	[REDACTED]
21.	03/11/2022	[REDACTED]
22.	04/11/2022	[REDACTED]
23.	07/11/2022	[REDACTED]
24.	11/11/2022	[REDACTED]
25.	18/11/2022	[REDACTED]
26.	21/11/2022	[REDACTED]
27.	25/11/2022	[REDACTED]
28.	28/11/2022	[REDACTED]

29.	30/11/2022	[REDACTED]
30.	05/12/2022	[REDACTED]
31.	08/12/2022	[REDACTED] [REDACTED]
32.	16/12/2022	[REDACTED]
33.	23/12/2022	[REDACTED]
34.	09/01/2023	[REDACTED] [REDACTED]
35.	19/01/2023	[REDACTED] [REDACTED]
36.	26/01/2023	[REDACTED]
37.	01/02/2023	[REDACTED] [REDACTED]
38.	23/03/2023	Notification made to the Commission

Source: Documents submitted in the Vendor Phase 1 RFI Response, the Vendor Phase 2 RFI Response, and information provided by third parties

### The 2022 Bidding Process

4.45 The formal bidding process for the Target Site opened the week beginning 4 July 2022, and consisted of two stages, the first of which lasted from 4 July 2022<sup>402</sup> to 30 August 2022 ("Stage 1") and the second, which lasted from 31 August 2022 to 12:00 midday on 29 September 2022 ("Stage 2").<sup>403</sup> Knight Frank and Colliers (the "Agents of the Vendor") received over [REDACTED] into the sale of the Target Site in Stage 1 from a wide range of potential purchasers including purchasers from the [REDACTED].<sup>404</sup>

4.46 The Commission notes that the Agents of the Vendor considered that [REDACTED].<sup>405</sup> In this regard, the Commission notes that in Stage 1, a number of potential purchasers who would eventually submit bids in

<sup>402</sup> Vendor Phase 1 RFI Response, document entitled 'Signed Response Document.pdf', page 4.

<sup>403</sup> Vendor Phase 1 RFI Response, document entitled '1C (i) a – KF Letter 28.07.22.pdf', page 2-3.

<sup>404</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED], page 1.

<sup>405</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED], page 10; and, Vendor Phase 1 RFI Response, document entitled [REDACTED] page 13, paragraph 7.3.



Stage 2 [REDACTED]  
[REDACTED]  
[REDACTED].

4.47 In Stage 2, the Agents of the Vendor issued bid process guidelines (“Bid Guidelines”),<sup>406</sup> setting out the conditions each participating bidder should meet. During Stage 2, potential purchasers of the Target Site, such as [REDACTED], continued to seek information on the sales process and sought to inspect the Target Site.<sup>407</sup> The number of individual organisations who had made enquiries into the sale of the Target Site amounted to [REDACTED].<sup>408</sup>

4.48 On 29 September 2022, [REDACTED] bids were made for the Target Site, with [REDACTED] being made before the deadline of 12:00 midday. These [REDACTED] on-time bids were from each of DAA,<sup>409</sup> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. A [REDACTED], submitted its bid to a party [REDACTED] [REDACTED] [REDACTED] bidder, [REDACTED] informed the Agents of the Vendor that while it had intended to make a bid for the Target Site, [REDACTED] [REDACTED] [REDACTED]<sup>415</sup>

4.49 In relation to the acceptance and assessment of bids, the Bid Guidelines set out that:

(a) “[t]he Agents and Vendor reserve the right to seek additional information or clarifications if required, or seek second round bids from any or all Bidders, although the intention is for a single round process”<sup>416</sup>

<sup>406</sup> Vendor Phase 1 RFI Response, document entitled ‘1C (ii) b – DACP – Bid Process Guidelines.pdf’, dated 31 August 2022.

<sup>407</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] (Email correspondence between [REDACTED] and [REDACTED] dated 02 September 2022); and Vendor Phase 1 RFI Response, document entitled [REDACTED] (Email correspondence between [REDACTED] dated 16 September 2022) attached to Vendor Phase 1 RFI Response, document entitled [REDACTED], dated 12 May 2023.

<sup>408</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED].

<sup>409</sup> Vendor Phase 1 RFI Response, document entitled ‘1B Bid 4 (i) – DAA 29.09.22 (11.28) (00639468xE641E).pdf’.

<sup>410</sup> Vendor Phase 1 RFI Response, document entitled, [REDACTED].

<sup>411</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED].

<sup>412</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED].

<sup>413</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] dated 29 September 2022.

<sup>414</sup> Vendor Phase 1 RFI Response, document entitled ‘1B Bid 6 (i) – 11.59am FW Dublin Airport Car Park Bid.msg’.

<sup>415</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] (Email correspondence between [REDACTED] dated 29 September 2022) attached to Vendor Phase 1 RFI Response, document entitled [REDACTED], dated 12 May 2023.

<sup>416</sup> Vendor Phase 1 RFI Response, document entitled ‘1C (ii) b – DACP – Bid Process Guidelines.pdf’, page 6.

- (b) “[h]aving assessed the bids received the Vendor will then decide whether to transact with any Bidder; but reserves the right not to transact with any party.”<sup>417</sup>
- (c) “[t]he Vendor will not be bound to accept the highest or indeed any bid and also reserves the right to amend, vary, extend, suspend or discontinue this process or nature of the Proposed Transaction without notice”.<sup>418</sup>

4.50 On 3 October 2022, [REDACTED] submitted an [REDACTED] [REDACTED]<sup>419</sup> The next day, on 4 October 2022, the Agents of the Vendor issued a letter to the Vendor providing: (i) an overview of the sales process; and (ii) an explanation as to their recommendation for the Vendor to enter into exclusive talks with [REDACTED]<sup>420</sup>

4.51 In a letter to the Vendor dated 4 October 2022, the Agents of the Vendor outlined the on-time bids as follows:<sup>421</sup>

*Overview of bids received for the Target Site outlined by the Agents of the Vendor to the Vendor*

Party	Level	Proof of Funds	Contracts	Notes
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[DAA] plc ([DAA] plc.)	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

<sup>417</sup> Vendor Phase 1 RFI Response, document entitled ‘1C (ii) b – DACP – Bid Process Guidelines.pdf’, page 7.

<sup>418</sup> Vendor Phase 1 RFI Response, document entitled ‘1C (ii) b – DACP – Bid Process Guidelines.pdf’, page 7.

<sup>419</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] dated 3rd October 2022.pdf’.

<sup>420</sup> Vendor Phase 1 RFI Response, document entitled ‘1D (i) DACP eLetter 04.10.22.pdf’.

<sup>421</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED], page 2.

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Source: [REDACTED] submitted in the Vendor Phase 1 RFI Response

4.52 The Agents of the Vendor (following engagement on various outstanding issues) recommended that the Vendor enter into an exclusivity period with [REDACTED] on the grounds that their revised offer constituted ‘[REDACTED]’ [REDACTED]”<sup>422</sup> The Agents of the Vendor subsequently wrote to [REDACTED] on 5 October 2022 [REDACTED] [REDACTED],<sup>423</sup> and informed the other bidders on 6 October 2022<sup>424</sup> that they had been unsuccessful in their bids. DAA,<sup>425</sup> [REDACTED] [REDACTED] [REDACTED] all informed the Agents of [REDACTED] [REDACTED].

4.53 In their letter of recommendation to the Vendor of 4 October 2022, the Agents of the Vendor did not question the compliance of the [REDACTED] with the Bid Guidelines, nor any potential [REDACTED] [REDACTED]. Mention was made, however, of the risk of [REDACTED] [REDACTED]<sup>428</sup>

4.54 On 3 November 2022, [REDACTED] contacted the Agents of the Vendor to inform them that [REDACTED] [REDACTED].<sup>429</sup> This was expanded upon by [REDACTED] in a letter of 7 November 2022 which explained [REDACTED]

<sup>422</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED], page 3.

<sup>423</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED], dated 5 October 2022 attached in the document entitled [REDACTED].

<sup>424</sup> [REDACTED] Vendor Phase 1 RFI Response, document entitled ‘[REDACTED]’; [REDACTED] Vendor Phase 1 RFI Response document entitled [REDACTED]; [REDACTED] Vendor Phase 1 RFI Response, document entitled [REDACTED]; Vendor Phase 1 RFI Response, document entitled [REDACTED] DAA: Vendor Phase 1 RFI Response, document entitled [REDACTED]

<sup>425</sup> Vendor Phase 1 RFI Response, document entitled ‘(iv) 07.10.2022 RE Dublin Airport Car Park KF response to DAA.msg’.

<sup>426</sup> Email correspondence between [REDACTED] and Knight Frank dated 11 October 2022, Vendor Phase 1 RFI Response, document entitled [REDACTED].

<sup>427</sup> [REDACTED] expressed such openness after DAA was selected. Vendor Phase 1 RFI Response, document entitled ‘(vi) Dublin Airport Car Park (1)’.

<sup>428</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED], page 3.

<sup>429</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED]

[REDACTED]

[REDACTED].<sup>430</sup> In the interim, on 4 November 2022, the Agents of the Vendor wrote to the Vendor outlining their recommendation as to how to proceed with the sales process for the Target Site [REDACTED]

[REDACTED].<sup>431</sup>

**Events following the withdrawal of the initial preferred bidder**

4.55 The letter of 4 November 2022 from the Agents of the Vendor to the Vendor identified the three highest bidders [REDACTED]

[REDACTED]

[REDACTED].<sup>432</sup>

4.56 The Agents of the Vendor described the bids of DAA, [REDACTED] as follows:

(a) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>433</sup>

(b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>434</sup>

(c) DAA: [REDACTED]

[REDACTED]

[REDACTED].

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<sup>430</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] page 1, attached in the document entitled [REDACTED]. In a call with the Commission on 09 February 2024, [REDACTED] stated that [REDACTED]

[REDACTED] CCPC Call with [REDACTED] dated 09 February 2024, page 1.

<sup>431</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED].

<sup>432</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] page 1.

<sup>433</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED], page 1.

<sup>434</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] page 1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>435</sup>

4.57 This time, the Agents of the Vendor recommended engaging with the bidder who [REDACTED]

[REDACTED]

[REDACTED]

4.58 DAA was considered as having the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>437</sup>

4.59 In a letter to the Vendor dated 8 December 2022, the Agents of the Vendor expanded on what they considered to be execution risk, noting that “[t]he execution risk, from a financial perspective, is significantly reduced in comparison with debt being required for the purchase given the turmoil in the financial markets at present.”<sup>438</sup>

4.60 DAA therefore, in the view of the Agents of the Vendor, [REDACTED]

[REDACTED]

[REDACTED]<sup>439</sup>

4.61 The Agents of the Vendor sent letters to the Vendor with details of why they decided to [REDACTED] on 5 December 2022<sup>440</sup> and 8 December 2022, respectively.<sup>441</sup>

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<sup>435</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] page 1.

<sup>436</sup> Vendor Phase 1 RFI Response, document entitled ‘1E (i) – 04.11.22 DACP – Recommendation Letter.pdf’, page 2.

<sup>437</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] page 2.

<sup>438</sup> Vendor Phase 1 RFI Response, document entitled ‘1E (i) – 04.11.22 DACP – Recommendation Letter.pdf’, page 2.

<sup>439</sup> The Parties have argued that it is not for the Commission to question the expertise of the Agents of the Vendor in recommending to the Vendor of a preferred bidder. The Commission does not question their expertise, or their assessment of the [REDACTED]. The Commission is not bound by their views and must form its own assessment of the likely outcomes absent the option of selling to DAA while taking into account all relevant considerations.

<sup>440</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED]

<sup>441</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED]

4.62 The Commission's view is that this indicated that the Vendor wanted to [REDACTED].  
[REDACTED].  
The Commission notes that DAA [REDACTED]<sup>442</sup> While the Vendor preferred a [REDACTED] the remaining bidders, other than [REDACTED] (as well as other bidders who were not included in the second evaluation) had not been stated by the Agents of the Vendor as being [REDACTED].  
During the Commission's [REDACTED] stated that it [REDACTED].  
[REDACTED]  
[REDACTED]<sup>443</sup> The Vendor's preference [REDACTED] does not mean, as the Parties have repeatedly argued, that the other bidders in the process [REDACTED].<sup>444</sup>

4.63 Indeed, the Commission understands that, although engagement with DAA was [REDACTED] following the letter of 4 November 2022, the Agents of the Vendor did correspond with other potential purchasers before [REDACTED] on 18 November 2022.<sup>445</sup> For instance, [REDACTED] has stated that, in a call on 11 November 2022 between [REDACTED] asked if [REDACTED] [REDACTED]<sup>446</sup> The Commission notes that [REDACTED] was willing to speak with, and check [REDACTED] [REDACTED]. This is an indication that, had negotiations with DAA for the sale of the Target Site not been successful or had DAA not been a prospective purchaser of the Target Site, the Agents of the Vendor [REDACTED].  
[REDACTED].

#### Views of the Parties

4.64 The Parties have argued that there were [REDACTED] to DAA at the time of the 2022 Bidding Process for the Target Site. The Vendor suggested that because of the [REDACTED] [REDACTED] in the 2022 Bidding Process, and changing market conditions in H2 2022 and 2023, the Vendor would [REDACTED].

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<sup>442</sup> The Vendor provided additional information in its Written Response, stating that [REDACTED] bid may not have been higher than that of DAA. According to the Vendor, [REDACTED] did not provide clarity regarding whether their offer was inclusive or exclusive of a Development Levy of over €6m.

<sup>443</sup> [REDACTED] call note 2, page 1.

<sup>444</sup> Vendor Economic Report, Annex A, Page 30.

<sup>445</sup> [REDACTED].

<sup>446</sup> Email correspondence between [REDACTED] dated 6 January 2023, contained in the Vendor Phase 1 RFI Response, document entitled [REDACTED].

[REDACTED]

4.65 Broadly, the points raised in the Parties' submissions regarding the 2022 Bidding Process can be grouped together as follows:

*Some or all of the alternative bidders were not compliant with the Bid Guidelines*

4.66 In the initial evaluation of the 2022 Bidding Process<sup>448</sup>, the Agents of the Vendor stated that the bid from [REDACTED]

[REDACTED]

4.67 [REDACTED] bid was not included in the summary table prepared by the Agents of the Vendor, [REDACTED]. In its initial evaluation, the Agents of the Vendor noted that [REDACTED]

4.68 The Parties asserted in their respective written responses to the Assessment that, following the [REDACTED] with the Bid Guidelines for the 2022 Bidding Process, and the Vendor also further elaborated on aspects [REDACTED].

4.69 For instance, the Vendor Written Response pointed to a letter dated 8 December 2022 from the Agents of the Vendor to the Vendor concerning [REDACTED].<sup>451</sup> In this letter, [REDACTED] bid was described as [REDACTED] for a number of reasons, including the following [REDACTED]

<sup>447</sup> Vendor Written Response, dated 17 January 2024, page 33.  
<sup>448</sup> The Agents' table evaluation of the received bids is set out in paragraph 4.51 above, and is found in Vendor Phase 1 RFI Response, document entitled '1D (i) DACP eLetter 04.10.22.pdf', page 2.  
<sup>449</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED], page 3.  
<sup>450</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED] page 2.  
<sup>451</sup> Vendor Written Response, dated 17 January 2024, page 42.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>452</sup>

4.70 With respect to [REDACTED] the Vendor stated that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>454</sup>

4.71 The Vendor further argued that all of the bids were [REDACTED]

[REDACTED]. The Vendor stated that [REDACTED]

[REDACTED]

[REDACTED]<sup>455</sup>

*Some or all of the alternative purchasers* [REDACTED]

4.72 The Parties asserted that following the [REDACTED]

[REDACTED]. The

submissions of the Parties in this respect focus on [REDACTED]

[REDACTED]

[REDACTED]

4.73 For instance, in relation to showing [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>452</sup> Vendor Written Response, dated 17 January 2024, page 42.

<sup>453</sup> Vendor Written Response, dated 17 January 2024, page 51.

<sup>454</sup> DAA Written Response, dated 17 January 2024, page 77, paragraph 356.

<sup>455</sup> Vendor Written Response, dated 17 January 2024, page 54.



[REDACTED] [REDACTED]  
[REDACTED] <sup>457</sup>.

4.74 The Vendor points to a letter of 5 December from the Agents of the Vendor to the Vendor concerning [REDACTED] which states that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] <sup>458</sup>

4.75 Accompanying its Written Response, DAA included [REDACTED] for each of [REDACTED]  
[REDACTED]. In these reports:<sup>459</sup>

- (a) [REDACTED]  
[REDACTED] <sup>460</sup>,
- (b) [REDACTED]  
[REDACTED] <sup>461</sup>,
- (c) [REDACTED]  
[REDACTED] <sup>462</sup>; and,
- (d) [REDACTED]  
[REDACTED] <sup>463</sup>

4.76 In its Written Response, DAA asserted that [REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>456</sup> The “no” for DAA was reproduced from a document submitted in response to the Phase 1 RFI and was not the Commission’s evaluation.  
<sup>457</sup> DAA Written Response, dated 17 January 2024. page 71, paragraph 322.  
<sup>458</sup> Vendor Written Response, dated 17 January 2024, page 41.  
<sup>459</sup> DAA Written Response, dated 17 January 2024, pages 121-161.  
<sup>460</sup> DAA Written Response, dated 17 January 2024, pages 121-127.  
<sup>461</sup> DAA Written Response, dated 17 January 2024, pages 128-137.  
<sup>462</sup> DAA Written Response, dated 17 January 2024, pages 138-152.  
<sup>463</sup> DAA Written Response, dated 17 January 2024, pages 153-161.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>465</sup>

*A failure to take into account the weakness of the property and financial markets*

4.77 The Parties argued that *“the Assessment ignores the change in economic circumstances in light of an uncertain property market and a rising interest rate environment”*.<sup>466</sup>

4.78 In particular:

*“To ignore the material change in economic conditions, the increase in interest rates, and real estate market uncertainty (as evidenced in real time by the Knight Frank letters to the Vendor) would be to “ignoring [sic] the actual competitive conditions of the market, which could lead to an incorrect assessment in a material respect” and would involve the [Commission] failing to have regard to a relevant consideration in its Assessment of the Proposed Transaction.”*<sup>467</sup>

4.79 The Vendor highlighted the changes in ECB rates since 2014, noting the gradual increase in interest rates since the time of the marketing campaign to sell the Target Site in July 2022. However, the Vendor recognised that rate increases have levelled off since September 2023.<sup>468</sup> In the Vendor’s view, interest rates will begin to decline in H1 2025, and the Target Site would be left vacant and sold to an alternative purchaser in H1 2025, becoming operational in H2 2025.<sup>469</sup>

4.80 According to a letter dated 4 November 2022 from the Agents of the Vendor to the Vendor:

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<sup>464</sup> DAA Written Response, dated 17 January 2024, page 71, paragraph 323.

<sup>465</sup> DAA Written Response, dated 17 January 2024, page 75, paragraph 349.

<sup>466</sup> DAA Written Response, page 87, paragraph 377.

<sup>467</sup> DAA Written Response, page 88, paragraph 383.

<sup>468</sup> Vendor Written Response, page 31.

<sup>469</sup> Vendor Written Submission, pages 32-33.

*“[T]he international sentiment for property investment has been heavily influenced by the Ukrainian war, creating a European wide energy crisis coupled with the inflationary aspects (that had taken hold prior to the commencement of the war) being fuelled further, creating uncertainty as to where property markets are going across Europe and indeed the globe. The interest rate rises have further impacted the market for quality investment and development opportunities due to the real cost of debt rising very significantly. This has created a nervousness amongst purchasers over the last 2/3 months with significant discounts being sought by purchasers who had previously agreed deals prior to completion or withdrawing entirely. The current interest rate environment, having significantly raised from mid-summer, particularly in the sterling/dollar areas, which are the primary funders of the Irish property market, is of serious concern as reflected in the proposed preferred bidder's withdrawal.”<sup>470</sup>*

*Impact of the funding environment on availability of funding for alternative purchasers*

- 4.81 In claiming that there were [REDACTED] for the Target Site [REDACTED] [REDACTED] the Vendor’s Economic Report stated that “[REDACTED] [REDACTED] [REDACTED] [REDACTED].”<sup>471</sup>
- 4.82 The Vendor’s Written Response stated that *“Furthermore, the adverse financial conditions in Q4 2022 and Q1 2023 compared with when the 2022 Bidding Process had commenced in the summer of 2022 suggests that there would [be] fewer not more potential bidders for the Target Site.”*<sup>472</sup>
- 4.83 On this point, the DAA Written Response stated that *“The Assessment’s Relevant Counterfactual takes an unrealistic view of the market by neglecting to take into account the rapid escalation in interest rates. Those who did not have funding when the sales process was launched would be unlikely to have funding now. Moreover, the market has changed so much that the more likely purchaser now is the likes of [DAA] – those which already have the cash*

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<sup>470</sup> Vendor Written Response, page 40.

<sup>471</sup> Vendor Economic Report, dated 7 December 2023, page 30.

<sup>472</sup> Vendor Written Response, dated 17 January 2024, page 60.

*but also have another incentive to operate it as a car park and provide the service to its customers.”<sup>473</sup>*

4.84 DAA further stated that *“The Assessment glosses over, without comment, [REDACTED] [REDACTED] [REDACTED] – when the marketing campaign started on 4 July 2022, the European Central Bank rate was 0.25%, it is now 4.75% - 19 times higher – [REDACTED] [REDACTED] [REDACTED]”<sup>474</sup>*

*Absent the Proposed Transaction, the Target Site would not have realised an acceptable price*

4.85 In the DAA Written Response, DAA put forward that *“In relation to \$4.97 [of the Assessment],<sup>475</sup> it is arguable that had a lower price been offered by one of the unsuccessful bidders, there would be no guarantee that the Vendor would be willing to accept this lower offer.”<sup>476</sup>*

4.86 In the Vendor Counterfactual Note, the Vendor argued that an acceptable price for the Target Site would likely not have been realised absent the Proposed Transaction, stating that, *“[i]n summary, the changed conditions in financial markets since September 2022 suggests that there would be fewer bids for the Target Site today because of the tighter credit conditions, both in terms of the increased cost of credit and the reduced availability of such credit. These same conditions are consistent with the view that any bids will be lower, indeed substantially lower than [REDACTED] Such heavily discounted bids would likely be unacceptable to the Vendor since they would not achieve the best return.”<sup>477</sup>* The Vendor Counterfactual Note goes on to state that, [REDACTED]

<sup>473</sup> DAA Written Response, dated 17 January 2024, page 88, paragraph 384.

<sup>474</sup> DAA Written Response, dated 17 January 2024, page 88, paragraph 386.

<sup>475</sup> In paragraph 4.97 of the Assessment the Commission notes that it must reach a view as to whether, on the balance of probabilities, another purchaser would have been willing and able to purchase the Target Asset at a price that the Vendor would have been willing to accept and that such a price could have been below the price agreed with DAA.

<sup>476</sup> DAA Written Response, dated 17 January 2024, page 86, paragraph 370.

<sup>477</sup> Vendor Counterfactual Note, dated 9 November 2023, pages 10-11.

[REDACTED]

[REDACTED] <sup>478</sup>.

#### Views of the Commission

4.87 In the Written Responses, the Parties suggested that the Commission questioned the appropriateness of the 2022 Bidding Process, and/or queried the Vendor’s decision to select DAA following the withdrawal of [REDACTED]. However, the question is not whether the Vendor should have made a different choice. For the purposes of establishing the appropriate counterfactual, the question is what would the Vendor have done absent the Proposed Transaction. This means that, to establish the counterfactual, the Commission must contemplate a 2022 Bidding Process in which DAA was not present, and also must discount the effects in that process that are specific to the merger, as arising from the presence of DAA in the 2022 Bidding Process.

4.88 In its analysis of the extent to which it is credible that, absent the Proposed Transaction, an alternative purchaser would have purchased the Target Site through the 2022 Bidding Process, the Commission has considered the issues raised by the Parties in their submissions as set out in paragraphs 4.64 to 4.86 above, and addresses each in turn below.

4.89 To the extent that the Commission relied on evidence from third parties with an interest in the Target Site, the Commission took account of the risk that their evidence might be influenced by their own commercial incentives. The Commission took account of that risk in assessing the accuracy of that evidence and the weight that should be given to it.

#### *Some or all of the alternative bidders were not compliant*

4.90 According to information submitted by the Vendor,<sup>479</sup> [REDACTED] of the alternative purchasers, [REDACTED] identified by the Agents of the Vendor [REDACTED] in the submission of their [REDACTED], the Agents included [REDACTED] in its evaluation of options following the [REDACTED] and continued to communicate with them. While the Commission understands that this bidder [REDACTED],<sup>480</sup> it does not seem that this [REDACTED]

<sup>478</sup> Vendor Counterfactual Note, dated 9 November 2023, page 11.

<sup>479</sup> Vendor Phase 1 RFI Response, document entitled ‘1D (i) DACP eLetter 04.10.22.pdf’, page 3.

<sup>480</sup> See paragraph 4.67 above. As noted, in the letter of 04 October 2022, attention was drawn to the manner in which [REDACTED] bid was submitted, without any comment on the contents of the bid itself.

was sufficiently serious for the Agents of the Vendor to [REDACTED]  
[REDACTED]

4.91 The Commission notes that the Parties' later claims of the [REDACTED] reflect the Vendor's preference for [REDACTED], and indeed the letters sent by the Agents of the Vendor in December 2022 followed the Agent's evaluation of DAA, [REDACTED] as potential purchasers. For example, the Agents of the Vendor commented that the [REDACTED]  
[REDACTED]  
[REDACTED].<sup>481</sup> However, as shown in paragraph 4.51, the initial preferred bidder had [REDACTED]  
[REDACTED]  
[REDACTED]

*Some or all of the alternative bidders were [REDACTED]*

4.92 The Commission engaged with each of the [REDACTED] non-DAA parties who made bid submissions in the 2022 Bidding Process to understand: (i) what their respective plans would be for the Target Site if they had been selected as the alternative purchaser of the Target Site; (ii) the party's level of interest in the Target Site (from and since the 2022 Bidding Process); and (iii) the party's funding situation.

[REDACTED]

4.93 The Commission held a call with [REDACTED] on 21 June 2023. Regarding its interest in the Target Site, [REDACTED] explained that it is a long-term investor, and that it "*generally invests in operating real estate assets*".<sup>482</sup> In addition to the Target Site, it had also considered investing in other car parks in the last five years. [REDACTED] considered that the Target Site represented a "*unique opportunity to purchase a site of such scale in close proximity to Dublin Airport*".<sup>483</sup> Specifically, when asked if, in a hypothetical situation the Vendor were to reopen the tender process for the Target Site, would it bid again, "[REDACTED] *said it would*".<sup>484</sup>

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<sup>481</sup> Vendor Phase 1 RFI Response, document entitled [REDACTED].

<sup>482</sup> [REDACTED] call note, page 1.

<sup>483</sup> [REDACTED] call note, page 1.

<sup>484</sup> [REDACTED] call note, page 2.

4.94 [REDACTED] noted that it “only” intended to use the Target Site as a car park,<sup>485</sup> and that it had planned to outsource the operation of the car park to a car park management company.<sup>486</sup> [REDACTED] has an existing relationship with one of these car park management companies for the past 16-17 years,<sup>487</sup> including in the operation of some of its other assets.<sup>488</sup> [REDACTED] further stated that should the opportunity for the purchase of the Target Site arise again, it would bid for it, and that it would be more confident in any subsequent bid.<sup>489</sup>

4.95 Following publication of an interview with the DAA CEO in the Sunday Times, in which he stated that he expected the Proposed Transaction to proceed as there is “no other bidder” for the Target Site,<sup>490</sup> the Commission received a submission from Euro Car Parks which stated that there were “[REDACTED] other “live” bidders that would gladly progress the purchase” of the Target Site immediately.<sup>491</sup> On foot of this email, the Commission held a second call with Euro Car Parks and ascertained that [REDACTED] who had intended to outsource the operation of the car park at the Target Site to [REDACTED], was one of the aforementioned “live bidders”. On this basis, the Commission held a second call with [REDACTED] on 9 February 2024 (“[REDACTED] call note 2”). Regarding its interest in the Target Site, [REDACTED] maintained that it “views the Target Site as a solid infrastructure asset, should the Target Site be relaunched to the market in the near future it would be very interested in entering and participating in any new sales process.” [REDACTED] stated that it has been involved in other transactions since the 2022 Bidding Process and noted that it currently has two live transactions (cumulatively of a similar level to the funding it would have needed to acquire the Target Site) and has secured funding for both.<sup>492</sup>

[REDACTED]

4.96 The Commission held a call with [REDACTED] on 26 June 2023, during which it explained that it planned to operate the Target Site as an independent car park servicing Dublin Airport. Had it been successful in its bid for the Target Site, it would have operated the Target Site as a car park itself, rather than outsourcing it to a third party.<sup>493</sup> [REDACTED] confirmed that it still had an

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<sup>485</sup> [REDACTED] call note, page 1.

<sup>486</sup> [REDACTED] call note, page 1.

<sup>487</sup> [REDACTED] call note, page 2.

<sup>488</sup> [REDACTED] call note, page 2.

<sup>489</sup> [REDACTED] call note, page 2.

<sup>490</sup> Hodges, O. (2024) ‘Dublin airport’s high-flyer relishes his spat with Ryanair’, *The Sunday Times*, 28 January 2024. Available at: <https://www.thetimes.co.uk/article/dublin-airports-high-flyer-relishes-his-spat-with-ryanair-mp5hqkfjn>.

<sup>491</sup> Email from Euro Car Parks to Commission on 29 January 2024.

<sup>492</sup> [REDACTED] call note 2, page 2.

<sup>493</sup> [REDACTED] call note, page 1.

interest in purchasing the Target Site, and would bid for the site should it become available in the future.<sup>494</sup> Additionally, ██████ noted that it would, in this circumstance, probably try to submit a better bid than it submitted in the 2022 Bidding Process.<sup>495</sup> Specifically the note of the call with ██████ states that *"The [Commission] asked ██████ if, in a hypothetical situation wherein the tender process was reopened, ██████ would bid for the site again. ██████ confirmed that it would, and added that it would probably try to submit a better bid than it ended up submitting in September."*<sup>496</sup>

██████

4.97 The Commission held a call with ██████ on 22 June 2023. In the call ██████ explained that it put a lot of effort into its research from July to September 2022 prior to submitting a bid for the Target Site.<sup>497</sup> ██████ went on to state that following the withdrawal of the initial preferred bidder for the Target Site, it continued to approach the Agents of the Vendor a number of times, until it was informed on 23 December 2022 that the Vendor had entered into a binding contract with another party.<sup>498</sup>

4.98 ██████ plan for bidding on the Target Site involved a joint approach with QuickPark, who would operate the Target Site had ██████ been successful in its bid.<sup>499</sup> In particular ██████ considered that this partnership increased ██████ confidence in its bid because QuickPark has unique knowledge of how the car park is run, having operated the car park at the site between 2003 and 2019.<sup>500</sup> Further, ██████ stated that, having competed with DAA for almost two decades, QuickPark knows the costs of delivering services at the site, the expenses involved, and how much to charge to reasonably turn a profit.<sup>501</sup> ██████ expanded that the reason it was so confident in its bid was that QuickPark knows the facts and figures of the Target Site, and is uniquely placed in knowing how to turn a profit on this car park. According to ██████ this, coupled with the fact that the deal involved a straight-forward acquisition of a clean title, meant that ██████ had to engage in very light touch due diligence

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<sup>494</sup> ██████ call note, page 2.

<sup>495</sup> ██████ call note, page 2.

<sup>496</sup> ██████ call note, page 2.

<sup>497</sup> ██████ call note, page 1.

<sup>498</sup> ██████ call note, page 1.

<sup>499</sup> ██████ call note, page 1-2.

<sup>500</sup> ██████ call note, page 1.

<sup>501</sup> ██████ call note, page 1.



only.<sup>502</sup> ██████ confirmed that QuickPark was confident that it could successfully compete with DAA in the supply of car parking at Dublin Airport.<sup>503</sup>

4.99 With respect to its on-going interest and ability to purchase the Target Site, ██████ confirmed to the Commission that it remained interested in purchasing the Target Site,<sup>504</sup> that it had a solid basis on day one, and that as far as it is concerned, it is still ready to acquire the Target Site should the opportunity present itself.<sup>505</sup> Specifically the note of the call with ██████ states “██████ stated that it would bid again, and that it had proffered to the agent that, in the event that DAA was unable to acquire the car park, ██████ would be willing to step in and take an assignment of the contract entered into with DAA, or otherwise buy and run the car park at the Site. ██████ stated that, in November 2022, the agent asked whether ██████ was still interested in acquiring the Dublin Airport Car Park site. ██████ stated that it was ready at the time, and this has not changed.”<sup>506</sup>

4.100 The Commission observes that the note of the call with ██████ states that “██████ stated that the Dublin Airport Car Park site is a long-term asset.”<sup>507</sup> The Commission considers this good evidence that ██████ and QuickPark would have operated the Target Site as a car park on a long-term basis should they have acquired it absent the Proposed Transaction.

4.101 ██████ reached out to the Commission in an email on 30 January 2024. In this email, ██████ stated that it was “alarmed and dismayed”<sup>508</sup> with the contents of a recent Sunday Times article, in which the DAA CEO stated that he expected the Proposed Transaction to proceed as there is “no other bidder” for the Target Site.<sup>509</sup> ██████ stated that it “remains ready, willing and able to engage in any future sales process” for the Target Site, and added that it would be happy to facilitate a call should the Commission have any queries in respect of ██████ position.<sup>510</sup>

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<sup>502</sup> ██████ call note, page 2.

<sup>503</sup> ██████ call note, page 2.

<sup>504</sup> ██████ call note, page 3-4.

<sup>505</sup> ██████ call note, page 5.

<sup>506</sup> ██████ call note, page 3-4.

<sup>507</sup> ██████ call note, page 5.

<sup>508</sup> Email correspondence with ██████ page 8, dated 30 January 2024.

<sup>509</sup> Hodges, O. (2024) ‘Dublin airport’s high-flyer relishes his spat with Ryanair’, *The Sunday Times*, 28 January 2024. Available at: <https://www.thetimes.co.uk/article/dublin-airports-high-flyer-relishes-his-spat-with-ryanair-mp5hqkfjn>.

<sup>510</sup> Email correspondence with ██████ page 8, dated 30 January 2024.

4.102 Following receipt of this email, the Commission held a call with [REDACTED] on 6 February 2024 (“[REDACTED] call note 2”). [REDACTED] stated that the Bid Guidelines “required a level of unconditionality attached to funding that was not achievable unless a bidder was a cash buyer” and was not achievable for debt funding.<sup>511</sup> [REDACTED] noted that the conditionality could readily have been addressed by legal due diligence that could have been carried out easily if [REDACTED] had been selected.<sup>512</sup>

4.103 [REDACTED] noted that, since the Commission issued its Assessment, its funders have sought to reengage on the matter of acquiring the Target Site.<sup>513</sup> [REDACTED] stated that this has resulted in meetings “having taken place in recent weeks since the announcement of the CCPC’s Assessment.”<sup>514</sup> Further, [REDACTED] stated that, as the commercial property market has softened, it has had more appetite from equity investment; and added that it was listed as a bidder for the Target Site in a Sunday Times article and has been approached by half a dozen investors, most of whom are private investors, to ask whether [REDACTED] will be reengaging with the Vendor and his agents.<sup>515</sup> [REDACTED] stated that it has been involved in many transactions – although no corporate purchases – since the 2022 Bidding Process and noted that it has regularly secured funding for clients.<sup>516</sup>

[REDACTED]

4.104 The Commission held a call with [REDACTED] on 26 June 2023. [REDACTED] explained that it bid for the Target Site as it is a commercial property business, and that the Target Site is an asset with good potential as there is a “large market for car parking at Dublin Airport.”<sup>517</sup> [REDACTED] explained that had it been successful in its bid for the Target Site, it planned to operate it as a car park, and would upgrade it and build a waiting room.<sup>518</sup> [REDACTED] noted that it had originally planned to operate the car park itself, but had then engaged with car park operators who had approached it.<sup>519</sup>

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<sup>511</sup> [REDACTED] call note 2, page 2.

<sup>512</sup> [REDACTED] call note 2, page 2.

<sup>513</sup> [REDACTED] call note 2, page 3.

<sup>514</sup> [REDACTED] call note 2, page 4.

<sup>515</sup> [REDACTED] call note 2, page 4.

<sup>516</sup> [REDACTED] call note 2, page 4.

<sup>517</sup> [REDACTED] call note, page 1.

<sup>518</sup> [REDACTED] call note, page 1.

<sup>519</sup> [REDACTED] call note, page 1.

- 4.105 ██████ confirmed to the CCPC that should it have the opportunity to bid for the Target Site again, it would do so, and that it would increase its bid.<sup>520</sup> Specifically the note of the call with ██████ states that *“The CCPC asked if, in a hypothetical situation wherein the tender process was reopened, ██████ would bid for the site again. ██████ confirmed that it would. The CCPC asked if ██████ would change any aspect of its original bid if it were to bid again. ██████ responded that it would increase its bid, and had some scope to change the bid price.”*<sup>521</sup>
- 4.106 ██████ reached out to the Commission in an email on 31 January 2024. In this email, ██████ stated that the comments made by the DAA CEO in a recent Sunday Times article, where he stated that he expected the Proposed Transaction to proceed as there is *“no other bidder”* for the Target Site,<sup>522</sup> were *“not at all correct as ██████ are still very much interested in acquiring the car park and notified the agents, owners and DAA of this in December.”*<sup>523</sup>
- 4.107 Following receipt of this email, the Commission held a second call with ██████ on 9 February 2024. ██████ stated that its bid for the Target Site during the 2022 Bidding Process was *“financed by very secure funding from the UK”* and *“there is no question regarding whether it would have been able to secure funding to purchase the Target Site.”*<sup>524</sup> ██████ stated that its funders are still onboard, and it spoke to them about the Target Site as recently as 8 February 2024.<sup>525</sup> ██████ stated that it is active in the commercial property market and has been involved in several transactions since 2022, although the quantum of each of these transactions has been less than the quantum of its bid for the Target Site.<sup>526</sup> ██████ stated that there is funding available in the commercial property market and noted that, although it has become more difficult to raise finance for smaller transactions, there is no difficulty in financing big projects.<sup>527</sup>
- ██████

██████

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<sup>520</sup> ██████ call note, page 2.

<sup>521</sup> ██████ call note, page 2.

<sup>522</sup> Hodges, O. (2024) ‘Dublin airport’s high-flyer relishes his spat with Ryanair’, *The Sunday Times*, 28 January 2024. Available at: <https://www.thetimes.co.uk/article/dublin-airports-high-flyer-relishes-his-spat-with-ryanair-mp5hqkfjn>.

<sup>523</sup> Email from ██████ to Commission on 31 January 2024.

<sup>524</sup> ██████ call note 2, page 2.

<sup>525</sup> ██████ call note 2, page 2.

<sup>526</sup> ██████ call note 2, page 2.

<sup>527</sup> ██████ call note 2, page 2.

- 4.108 The Commission held a call with [REDACTED] on 21 June 2023. [REDACTED] explained that had it been successful in purchasing the Target Site, it intended to keep the site operational as a car park.<sup>528</sup> [REDACTED] explained that it had contacted an established car park operator with the view of partnering to operate the Target Site in the short term, and that in the long term it would plan for additional streams of revenue, such as installing solar panels for electricity generation.<sup>529</sup>
- 4.109 [REDACTED] explained that if the Target Site were to become available, it would bid again, and that it would carry out more due diligence to see if it could increase its bid price.<sup>530</sup> Specifically, the note of the call with [REDACTED] states *“The CCPC asked whether, in a hypothetical situation wherein the tender process for the [Target Site] was to reopen, [REDACTED] would submit another bid. [REDACTED] replied that it would bid again.”*<sup>531</sup> This call note also states *“The CCPC asked whether [REDACTED] would change any aspect of its bid, if it were to bid again. [REDACTED] responded that it wouldn’t change its bid, but would further explore the cost and projected revenues, and would carry out more due diligence to see if it could enhance its bid price.”*<sup>532</sup>

The Commission’s conclusion on the financial credibility of the alternative bidders

- 4.110 The Commission understands that the evaluation carried out by the Agents of the Vendor in the 2022 Bidding Process [REDACTED] and following [REDACTED] [REDACTED] the remaining alternative bids (including DAA). For the purposes of establishing the appropriate counterfactual, the key question is whether, absent the Proposed Transaction, any of these bidders was a credible option as an alternative purchaser. To do this, the Commission must discount the merger-specific effects associated with the presence of DAA in the 2022 Bidding Process.
- 4.111 Based on evidence provided by the Parties and by third parties, the Commission’s view is that, absent the Proposed Transaction, it is credible that the Vendor would have re-engaged with alternative bidders following the withdrawal of [REDACTED] and that there were alternative bidders with whom the Vendor would have concluded the sale of the Target Site. The Commission’s reasoning is summarised as follows:

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<sup>528</sup> [REDACTED] call note, page 1.

<sup>529</sup> [REDACTED] call note, page 1.

<sup>530</sup> [REDACTED] call note, page 2.

<sup>531</sup> [REDACTED] call note, page 2.

<sup>532</sup> [REDACTED] call note, page 2.

- (a) The Vendor took steps to engage with [REDACTED], so, in principle, [REDACTED] process was its preferred action;
- (b) The Agents of the Vendor further evaluated [REDACTED] alternative bidders, [REDACTED];
- (c) The Commission understands that DAA was [REDACTED] and as such was an attractive option for the Vendor. However, the Vendor's initial selection, [REDACTED];
- (d) The Agents of the Vendor's communications to the Vendor of 5 and 8 December 2022 were sent in the context of the [REDACTED]. For the purposes of establishing the counterfactual, the Commission must discount the presence of DAA in the 2022 Bidding Process, and the actions that can be attributed to DAA's presence<sup>533</sup>;
- (e) The attractiveness of DAA to the Vendor does not mean that the other alternative purchasers were not genuinely interested and/or financially credible. It is the Commission's view that, had DAA not been part of the 2022 Bidding Process, there were credible alternative purchasers of the Target Site, and that the Vendor would have engaged with at least one of these alternative purchasers.

#### *Impact of developments in the property and financial markets*

4.112 The Commission set out above in paragraphs 4.77 to 4.80 the Parties' views of changes in the property and financial markets from the time of the 2022 Bidding Process on. The Commission acknowledges the turbulence in the property and financial markets in H2 2022 and into 2023. The Parties have cited global events, including the increase in interest rates, as contributing to a climate of uncertainty in the property markets, and concluded that *"the increasing cost of*

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<sup>533</sup> In this regard, the Commission notes its consistency with the approach of other merger control authorities. For example, in its recent merger inquiry in *Cellnex / CK Hutchison UK towers*, in its Final Report, dated 3 March 2022, the CMA states that *"We consider that, following receipt of this offer, CK Hutchison was primarily focused on Cellnex as the purchaser of the assets and so had only limited engagement with other potential purchasers and it therefore did not engage as fully with alternative purchasers as it would, absent this offer"*, see paragraph 5.147. Available at: [https://assets.publishing.service.gov.uk/media/62221304d3bf7f4f0ec9b75e/Cellnex\\_CK\\_Hutchison\\_-\\_Final\\_Report.pdf](https://assets.publishing.service.gov.uk/media/62221304d3bf7f4f0ec9b75e/Cellnex_CK_Hutchison_-_Final_Report.pdf).

*funds due to the ECB rate hikes and the unavailability of credit would hit both would be purchasers of the Target Site and the commercial/office property market.”<sup>534</sup>*

- 4.113 The impact of change in the wider economic environment was described in Q3 2022 by one real estate expert as follows:

*“Bid offer spreads have widened as investors assess the impact of rising interest rates on pricing, with a thinner pool of buyers and financiers now operating in the market”<sup>535</sup>*

- 4.114 In the Oral Submission, James Meagher, Director of Knight Frank, was asked about transactions that had taken place over the last year. He stated that:

*“Volumes are down very dramatically since, you know, the autumn of '22, which was around this period of time. Funding had become very difficult; if not available. Refinance has been impossible or nay impossible.....The capital market transactions and land transactions, which would relate specifically to this, are down very, very heavily and I'm sure you seen that across industry reports or accounts simply pointing that out. And it's driven by costs of funds where, you know, funds within pre-'23 were effectively zero plus margin, you know, and yields were down to prime office yields down at 3.5%, industrial yields 4%, you know, residential yields were at that level also. So, cost of funds matched yields. Now, cost of funds are 5, 6, 7% for similar transactions, so just the maths won't work for investors.*

*BRIAN MCHUGH: So, there have been some deals but at a lower level?*

*JAMES MEAGHER: I think, "forced sales", would probably be the best way to describe it where people either couldn't refinance or where there was receiverships in place... So, you're given a three- or six-month period in which to sell it and it's basically there doesn't appear to be a floor in some of those instances over the last year. But, you know, anyone who would be interested in selling hasn't sold in the last 12 or 15 months. They would be holding.”<sup>536</sup>*

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<sup>534</sup> Vendor Written Response, page 59.

<sup>535</sup> CBRE (2023) *Ireland Investment and Funding Market Overview Q3 2022*, page 2. Available at: [https://mktgdocs.cbre.com/2299/64fcc50f-1cbb-488b-967c-0c04d8cbe85d-892944367/Ireland\\_20Investment\\_20\\_20Fun.pdf](https://mktgdocs.cbre.com/2299/64fcc50f-1cbb-488b-967c-0c04d8cbe85d-892944367/Ireland_20Investment_20_20Fun.pdf).

<sup>536</sup> Oral Submission Transcript, page 23, lines 3-26.

4.115 However, in the Commission’s view, the situation is more nuanced than that put forward by the Parties. This nuance was expressed in a 2023 market outlook report by a commercial real estate expert as follows:

*“Current expectations are for the ECB main refinancing rate to peak in 2023, to stabilise, and to perhaps see a more dovish approach from policymakers as we enter 2024. Investment activity will be slower through the early part of 2023, however when there is more defined stability in relation to interest rates and the cost of capital, we will see a return to more normal trading conditions, and asset price stabilisation. Not all investors will wait on the side-lines however, as the current market dynamics may present an ideal buying opportunity for many.”<sup>537</sup>*

4.116 Another expert in the field stated that, overall, the “activity in the Irish investment market has been very robust” during this turbulent time.<sup>538</sup> Knight Frank stated that in Q3 2022 “although investor concerns in relation to the macroeconomic and funding environment intensified in the second half of the year [2022], investment activity remained strong with €1.7billion worth of assets transacting” during that period.<sup>539</sup> Further, although on the whole fewer deals were concluded, it is not the case that no deals were concluded. In Q4 2022 Knight Frank’s Ireland Investment Market Report stated that “investor spend for 2022 so far is significantly above the average for the equivalent period over the last five years which equates to €2.5 billion”.<sup>540</sup>

4.117 Specifically, the Commission notes that the Vendor continued to engage in transactions through 2022 and 2023. For example, it was reported that the Vendor sold a site in Clongriffin in 2023 for €38m. In addition, the Vendor was actively marketing a residential site in Donaghmede in May 2023.<sup>541</sup> The Vendor is currently marketing a site in Gorey, Co. Wexford for €3m.<sup>542</sup>

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<sup>537</sup> CBRE (2023) *2023 Market Outlook*, page 12. Available at: [https://www.valprecapital.com/wp-content/uploads/2023/04/CBRE\\_Ireland\\_Outlook\\_2023.pdf](https://www.valprecapital.com/wp-content/uploads/2023/04/CBRE_Ireland_Outlook_2023.pdf).

<sup>538</sup> Colliers (2022) *Q2 2022 Capital Markets Quarterly Report*, page 2. Available at: <https://www.colliers.com/download-article?itemId=246b0982-960a-4368-b7d1-5e52077980e3>.

<sup>539</sup> Knight Frank (2022) *Ireland Investment Market: Research – December 2022*, page 3. Available at: <https://www.knightfrank.ie/wp-content/uploads/2022/12/Knight-Frank-Irish-Investment-Market-Dec-2022.pdf>.

<sup>540</sup> Knight Frank (2022) *Ireland Investment Market: Research – December 2022*, page 3. Available at: <https://www.knightfrank.ie/wp-content/uploads/2022/12/Knight-Frank-Irish-Investment-Market-Dec-2022.pdf>.

<sup>541</sup> Quinlan, R. (2023) ‘Donaghmede site with full planning for 18 new homes seeks €700,000’, *Irish Times*, 31 May 2023. Available at: <https://www.irishtimes.com/property/commercial-property/2023/05/31/donaghmede-site-with-full-planning-for-18-new-homes-seeks-700000/>.

<sup>542</sup> Buckley, D. (2024) ‘Gerry Gannon seeks €3m for Gorey residential site’, *Irish Independent*, 14 March 2024. Available at: <https://www.independent.ie/business/commercial-property/gerry-gannon-seeks-3m-for-gorey-residential-site/a1397312379.html>.

- 4.118 The Commission’s view is that reports prepared by experts at the time (i.e., late 2022/early 2023) reflect a shared view of the effects of disruption in the financial markets, alongside a view that the effects were likely to be short-term. With the benefit of hindsight, the experts’ views have played out during 2023, as markets began adapting to higher interest rates in the second half of 2023 and, as discussed above, this is reflected in higher market activity in that period. Therefore, the Commission does not agree with the Parties’ view that, absent the Proposed Transaction, bidding for the Target Site would have been suspended until 2025.
- 4.119 The Commission notes, and details further below, that all three alternative purchasers with whom the Commission had discussions in late January/February 2024 expressed continuing interest in the Target Site, and confidence in their ability to raise finance. The Commission notes that published information is available demonstrating that alternative purchasers continued to invest in property and were able to secure funding in H2 2022 and H1 2023. For example, it was reported in July 2023 that ██████ was in “advanced discussions” to buy a bar in Dublin, with a price between €14m and €18m.<sup>543</sup> ██████ completed a deal in December 2022 to buy 2 Sisters Food Group.<sup>544</sup> ██████ secured funding in October 2023 for two residential communities in Dublin.<sup>545</sup>
- 4.120 Further, although some parts of the property market underperformed during the period of mid-2022 to 2023, this was not the case for all parts of the market and many transactions still took place in the Irish property market. As described by Davy, “*yes we’re slowing down, but to still above-average levels*”.<sup>546</sup> As an example of market activity, ██████ stated that it has been involved in other transactions since the 2022 Bidding Process, and noted that it currently has two live transactions (cumulatively of a similar level to the funding it would have needed to acquire the Target Site) and has secured funding for both. ██████ expressed a view that capital markets were still a little precarious in early 2023 but that since the second half of 2023, borrowers and lenders have come to terms with the “new norm” of higher interest rates.<sup>547</sup>

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<sup>543</sup> Lyons, T. (2023) ‘Well-known Dublin pub on Camden Street sells for over €14m’, *The Currency*, 19 July 2023. Available at: <https://thecurrency.news/articles/123679/well-known-dublin-pub-on-camden-street-sells-for-over-e14m/>.

<sup>544</sup> Devlin, E. (2022) ‘2 Sisters agrees sale of Holland’s Pies and bakery division’ *The Grocer*, 1 December 2022. Available at: <https://www.thegrocer.co.uk/mergers-and-acquisitions/2-sisters-agrees-sale-of-hollands-pies-and-bakery-division/674116.article>.

<sup>545</sup> [linkedin.com](https://www.linkedin.com/posts/scio-capital-llp_alternativeinvestments-alternativecredit-activity-7114908848179556352-Efq7?utm_source=share&utm_medium=member_ios) (2023) *SCIO Capital LLP’s Post*. Available at: [https://www.linkedin.com/posts/scio-capital-llp\\_alternativeinvestments-alternativecredit-activity-7114908848179556352-Efq7?utm\\_source=share&utm\\_medium=member\\_ios](https://www.linkedin.com/posts/scio-capital-llp_alternativeinvestments-alternativecredit-activity-7114908848179556352-Efq7?utm_source=share&utm_medium=member_ios).

<sup>546</sup> [davy.ie](https://www.davy.ie/market-and-insights/insights/marketwatch/2022/outlook-2022/global-and-regional-investment-outlook-2022.html) (2022) *Global and Regional Investment Outlook 2022*. Available at: <https://www.davy.ie/market-and-insights/insights/marketwatch/2022/outlook-2022/global-and-regional-investment-outlook-2022.html>.

<sup>547</sup> ██████ call note 2, page 2.



- 4.121 The Commission notes that, even in the context of a turbulent property market, the Target Site is a very attractive asset given its commercial purpose and readily available customer demand. Indeed, the Colliers website described the sales opportunity offered by the Target Site as follows: *“This is a unique opportunity to acquire a trophy infrastructural asset.”*
- 4.122 During the Commission’s second call with ██████ on 9 February 2024, ██████ that, if the Target Site were to be brought to market now, it would anticipate a good level of interest notwithstanding the increase in interest rates given the stabilisation and growth of passenger numbers through Dublin Airport since the 2022 Bidding Process.<sup>548</sup> Furthermore, as mentioned in paragraph 4.95 above, ██████ stated that it *“views the Target Site as a solid infrastructure asset, should the Target Site be relaunched to the market in the near future it would be very interested in entering and participating in any new sales process.”*<sup>549</sup>
- 4.123 During the Commission’s second call with ██████ on 6 February 2024, ██████ stated that the Target Site is a highly attractive asset because it is the last car park available for purchase at Dublin Airport with *“almost guaranteed cash flow”*.<sup>550</sup> ██████ also noted that the *“interest in, and appetite to provide funding for, the Target Site is higher than it was during the 2022 bidding process.”*<sup>551</sup> ██████ stated that the Target Site is a *“very unique asset”*, especially in light of the planning restrictions in the area meaning that a new car park is unlikely to be built, and, as a result, ██████ funders were comfortable with the prospect of financing ██████ acquisition of the Target Site had it been selected as preferred bidder.<sup>552</sup>
- 4.124 During the Commission’s second call with ██████ on 9 February 2024, ██████ stated that the Target Site is *“obviously a good property that would be attractive to any funder”* because: (i) DAA’s car park prices are high and could, in ██████’s view, be profitably undercut by an provider of the car park at the Target Site; (ii) there has been an increase in airline travel since the 2022 Bidding Process; and (iii) the capacity at Dublin Airport is going to increase.<sup>553</sup> ██████ stated that it would be surprised if there was not more interest in acquiring the Target Site now than there was during the 2022 Bidding Process, and added that FCC maintaining that

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<sup>548</sup> ██████ call note 2, page 2.

<sup>549</sup> ██████ call note 2, page 2.

<sup>550</sup> ██████ call note 2, page 5.

<sup>551</sup> ██████ call note 2, page 4.

<sup>552</sup> ██████ call note 2, page 5.

<sup>553</sup> ██████ call note 2, page 2.

there will be no additional car parking available at Dublin Airport makes the Target Site even more valuable.<sup>554</sup>

4.125 During the Commission's second call with Euro Car Parks on 1 February 2024 (Euro Car Parks call note 2), Euro Car Parks stated that it believes the Target Site is more attractive now than it was during the 2022 Bidding Process for two reasons: (i) customers of DAA's car parks "*have become disenchanted with DAA's running of its car parks*";<sup>555</sup> and (ii) demand for car parking is higher than was forecast during the 2022 Bidding Process because there was an assumption at the time that Dublin Airport would not return to full capacity for at least a year and this assumption affected the commercial modelling.<sup>556</sup> Euro Car Parks also stated that the Target Site is the "*best parking opportunity it has seen in its 28 years in the industry.*"<sup>557</sup>

4.126 In assessing the Impact of developments in the property and financial markets, the Commission also consulted with an industry expert. During the Commission's call with [REDACTED], an industry expert with CBRE Ireland, [REDACTED] stated that, in his personal view, "*viability of a car park in the vicinity of Dublin Airport is strong, especially in light of strong air traffic numbers post-COVID.*"<sup>558</sup>

4.127 The Commission is of the view that this increases the likelihood that, in the absence of DAA, there would have been: (i) a competitive process for the sale of the Target Site; and (ii) serious interest from investors, as there were no other expected opportunities to acquire a car park to serve Dublin Airport.<sup>559</sup>

#### *Impact of the funding environment on availability of funding for alternative purchasers*

4.128 It is the case that DAA was the only cash buyer in the 2022 Bidding Process, and as such, its ability to secure funding for the purchase of the Target Site differed from that of alternative purchasers. In terms of the ability of alternative purchasers to secure financing to be able to purchase the Target Site at a price the Vendor would have been willing to accept, the Commission acknowledges that funding costs have increased compared to the situation

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<sup>554</sup> [REDACTED] call note 2, page 2.

<sup>555</sup> Euro Car Parks call note 2, page 2.

<sup>556</sup> Euro Car Parks call note 2, page 2.

<sup>557</sup> Euro Car Parks call note 2, page 2.

<sup>558</sup> CBRE call note, page 2.

<sup>559</sup> In its Final Report in respect of its merger inquiry in Cellnex / CK Hutchison UK towers, dated 3 March 2022, the CMA considered the attractiveness of the target asset as relevant to determining the likelihood that it would have been sold to an alternative purchaser in the counterfactual, including the fact that there were no other expected opportunities to acquire such an asset, see paragraphs 5.123 – 5.127. Available at: [https://assets.publishing.service.gov.uk/media/62221304d3bf7f4f0ec9b75e/Cellnex\\_CK\\_Hutchison\\_-\\_Final\\_Report.pdf](https://assets.publishing.service.gov.uk/media/62221304d3bf7f4f0ec9b75e/Cellnex_CK_Hutchison_-_Final_Report.pdf).

prevailing at the time of the formulation of bids in the 2022 Bidding Process. However, while this may have impacted some, or all, of the non-cash bidders in the 2022 Bidding Process, the evidence suggests that it cannot be assumed (as the Parties appear to do) that this, of itself, means that [REDACTED].<sup>560</sup>

4.129 As discussed in paragraph 4.102 above, during the Commission's second call with [REDACTED] [REDACTED] stated that the Bid Guidelines "required a level of unconditionality attached to funding that was not achievable unless a bidder was a cash buyer" and was not achievable for debt funding.<sup>561</sup> [REDACTED] stated that the level of conditionality attached to its funding was standard for a transaction of the magnitude of the acquisition of the Target Site.<sup>562</sup> In its view, the letters of support it received from its funders during the 2022 Bidding Process were significant, and getting Heads of Terms from the banks is tantamount to having funding approved because the Heads of Terms have to be approved by the bank's Credit Committee.<sup>563</sup> When asked by the Commission how long the due diligence in respect of receiving funding would have taken, [REDACTED] estimated that, from receiving letters of support to having the funding in place, the process would have taken roughly eight weeks.<sup>564</sup>

4.130 Furthermore, as discussed in paragraph 4.103 above, [REDACTED] noted that, since the Commission issued its Assessment, its funders have sought to reengage on the matter of acquiring the Target Site.<sup>565</sup> [REDACTED] also noted that it has had more appetite from equity investment; and added that it was listed as a bidder for the Target Site in a Sunday Times article and has been approached by half a dozen investors, most of whom are private investors, to ask whether [REDACTED] will be reengaging with the Vendor and his agents.<sup>566</sup> [REDACTED] stated that it has been involved in many transactions – although no corporate purchases – since the 2022 Bidding Process and noted that it has regularly secured funding for clients.<sup>567</sup>

4.131 During the Commission's second call with [REDACTED] was of the view that "its bid for the Target Site was financed by very secure funding from the UK" and that "there is no question

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<sup>560</sup> Vendor Economic Report, page 30.

<sup>561</sup> [REDACTED] call note 2, page 2.

<sup>562</sup> [REDACTED] call note 2, page 3.

<sup>563</sup> [REDACTED] call note 2, page 5.

<sup>564</sup> [REDACTED] call note 2, page 3.

<sup>565</sup> [REDACTED] call note 2, page 3.

<sup>566</sup> [REDACTED] call note 2, page 4.

<sup>567</sup> [REDACTED] call note 2, page 4.

regarding whether it would have been able to secure funding to purchase the Target Site.”<sup>568</sup>

████████ stated “the only delay it would have anticipated in securing its funding to acquire the Target Site would have been how quickly the solicitors could complete the legal due diligence.”<sup>569</sup> Additionally, ██████ noted that it is active in the commercial property market and has been involved in several transactions since the 2022 Bidding Process.<sup>570</sup>

- 4.132 During the Commission’s second call with ██████ stated, that following increased uncertainty in capital markets in 2022, ██████ primary debt funder stated that it was going “risk off” and would not be in a position to provide the debt funding for the project. ██████ noted that its equity funds were still available.<sup>571</sup> ██████ also noted that *“borrowers and lenders have come to terms with the new norm of higher interest rates.”*<sup>572</sup>

*Whether, absent the Proposed Transaction, the Target Site would have been sold for a price that the Vendor would find acceptable*

- 4.133 The Parties’ contention is that, absent the Proposed Transaction, the Target Site would ██████

- 4.134 In respect of establishing the counterfactual sale value of the Target Site, the Vendor’s Economic Report Update stated that it is inappropriate to apply the methodology in two of the Commission’s recent banking merger determinations (M/21/021 – Bank of Ireland/Certain Assets of KBC and M/21/040 – AIB/Certain Assets of Ulster Bank) in the present case. In particular, the Vendor refers to whether an alternative purchaser was willing to acquire the target at any price above liquidation value as being concerned only in a scenario involving exiting firms, as was the case in the banking merger determinations.

- 4.135 The Vendor’s Economic Report Update stated:

*“It is therefore incorrect for the CCPC in constructing a counterfactual with respect to the Target Site, to argue that because there may be viable credible bidders for the Target Site prepared to pay the liquidation value, that the relevant counterfactual is, absent the Proposed Transaction, there would have been one or more viable credible alternative bidders for the Target Site prepared to pay the liquidation value, which it is*

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<sup>568</sup> ██████ call note 2, page 2.

<sup>569</sup> ██████ call note 2, page 3.

<sup>570</sup> ██████ call note 2, page 2.

<sup>571</sup> ██████ call note 2, page 1.

<sup>572</sup> ██████ call note 2, page 2.

*assumed is set at a substantial discount to the €70 million Guide Price for the Target Site.*<sup>573</sup>

4.136 For the purposes of establishing the appropriate counterfactual, it is not necessary to reach a view on the exact price at which the Vendor would have sold the Target Site in the absence of the Proposed Transaction. Rather, and as was explained in the meeting with the Parties of 12 December 2023, the Commission seeks to establish whether, in the absence of the Proposed Transaction, the Vendor would have sought to sell the Target Site to an alternative purchaser, and in this case, whether there was an alternative purchaser willing and able to acquire the Target Site at a price the Vendor would have likely accepted. For the avoidance of doubt, it is not the Commission's position that, in this case, the appropriate sales value in the counterfactual is the liquidation value of the Target Site.<sup>574</sup>

4.137 In fact, the evidence from the 2022 Bidding Process indicates that there were [REDACTED] [REDACTED] who were prepared to [REDACTED] [REDACTED]. The Commission considers that the Vendor's acceptance of a purchase price from DAA of [REDACTED] supports a view [REDACTED]. In addition, absent the Proposed Transaction, the Vendor may have been able to agree an [REDACTED].

**Conclusion on whether, absent the Proposed Transaction, it is likely that the Vendor would have sold the Target Site to an alternative purchaser through the 2022 Bidding Process**

4.138 In order to establish the appropriate counterfactual, the Commission concludes that, absent the Proposed Transaction (i.e., if DAA was not involved in the bidding process) it is likely that the Vendor would have been sold to an alternative purchaser during the 2022 Bidding Process.

4.139 In summary, the Commission's reasoning is as follows:

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<sup>573</sup> Vendor Economic Report Update, page 3.

<sup>574</sup> Similarly, the counterfactual is not required to assume that the most lucrative bid will be preferred. The CMA takes a similar approach. In *Adevinta / ebay* (see footnote 349 above), the parties had argued that the CMA's approach to assessing the bidding process would mean that sellers would always need to pick the most pro-competitive bid, even if that bid was less attractive or had other drawbacks. The CMA responded to this argument that "*it is a decision for merging parties as to how to take account of regulatory risk whilst conducting a transaction. However the CMA will only look to intervene in mergers that raise competition concerns, and it is not part of the CMA's remit to take account of the returns to shareholders when considering whether a merger raises competition concerns*". See paragraphs 80 – 81.

- (a) There were a number of [REDACTED] for the Target Site, and furthermore the Agents of the Vendor [REDACTED];
- (b) The assessment of the financial credibility of alternative purchasers was made once the selection of DAA had been made. Once the Vendor had entered into an exclusivity arrangement with DAA, the Vendor was primarily focused on DAA as the purchaser of the Target Site and so had only limited engagement with other potential purchasers who sought to engage with it. The Vendor therefore did not engage as fully with alternative purchasers as might otherwise have been the case absent DAA's offer;<sup>575</sup>
- (c) It is the case that DAA was the only cash buyer, and as such was preferred by the Vendor after the withdrawal of [REDACTED]. However, that does not mean that alternative purchasers were not financially credible. In addition, the Commission notes that the initial preferred bidder was not a cash buyer. In the absence of the Proposed Transaction, based on evidence including that provided by alternative purchasers, the Commission finds it credible that the Vendor would have [REDACTED];
- (d) While recognising the turbulence in the property market late 2022 and at the beginning of 2023, as discussed above there is evidence that material transactions did proceed during this period. The Target Site is an attractive and unique proposition,<sup>576</sup> and was viewed by alternative purchasers as an appealing investment opportunity; and,
- (e) The cost of capital rose in late 2022, and interest rates remained higher during 2023 than they had been at the beginning of the 2022 Bidding Process, where bids were submitted at a time of low interest rates. However, at the same time, air travel

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<sup>575</sup> The CMA has made similar findings in its recent merger inquiry in *Cellnex / CK Hutchison UK towers*, stating in its Final Report, dated 3 March 2022, that “[w]e consider that, following receipt of this offer, CK Hutchison was primarily focused on Cellnex as the purchaser of the assets and so had only limited engagement with other potential purchasers and it therefore did not engage as fully with alternative purchasers as it would, absent this offer”, see paragraph 5.147. Available at: [https://assets.publishing.service.gov.uk/media/62221304d3bf7f4f0ec9b75e/Cellnex\\_CK\\_Hutchison\\_-\\_Final\\_Report.pdf](https://assets.publishing.service.gov.uk/media/62221304d3bf7f4f0ec9b75e/Cellnex_CK_Hutchison_-_Final_Report.pdf). Similarly, in its Final Report in the *Reckitt Benckiser and KY Brand* merger inquiry, dated 15 August 2015, the CMA stated that “[w]e recognise that if RB had not been bidding, additional parties might have been included in the bidding process or shortlists”, see paragraph 7.27. Available at: [https://assets.publishing.service.gov.uk/media/55cb3230ed915d5343000026/Reckitt\\_Benckiser\\_-\\_K-Y\\_brand\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/media/55cb3230ed915d5343000026/Reckitt_Benckiser_-_K-Y_brand_final_report.pdf).

<sup>576</sup> See footnote 559 above in this regard.

returned to roughly pre-pandemic levels<sup>577</sup> and demand for parking increased.<sup>578</sup> This means that while borrowing costs increased, projected revenues for the Target Site also increased.

4.140 In sum, there were [REDACTED].  
[REDACTED] The Target Site is an attractive investment opportunity, and all of the evidence seen by the Commission indicates that the Vendor was prepared [REDACTED].  
[REDACTED]. For all of these reasons, the Commission finds it likely that the Vendor would have sold the Target Site to an alternative purchaser through the 2022 Bidding Process

**Is it likely that, absent the Proposed Transaction, the 2022 Bidding Process would have been extended or modified, or a new sales process would have been initiated?**

4.141 The Commission has set out above its reasoning that absent the Proposed Transaction, the Vendor would have sold the Target Site to an alternative purchaser as part of the 2022 Bidding Process. Notwithstanding, in this section, the Commission considers whether, if the 2022 Bidding Process had not been successful within the parameters as originally conceived, the Vendor would have pursued an option to amend the 2022 Bidding Process or even initiate a new process.

**Views of the Parties**

4.142 The Vendor has submitted on a number of occasions that there were no alternative plans or contingencies in place in the event that the 2022 Bidding Process had failed. The points the Vendor has made in this respect are set out below.

(a) In the Vendor Phase 2 RFI response, the Vendor stated that:

*“It is only in the event that the sale of the Target Site to the DAA fails, is abandoned, or does not proceed, the Vendor would at that point in time assess his options as any alternative to a sale of the Target Site to the DAA will be heavily dependent on the external financial market conditions prevailing at that time. Additionally, we would also need to consider the impact a [REDACTED]*

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<sup>577</sup> See paragraph 2.4 above.

<sup>578</sup> See paragraphs 2.66 and 2.67 above.

█. *There are no further documents in existence as there are no alternative plans, arrangements, or contingencies if the sale with DAA does not proceed.*<sup>579</sup>

4.143 In the Vendor’s Written Response, the economic expert of the Vendor also set out their views on whether the Vendor would have █. They stated that:

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█  
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█”<sup>580</sup>

4.144 In the Vendor Counterfactual Submission and the Vendor Economic Report, it was argued that the Vendor may “in view of the changed financial conditions, with the secured lender’s consent, delay the sale of the Target Site until market conditions improve”<sup>581</sup> and that the potential absence of the Target Site as a competitive force should be considered by the Commission in its assessment of the counterfactual.

4.145 DAA expressed a similar view in the DAA Economic Report, stating:

*“that [while] a new purchaser would eventually appear, significant time would elapse before its appearance and hence the 6,000+ public car parking spaces would remain unused. At best, in reasonable counterfactuals the 6,000 plus spaces would all be used*

<sup>579</sup> Vendor Phase 2 RFI Response, page 4.

<sup>580</sup> Vendor Written Response, page 60.

<sup>581</sup> Vendor Economic Report, Annex A, page 34.



*for Dublin Airport public car parking ... eventually and this inevitable time delay should and would surely be of direct interest to the [Commission]”.*<sup>582</sup>

#### Views of the Commission

- 4.146 The Commission has considered whether, if the 2022 Bidding Process had not been successful within the parameters as originally conceived and absent the Proposed Transaction, it is likely that the Vendor would have sought to re-examine the options available to it to realise his strategic objectives. The Commission has therefore considered whether the Vendor would have sought, for example, to modify the parameters or extend the timeline of the 2022 Bidding process in an effort to re-engage with previous bidders or to attract other potential purchasers.<sup>583</sup>
- 4.147 As regards the Parties’ comments as to the [REDACTED]”, the Commission is required to consider in the counterfactual what would likely have occurred if a sale to DAA could not have been contemplated. In those circumstances, the Commission must assess the evidence in the round and make a predictive judgement. It is not bound by the Parties’ stated positions but must take its own view.
- 4.148 In that regard, the Commission notes that the incentives and rationale underpinning the Vendor’s decision to sell the Target Site would remain, even if the 2022 Bidding Process had failed.
- 4.149 In the Commission’s view, if the Vendor had decided that the 2022 Bidding Process had failed, the Vendor would have had a number of options available to it, including the following:
- (a) The Vendor could have initiated a new or modified sales process, including re-engaging with entities that had previously expressed interest;
  - (b) The Vendor could have sought to delay or extend the timing of the sale, in order to accommodate any short-term issues that may have arisen with alternative purchasers.

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<sup>582</sup> DAA Economic Report, page 3.

<sup>583</sup> This is consistent with the decisional practice of the European Commission. In M.5440 - *Lufthansa/Austrian Airlines* (2009), the European Commission found that one of the counterfactual scenarios against which that merger was to be assessed was the sale of the target (Austrian Airlines) to an alternative purchaser to Lufthansa (the alternative purchaser being Air France/KLM), even though Air France/KLM did not submit any formal offer in a particular sales process. The European Commission held that: “On the basis of the evidence available to the Commission, it therefore seems that, if [Lufthansa] would not have submitted an offer, the bidding process for the privatisation of [Austrian Airlines] would have been prolonged and negotiations with other interested parties would have continued, and the acquisition of [Austrian Airlines] by Air France-KLM would likely have been the most likely outcome.” See paragraphs 84 – 104 in the European Commission’s decision in M.5440 - *Lufthansa/Austrian Airlines*. Available at: [https://ec.europa.eu/competition/mergers/cases/decisions/m5440\\_20090828\\_20600\\_en.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m5440_20090828_20600_en.pdf). See also footnote 587 below in this regard.

4.150 The Commission considers that the Vendor could have initiated a new or modified sales process, if the 2022 Bidding Process had failed. As discussed above, the 2022 Bidding Process demonstrated that there was considerable interest in the Target Site at that time.

4.151 An Agent of the Vendor (Knight Frank) continued to engage with alternative purchasers following its decision to prioritise engagement with DAA. The Vendor has proposed an explanation for this on-going engagement:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] <sup>584</sup>

4.152 While engagement with alternative purchasers may have incorporated an element of strategic negotiation, the Commission considers that the on-going engagement with alternative purchasers during the exclusivity period with DAA is also evidence of the Vendor keeping this option open, albeit at arms' length given the engagement with the DAA bid. However, as discussed above, the Commission does not accept that none of the other bidders were a [REDACTED] and further, had there been no DAA bid, the Commission considers that the Vendor's engagement with those bidders would have been significantly different.

4.153 While NAMA has a role in ensuring that sales follow certain procedures, [REDACTED]  
[REDACTED] Operating within its overarching aims, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

4.154 The Vendor may also have considered a broader range of prospective purchasers. While the Parties have emphasised how extensive the sales process was, the Commission recognises that

<sup>584</sup> Quote from Agent of the Vendor, cited in Vendor Written Response, page 54.

<sup>585</sup> NAMA call note, page 3.

circumstances change for investors, and it is possible that new potential purchasers could have become interested. As noted in paragraphs 4.122 to 4.126 above, third parties have confirmed the attractiveness of the Target Site as an investment opportunity, and have noted that it is unlikely that there will be similar opportunities available for some time.<sup>586</sup> This gives further weight to the notion that there would likely be interest in a wider process had the 2022 Bidding Process failed.

- 4.155 The Commission considers that the Vendor also had the option of running a longer sales process, in the event that it was not possible to achieve its desired outcomes within the timelines of the 2022 Bidding Process. The Vendor did extend the process once the initial preferred bidder withdrew, which suggests that an extension was a plausible option.<sup>587</sup> An extended sales process could have enabled the Vendor to manage or overcome any timing issues limiting the involvement of particular bidders. Evidence from alternative purchasers who are not cash buyers indicated that the timelines set out in the 2022 Bidding Process were challenging. During its second call with the Commission, ██████████ stated that “*the timeline for the 2022 bidding process was quite short.*”<sup>588</sup> As mentioned in paragraph 4.129, ██████████ estimated that it would have taken eight weeks from receiving the letters of support to having the funding in place.<sup>589</sup>
- 4.156 As the Commission has discussed in paragraph 4.7 above, in establishing the counterfactual, the Commission is not limited to considering alternative scenarios that would have occurred at exactly the same time as the developments that gave rise to the Proposed Transaction. The Commission has therefore taken into account options that may have been available to the Vendor in the short to medium term, and considers that it would have been credible for the Vendor to extend or modify its bidding process.

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<sup>586</sup> See paragraph 4.139(d) above.

<sup>587</sup> The Parties argued that, because the ██████████. The Commission considers that this does not seem accurate considering the evidence that the process was, in fact, ██████████. In any event, the Commission notes that this would not be a bar on its consideration of the counterfactual and refers to a number of cases of the European Commission in this regard. For example, in M.5440 - *Lufthansa/Austrian Airlines* (2009), it considered Air France-KLM as an alternative purchaser even though it had not participated in the public bid process. The European Commission rejected as relevant the fact that the vendor was a public body and had argued that it was obliged to follow the established sales process and could not have negotiated with an alternative purchaser who had not participated in the official sales process. See paragraph 97, cited in footnote 583 above.

More recently, in M.8444 – *ArcelorMittal/Ilva* (2018), the European Commission found that the fact that another bidder had confirmed its interest in acquiring the target after the bid had been awarded supported the view that, absent the proposed transaction, the target would likely have been acquired by another bidder. This was notwithstanding the fact that the vendor was the Italian government who had maintained that it could not accept this alternative bidder on the basis of non-compliance with a public bidding process, see paragraph 422. Available at [https://ec.europa.eu/competition/mergers/cases/decisions/m8444\\_6740\\_3.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m8444_6740_3.pdf).

<sup>588</sup> ██████████ call note 2, page 2.

<sup>589</sup> ██████████ call note 2, page 3.

## Conclusion on the appropriate counterfactual

4.157 The Commission has considered three options that were available to the Vendor absent the Proposed Transaction i.e. absent the sale of the Target Site to DAA. These options were:

- (a) abandon the sale of the Target Site;
- (b) sell the Target Site to an alternative purchaser as part of the 2022 Bidding Process; or
- (c) sell the Target Site to an alternative purchaser through a revised sales process.

4.158 The Commission notes that, as discussed above in paragraph 4.11, its assessment of the counterfactual does not require a specification of the exact route the Vendor would have taken absent the Proposed Transaction. Rather, the counterfactual should consider the credibility of the alternative options available to the Vendor based on an assessment, in the round, of all the evidence available to the Commission.

4.159 With this in mind, and for the reason set out above, the Commission has concluded that absent the Proposed Transaction, the Vendor would likely:

- (a) not have abandoned the sale of the Target Site;
- (b) have sold the Target Site to an alternative purchaser as part of the 2022 Bidding Process; or
- (c) have sold the Target Site to an alternative purchaser through a revised sales process.

4.160 Accordingly, the Commission has concluded that the relevant counterfactual to the Proposed Transaction is that, in the absence of the Proposed Transaction, the Vendor would have sold the Target Site to an alternative purchaser as part of the 2022 Bidding Process or would have sold the Target Site to an alternative purchaser through a revised sales process (the “Relevant Counterfactual”).

## 5. COMPETITIVE ASSESSMENT

### HORIZONTAL UNILATERAL EFFECTS

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#### Introduction

- 5.1 In this section, the Commission sets out its analysis of horizontal unilateral effects occurring from the implementation of the Proposed Transaction in the market for the provision of car parking spaces to the public in the vicinity of Dublin Airport.
- 5.2 Unilateral effects, as explained in paragraph 4.8 of the Commission’s Merger Guidelines, occur when “a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.”
- 5.3 In addition, the EC Horizontal Merger Guidelines state the following in respect of “Non-coordinated effects”:<sup>590</sup>

*“A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms’ price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.”<sup>591</sup>*

#### The likelihood of unilateral effects

- 5.4 In considering the likelihood of the implementation of the Proposed Transaction resulting in unilateral effects, the Commission has assessed the arguments put forward by the Parties and the evidence collected from the Parties and third parties. Following that assessment, the

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<sup>590</sup> As noted in footnote 27 of the EC Horizontal Merger Guidelines, “non-coordinated effects” are also often called “unilateral effects”.

<sup>591</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings [2004] OJ C 31, 5.2.2004, paragraph 24.

Commission has identified one potential theory of harm (i.e., how the Proposed Transaction is likely to result in an SLC). This is:

- Theory of Harm – the Proposed Transaction will result in the removal of the most significant competitive threat to DAA in the Relevant Market resulting in higher prices and reduced quality of service.

5.5 The Commission assesses this potential theory of harm below.

## **Theory of Harm – the Proposed Transaction will result in the removal of the most significant competitive threat to DAA in the Relevant Market resulting in higher prices and reduced quality of service**

### **Introduction**

5.6 For the reasons set out in Section 4, for the purposes of assessing the Proposed Transaction, the Commission considers that the Relevant Counterfactual is that the Vendor would have sold the Target Site to an alternative purchaser as part of the 2022 Bidding Process or would have sold the Target Site to an alternative purchaser through a revised sales process. Therefore, the Target Site is operated in competition with DAA in the Relevant Market. The Proposed Transaction necessarily precludes this Relevant Counterfactual. As a result of the Proposed Transaction, competition between DAA and a competing provider at the Target Site and the resulting competitive constraint exerted on DAA would be lost.

5.7 In the Commission's view, this loss of competition is substantial and countervailing factors would not be sufficient to competitively constrain DAA following the implementation of the Proposed Transaction and prevent an SLC.

5.8 The Commission's analysis in its Theory of Harm is structured as follows:

- (a) First, the Commission sets out:
  - (i) the Views of the Parties (including the views of the Commission on the Parties' submissions); and,
  - (ii) the views of third parties
- (b) The Commission then assesses factors which demonstrate whether the Proposed Transaction will result in an SLC. These are:

- (i) the impact of the Proposed Transaction on market structure and concentration; and,
- (ii) the Commission's examination of the extent to which the Target Site provides an important competitive constraint in the Relevant Market. Here, the Commission assesses:
  - the nature of competition between DAA and the Target Site;
  - DAA's intentions in the event that a competitor was to operate the Target Site;
  - [REDACTED]
  - [REDACTED] and,
  - the likelihood that a competing provider at the Target Site would continue to be an important competitive constraint in the Relevant Market in the absence of the Proposed Transaction
- (c) The Commission then sets out a summary of its analysis of the competitive effects arising from the removal of the Target Site as a competitive threat to DAA in the absence of significant countervailing factors.
- (d) The Commission then assesses factors which could potentially prevent an SLC:
  - (i) the extent to which other firms within and outside the Relevant Market are likely to competitively constrain DAA following the implementation of the Proposed Transaction. Here, the Commission assesses:
    - whether other competitors could replace the competitive constraint provided by the Target Site;
    - barriers to entry and expansion in the Relevant Market; and,
    - out of market constraints.
  - (ii) whether economic regulation of DAA's airport charges and DAA's statutory obligations negate an SLC. Here the Commission assesses:

- whether economic regulation of airport charges and DAA’s statutory objectives affects DAA’s ability and incentive to exercise its market power in the provision of car parking; and,
  - whether purported potential reductions in airport charges resulting from increased car parking revenues improves consumer welfare such that the Proposed Transaction does not result in an SLC.
- (e) Finally, having considered all the above, the Commission then sets out its overall conclusion on the Theory of Harm.

### Views of the Parties

5.9 In the Merger Notification Form, the Parties stated that the Proposed Transaction will not give rise to an SLC “*mainly because [...]*”:<sup>592</sup>

- (a) *“All of [DAA]’s relevant activities (including revenue from car parking) are regulated, directly or indirectly, by the Commission for Aviation Regulation (CAR) on an on-going sustained basis*<sup>593</sup>
- (i) *In particular, there is a “single till” (as opposed to a “dual till”) model operated at Dublin Airport by CAR*
- (ii) *This means that any excess profit/rent from one activity will offset or reduce the amount of income which [DAA] may earn from another activity*
- (iii) *As such, any excess profit/rent which [DAA] earns from parking would be taken into consideration by CAR when setting the cap on the level of revenue / profit which [DAA] may earn from its other regulated activities*
- (iv) *In particular, if [DAA] were to ever seek to charge excessively high prices to user [sic] its car parks (including the Target Site were it to acquire it) then CAR would reduce the possible revenue which [DAA] could earn from [DAA]’s other activities*

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<sup>592</sup> Merger Notification Form, page 52, paragraph 139.

<sup>593</sup> Merger Notification Form, page 53, paragraph 13.



- (v) *This means that any excess (temporary) profit which [DAA] would earn from the car parking would then benefit all of [DAA]’s passengers; the excess profit would not go to [DAA]’s shareholder. In contrast, a private operator would retain the excess profits / rent implying that there would be a greater incentive to seek out excess profits / rent*
- (vi) *While CAR does not supervise the specific prices which [DAA] charges for specific car park spaces, the constant supervision by CAR of [DAA]’s regulated activities (including revenue from car parking) means that pricing by [DAA] is effectively controlled in real terms by CAR because of the material impact of CAR’s work relating to the price cap”;*<sup>594</sup>
- (b) *“[DAA] has every incentive to facilitate and, indeed, grow the number of passengers using Dublin Airport. This means that [DAA] also has every incentive to have adequate car parking to accommodate its passengers ... Therefore [DAA] has significantly different incentives from a nonairport operator who would otherwise acquire the Target Site and may well be tempted at some stage to convert it to a more profitable use (e.g., it could acquire the Target Site, use it as a car park while it is seeking planning permission for an alternative use thereby depriving passengers of 6,122 spaces). Operating the Target Site as a car park might be one of the least profitable uses of such land but [DAA] has an incentive to do so for as long as such parking is needed because the existence of the car park space assists its main purpose (i.e., running and operating the airport and maximising the number of passengers using it); Car parks are close competitors for each other but other modes of transport are also competitors albeit perhaps not as close as the other car parks”. “[DAA] has every incentive to operate the Target Site as a car park, as long as needed, so as to grow its business by facilitating as many passengers as possible. And throughout that time, the CAR will be monitoring [DAA]’s income from the operation of the Target Site”;*<sup>595</sup>
- (c) *“There would be economies of scale and scope if [DAA] were to acquire the Target Site. There would be significant efficiencies associated with the Proposed Transaction, as [DAA] could leverage and extend its existing car park operation including security infrastructure and personnel, with both operation and management teams, bus*

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<sup>594</sup> Merger Notification Form, page 53.

<sup>595</sup> Merger Notification Form, pages 53-54.

*shuttle services, payment platforms and booking service to operate the Target site in a more efficient way, enabling economies of scale compared with any other potential (private sector) competitor. Given the way in which [DAA] is so tightly regulated by CAR (particularly in terms of the need / incentives for efficiencies and cost reductions on the part of [DAA]), the efficiencies would be passed on to the customers of [DAA] over time. They cannot be “pocketed” by [DAA] or its shareholder and hence these efficiencies would lead to relatively lower prices. Moreover, these efficiencies are merger-specific because they could not otherwise be accomplished by other means; indeed, Quick Park was not vertically integrated in contrast to [DAA]”;*<sup>596</sup>

- (d) *“[DAA] will also continue to face competition from other car parks in its catchment area, including hotel car parks, shopping centre car parks, park and ride car parks as well as potential new entrants. There are 13 Hotels in the catchment area of the airport which offer car parking to passengers. For example, Clayton Hotel at Dublin Airport has a car park service dedicated to users of Dublin Airport – for example, that hotel has 1,500 spaces (with only 608 rooms) – its website demonstrates the strength of this competitive offering”;*<sup>597</sup>
- (e) *“[DAA] is closely monitored and supervised by the Minister for Transport, the Department of Transport, politicians, the media and various stakeholders who would not tolerate excessive prices and under-utilisation of the car parking spaces. Given the value of the land at Dublin Airport, [DAA] has every incentive to fill its car parks – an incentive which would not necessarily be present for others”;*<sup>598</sup>
- (f) *“The Target Site has been vacant since September 2020 and has not been a competitor to any other provider of car parking serving Dublin Airport in that time”;*<sup>599</sup>
- (g) *“there are simply not enough car parking spaces serving Dublin Airport at this time so restoring capacity, on a guaranteed basis, of 6,122 spaces would be very attractive for passengers”;*<sup>600</sup>

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<sup>596</sup> Merger Notification Form, page 54.

<sup>597</sup> Merger Notification Form, page 54. This argument is also repeated on pages 56 and 57 of the Merger Notification Form.

<sup>598</sup> Merger Notification Form, page 54.

<sup>599</sup> Merger Notification Form, page 55.

<sup>600</sup> Merger Notification Form, page 55.

- (h) *“Other modes of transport will continue to operate as viable substitutes and pose a significant competitive constraint on the car parks of [DAA] and others post-transaction, including private car drop offs / collections, taxis, airport bus / coach services, private and public bus services as well as private car hire. [DAA] is working with the likes of TII, the National Transport Authority, and Fingal County Council to incentivise greater use of public transport by users of Dublin Airport. In the medium to longer term, the new Metrolink train line will also pose a serious competitive constraint on [DAA]’s car parks”,<sup>601</sup>*
- (i) *“The proportion of Dublin Airport’s total passengers using [DAA]’s existing car parks is about █%. About █% of passengers originating from the island of Ireland use the car parks – or, put another way, █% do not do so. So there are already alternatives / different modes of transport being used well ahead of the Metrolink coming on stream. As public transport comes more on stream post-Covid, there is no doubt that these other modes are a constraint on the car parking option”,<sup>602</sup>*
- (j) *“If the Proposed Transaction was to proceed then car parking prices at Dublin Airport would probably fall as compared to their current levels and would remain lower than they might well be if an independent non-regulated entity bought the Target Site. [DAA] operates a dynamic pricing model to manage the capacity of its car parks, and a significant increase in capacity would decrease the average cost for all parking spaces at Dublin Airport. While it is impossible to be precise about the likely fall in price, it is expected that they could fall appreciably leading to a material savings [sic] for passengers”,<sup>603</sup>*
- (k) *“Moreover, it is reasonable to believe that the prices for the consumer / passenger would remain lower as a result of the Proposed Transaction than if someone other than [DAA] bought the Target Site and were to stop using it as a car park (in whole or in part) after a period of time (as would be its right) – the site has more valuable uses other than as a car park and it could well be used for other purposes (e.g., car hire,*

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<sup>601</sup> Merger Notification Form, page 55. This argument is also repeated on page 56 of the Merger Notification Form.

<sup>602</sup> Merger Notification Form, page 55.

<sup>603</sup> Merger Notification Form. Page 55.

*depot for car hire cars, retail, residential and, logistics/air cargo/warehousing or as an office park (subject to planning permission))”;*<sup>604</sup>

- (l) *“If the Target Site had been owned by [DAA] over the last few years then it would have been operated as a car park entirely; by contrast, the Target Site (in the ownership of a non-regulated entity) has remained idle and was not used as a car park (or anything else)”;*<sup>605</sup>
- (m) *“The car parking stock provided by all providers (including [DAA]) during 2022 (and already in 2023) has proved inadequate particularly in the absence of the Target Site”;*<sup>606</sup>
- (n) *“[DAA] does not want excessively high prices for its car parking – for [DAA], parking is just an enabler to get some passengers (and probably a declining proportion over time) to use Dublin Airport and want to drive and park there. [DAA] does not want parking to be an obstacle to consumers and businesses choosing Dublin Airport. [DAA] (with its public service obligations) would prefer ample supply of car parking at a cheaper price than too little parking at too high a price. Without buying the Target Site, [DAA], cannot easily guarantee this desirable outcome”;*<sup>607</sup>
- (o) *“The availability of long term car parks near an airport is important to facilitate passengers in getting to, and from, the terminals quickly and consistently. Airports globally have car parks attached but Dublin Airport has a disproportionately low proportion of car park spaces to number of passengers carried. For example, it would be difficult to grow passenger numbers at Dublin Airport from customers in parts of Ulster and Leinster without affordable and reliable long term car parks – passengers from Munster and Leinster might well opt instead for Cork, Ireland West or Shannon”;*<sup>608</sup>
- (p) *“Even in relation to car parking, there are many car park owners and operators that are competitors or potential competitors to [DAA], such as local authorities, APCOA,*

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<sup>604</sup> Merger Notification Form, page 55.

<sup>605</sup> Merger Notification Form, page 55.

<sup>606</sup> Merger Notification Form, page 56.

<sup>607</sup> Merger Notification Form, page 56.

<sup>608</sup> Merger Notification Form, page 56.

*Best Car Parks, Bidvest, Euro Car Parks, Park Rite, Ipáirc and Q-Park as well as the principals behind QuickPark; and other local car park operators and hotel owner”;*<sup>609</sup>

- (q) *“In the absence of the Proposed Transaction, passengers at Dublin Airport would almost certainly be worse off, and difficulties and high pricing for car parking experienced in 2022 would be exacerbated in light of increased demand through higher passenger numbers.”*<sup>610</sup>

5.10 Further, three points set out by the Vendor Written Response in respect of why the Proposed Transaction would not give rise to an SLC are as follows:

- (a) Following implementation of the Proposed Transaction, DAA’s ability to increase car parking prices will be limited by the fact that the provision of car parking spaces to the public is part of a wider product market that includes taxis and may include public transport;<sup>611</sup>
- (b) According to the Vendor Written Response, even if DAA *“took the position that its statutory mandate did not restrict its ability to maximise its profits from its car parking activities”*,<sup>612</sup> prices would not be much higher than in the event that the Target Site was acquired by a third party and operated as a car park. In such a scenario, according to the Vendor Written Response, the structure of the Relevant Market would be duopolistic, with car parking prices that *“are likely to be well above the competitive level.”*<sup>613</sup> The Vendor Written Response stated that, in such market conditions, there may be *“a tacit arrangement between the duopolists to maintain car parking prices above the competitive level”*. Alternatively, the Vendor Written Response suggested that DAA may *“act as a price leader setting a supra competitive price”* which the operator of the Target Site follows. The Vendor Written Response also suggested that Cournot competition may take place, again leading to a supra competitive price. The Vendor Written Response suggested that *“the move from a virtual duopoly to a virtual monopoly may not result in a substantial price increase.”*<sup>614</sup> Ultimately, the Vendor Written Response stated that evidence of competition between DAA and QuickPark in

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<sup>609</sup> Merger Notification Form, page 57.

<sup>610</sup> Merger Notification Form, page 57.

<sup>611</sup> Vendor Written Response, page 78.

<sup>612</sup> Vendor Written Response, page 69.

<sup>613</sup> Ibid.

<sup>614</sup> Vendor Written Response, page 70.

the past does not guarantee that competition would be as fierce between DAA and the purchaser of the Target Site. The Vendor Written Response added that, *“while the overall car parking capacity has remained constant demand for such spaces has continued to increase as passenger numbers have increased. As capacity limits are reached at peak times there is less to be gained from undercutting each other and as a result higher less competitive prices are likely to be the resulting state of affairs”*;<sup>615</sup> and

- (c) According to the Vendor Written Response, DAA *“has not exploited any market power that it might currently possess”* because the fact that DAA’s *“car parking capacity has been fully utilised, with the result that some passengers and others wishing to use those facilities may be unable to do so...suggests that [DAA] has not raised prices so that demand is equal to the sometimes constrained supply.”*<sup>616</sup> This, along with DAA’s attempts to alleviate the impact of constrained capacity by approaching the Vendor to lease the Target Site on a short-term basis and by increasing the number of taxi permits available suggests, according to the Vendor Written Response, that DAA’s behaviour *“does not appear to that [sic] of an entity maximising profits by taking advantage of the shortage [of car parking spaces in the vicinity of Dublin Airport]”*.<sup>617</sup>

5.11 All of the views set out in paragraph 5.9 and paragraph 5.10 above were reiterated and expanded upon by the Parties in their respective economic reports. The Commission has considered these economic reports in its analysis set out below.

#### **Views of the Commission on the Parties’ submissions**

5.12 In this section, the Commission summarises its views on the points raised by the Parties, before setting out in detail its analysis of competitive effects.

#### *Constraints from public transport and other modes of access to Dublin Airport*

5.13 The Commission has set out its findings in relation to market definition in Section 3 of this Determination and has found that public transport is not in the Relevant Market.

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<sup>615</sup> Vendor Written Response, page 72.

<sup>616</sup> Vendor Written Response, page 68.

<sup>617</sup> Ibid.

5.14 However, in order to further consider fully any constraints that may arise from public transport, the Commission's analysis in respect of constraints from outside the Relevant Market is set out from paragraph 5.234 onwards.

*Use of the Target Site by an alternative purchaser to DAA*

5.15 The Commission notes the Parties' argument that an alternative purchaser to DAA "*may well be tempted at some stage to convert [the Target Site] to a more profitable use [other than car parking].*"

5.16 As discussed above in paragraphs 4.93 to 4.109, all of the bidders in the 2022 Bidding Process intended to offer a car parking service on the Target Site. Further, the Target Site is designated in its planning permission as a zone of general employment, with a specific use of 'car park'. The Commission engaged with FCC in a call on 29 September 2023 on this issue, and FCC confirmed that in a hypothetical situation where a purchaser sought to use the Target Site for something other than a car park, such as a hotel, they would need to apply for planning permission to do so.<sup>618</sup> Therefore, the only permitted use of the Target Site at this time is as a car park serving Dublin Airport. This was acknowledged in the Vendor Counterfactual Submission which stated: "*it should be noted that even an alternative use under the GE [General Employment] designation would require planning permission thus further delaying any alternative use to that of a car park from being realised.*"<sup>619</sup>

5.17 On balance, the Commission considers that the planning permission of the Target Site means that, in theory, some viable alternative uses (within the scope of the *General Employment* zoning objective) for the Target Site could be pursued,<sup>620</sup> but that planning represents a not insignificant barrier to the use of the Target Site for alternative purposes. The Commission's finding is that an alternative purchaser to DAA would likely have operated the Target Site as a car park serving Dublin Airport.

*Prices following the implementation of the Proposed Transaction may fall compared to today when the Target Site is not operating and may be lower than if a competitor operated the Target Site*

5.18 Regarding the Parties' views that "[i]f the Proposed Transaction was to proceed then car parking prices at Dublin Airport would probably fall as compared to their current levels ...", the Commission notes its conclusion in section 4 that the Relevant Counterfactual (i.e., the

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<sup>618</sup> FCC call note, dated 29 September 2023, page 2.

<sup>619</sup> Vendor Phase 2 RFI Response, document entitled 'S3.0.0 - 2023.11.09PKG Final Counterfactual Note.pdf', page 13.

<sup>620</sup> FCC call note, dated 29 September 2023, page 3.

relevant comparison) to the Proposed Transaction is not that the Target Site remains vacant but rather that the Target Site is sold to an alternative purchaser and competes with DAA in the Relevant Market. Therefore, the correct comparison is between the competitive situation arising under the Proposed Transaction and that arising under the Relevant Counterfactual. The current situation of the Target Site being inactive is not the proper comparator.

- 5.19 Regarding the argument that prices may be lower following the Proposed Transaction than “*if an independent non-regulated entity bought the Target Site*”, the Commission’s Theory of Harm set out below analyses this point in detail.

#### *Capacity constraints facing Dublin Airport car parks*

- 5.20 The reopening of the Target Site as a car park serving Dublin Airport would result in a significant increase in capacity in the Relevant Market. As shown in Table 18, the reopening of the Target Site would increase the estimated number of long-term car parking spaces in the Relevant Market from 19,019 to 25,141. This would represent an increase in capacity of 32%—just under a third.
- 5.21 The Parties argued that this “*significant increase in capacity would decrease the average cost for all parking spaces at Dublin Airport. While it is impossible to be precise about the likely fall in price, it is expected that they would fall appreciably leading to savings for passengers*”.<sup>621</sup> However, the DAA Written Response attempted to quantify the prices that would be charged following implementation of the Proposed Transaction as follows:

*“449. Under [DAA]’s pricing model, the likely estimates of price reduction because of the Proposed Transaction would be as follows:*

- *Red 3 Day Average €12.60 to € [REDACTED] (VAT inclusive)*
- *Red 4 Day Average €12.40 to € [REDACTED] (VAT inclusive)*
- *Red 8 day Average €8.90 to € [REDACTED] (VAT inclusive)*

*450. Overall, this represents c. [REDACTED] % reduction in prices.”<sup>622</sup>*

<sup>621</sup> Merger Notification Form, page 15, paragraph 18, bullet point 22.

<sup>622</sup> DAA Written Response, page 99, paragraphs 449 and 450.

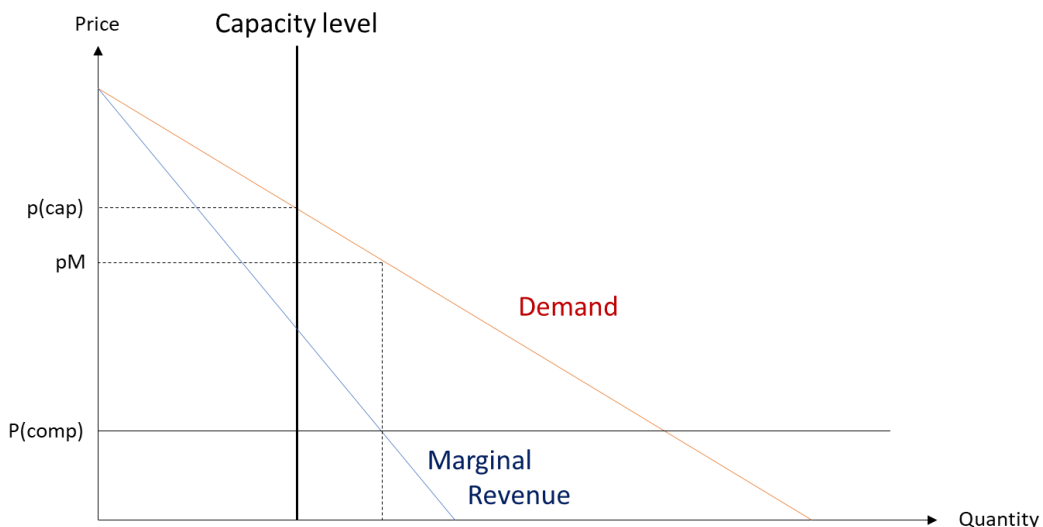


The Commission notes that, as discussed in greater detail in paragraphs 5.137 to 5.139 below, DAA intended to reduce long-term car parking prices by █% in the event that the car park at the Target Site was reopened and the provider at the car park at the Target Site employed an “[a]ggressive [c]ampaign” in respect of its pricing strategy.<sup>623</sup>

5.22 Therefore, the Commission agrees that an increase in capacity in the Relevant Market compared to the level of capacity today is likely to lead to a decrease in car parking prices compared to those today (particularly at times of peak demand). However, the question the Commission must consider is whether car parking prices would be lower (and service levels higher) in the counterfactual scenario, i.e., if the additional capacity were owned and operated by a competitor car park provider.

5.23 If supply capacity in a market is sufficiently low, relative to demand in the market, this can provide firms in the market with an ability and incentive to set prices above the competitive level in a market with no, or lower, capacity constraints.

Figure 9: Stylised example of effect of capacity constraints on price



Source: The Commission

5.24 Figure 9 sets out a stylised example of the effect of capacity constraints on a market. In this example, the level of capacity within the market is such that suppliers can charge a price ( $p(\text{cap})$ ) which clears the market at that level of capacity. This price is significantly higher than

<sup>623</sup> DAA Phase 1 RFI Response, correspondence dated 2 February 2022 contained in document entitled █ dated 9 February 2022.

the competitive price level ( $p(comp)$ ) in the market were there no capacity constraints. In this example,  $p(cap)$  is also higher than the price a monopolist could charge, ( $pM$ ).

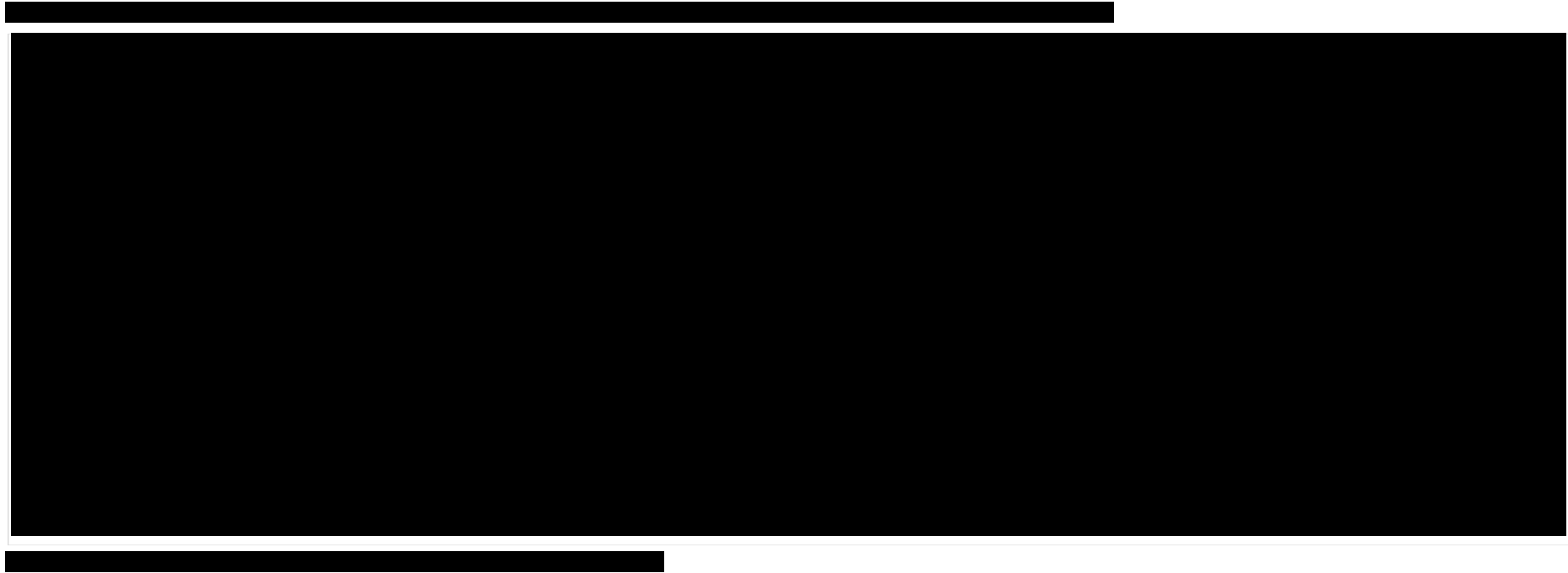
- 5.25 In this scenario, competition has no effect on the price level in the market, as the capacity constraint gives suppliers in the market the ability and incentive to charge  $p(cap)$ , regardless of the number of competitors in the market.
- 5.26 Depending on where capacity lies compared to the quantity that a monopolistic supplier would provide, competition may have no effect on the price level in the market. If capacity is below  $qM$ ,  $p(cap)$  is above  $pM$  and the price would be entirely determined by the need to reduce demand to the level that fills capacity. If capacity is above  $qM$ , but below the quantity that would be supplied in a perfectly competitive market without any capacity constraints, then a profit-maximising monopolist would not fill all capacity, but competition would create the pressure to increase output up to the point where capacity constraints begin to take effect. Competition will not drive the price down to the level that would emerge in the absence of capacity constraints, but it would still create a downward pressure on prices.
- 5.27 Given the well-documented issues with capacity constraints at DAA's car parks,<sup>624</sup> the Commission has considered whether the level of capacity in the Relevant Market could weaken the impact of competition in the market, such that it would mean that the Proposed Transaction would be unlikely to lead to an SLC.
- 5.28 In its Phase 2 RFI Response, DAA provided the Commission with data relating to the occupancy of its car parks, in terms of the proportion of time for which occupancy was above: (i) 50%; (ii) 75%; and (iii) 90%.<sup>625</sup>

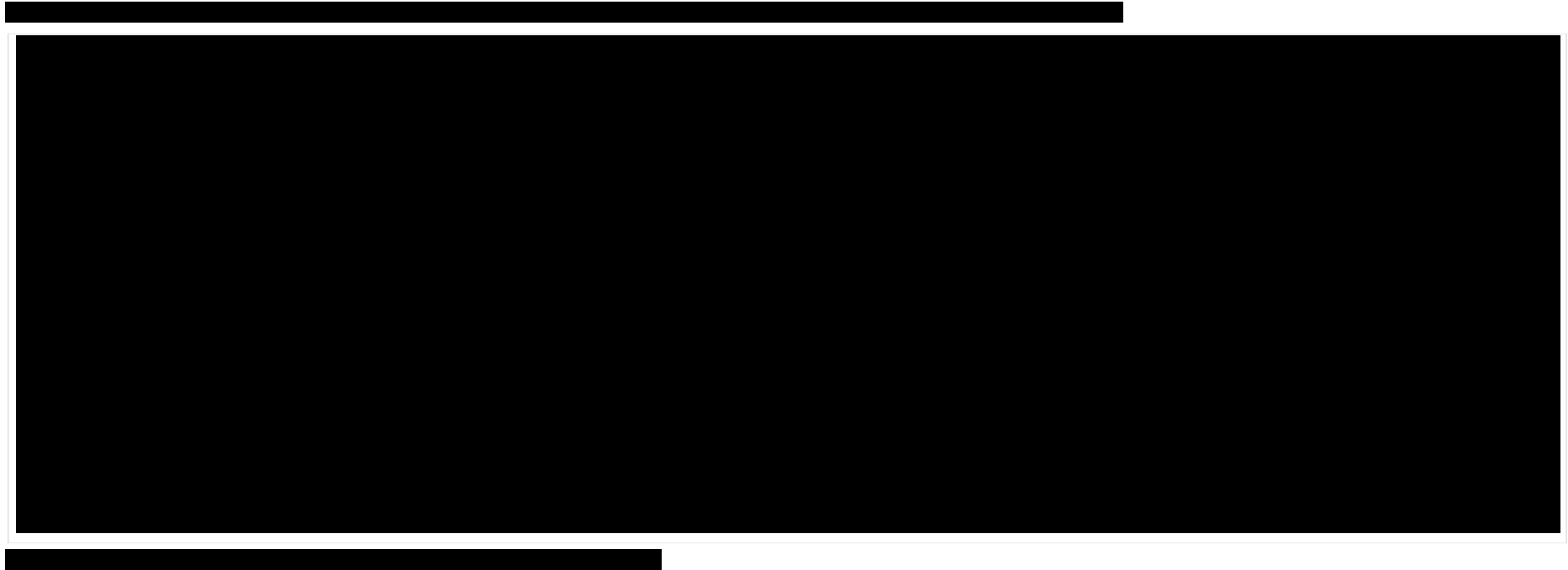
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<sup>624</sup> See paragraphs 2.66 and 2.67 above.

<sup>625</sup> DAA Phase 2 RFI Response, Question 60. Proportion of time is measured as days per month that the car park was above the stated levels of occupancy, in terms of percentage of parking spaces occupied.





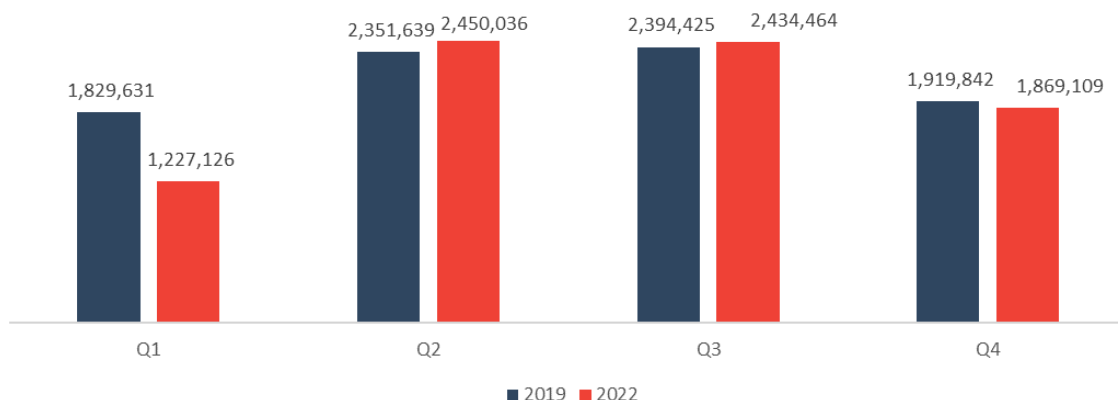


5.29 From Figures 10, 11 and 12, the Commission draws the following conclusions:

- (a) The Express Red car park consistently has the [REDACTED] occupancy levels of DAA’s three long-term car parks, followed by Holiday Blue, with Express Green [REDACTED] to accommodate periods of high demand.
- (b) Pre-Covid, there appears to have been considerable [REDACTED] capacity outside the peak summer months. The Express Red car park was consistently at [REDACTED] [REDACTED] outside of May-September in this period, the Holiday Blue car park was [REDACTED] in the same months, and the Express Green car park was [REDACTED] in the summer months.
- (c) Occupancy levels since the beginning of 2022 have been [REDACTED] than pre-Covid. Furthermore, the Express Green car park, which was [REDACTED] [REDACTED] pre-Covid, has been [REDACTED]. Since May 2022, it is clear that DAA’s car parks have been operating [REDACTED].

5.30 The Commission observes that the recent period of capacity constraints has occurred after QuickPark ceased to operate the Target Site as a car park. On this basis, the Commission’s view is that these figures do not accurately reflect the likely occupancy levels of the car parks in the Relevant Market in the event that the Target Site were to resume operation as a car park.

Figure 13: Island of Ireland-based passenger numbers, excluding transfers and transit, 2019 and 2022, quarterly.



Source : DAA Phase 1 RFI Response, Question 31.

5.31 Figure 13 above sets out quarterly departing passenger numbers at Dublin Airport, limited to those passengers who originate from the island of Ireland, and excluding transfers and

transiting passengers. Figure 13 highlights that, with the exception of Q1 2022, which was impacted by the ongoing effects of the Covid-19 pandemic, passenger numbers in 2019 and 2022 were highly similar: relative to 2019, there were differences of 4.2%, 1.7% and -2.6%, respectively, between Q2, Q3, and Q4 of 2022. Therefore, the Commission is of the view that occupancy levels in 2019 are likely to be reflective of what occupancy levels in 2022 would have been in the event that the Target Site had been operating as a car park.

5.32 Therefore, the Commission's view is that capacity constraints are unlikely to alleviate concerns about a potential detrimental effect on competition arising from the Proposed Transaction. Outside of the peak summer months, in the absence of a significant increase in passenger numbers, the available capacity is well above the level at which competition effects would be absent (viz. the quantity that would be supplied by a monopolist). The IAA has expressed a similar view regarding occupancy in DAA car parks, stating: “[h]owever, the car parks are not full outside of peak summer”.<sup>626</sup>

5.33 As noted in Section 2, the current Dublin Airport passenger cap is 32 million, with Dublin Airport handling more passengers than that in 2019 (i.e., 32,676,251).<sup>627</sup> 2022 passenger numbers are likely to be similar.<sup>628</sup> Therefore, without an increase in the passenger cap, Dublin Airport will not be permitted to handle more passengers. As set out in paragraph 2.46, DAA has applied to FCC to develop c.1,871 long-term additional car parking spaces at Dublin Airport as part of its application to develop the capacity of Dublin Airport and to increase the cap on annual passengers to 40 million. However, the eventual outcome of the application process, and the implementation of any decision on foot of it is too uncertain to be taken into account in the Commission's competitive assessment.

*There are other competitors and potential competitors to DAA*

5.34 The Commission has considered the other firms present in the Relevant Market from paragraphs 5.425.54 to 5.64 below.

5.35 The Commission has examined barriers to entry and barriers to expansion from paragraphs 5.210 to 5.233 5.233 below.

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<sup>626</sup> Commission for Aviation Regulation (2020) Commission Paper 5/2020, *Determination on the Maximum Level of Airport Charges at Dublin Airport 2020-2024*, paragraph 7.74. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3_0).

<sup>627</sup> Central Statistics Office (2019) *Transport Omnibus 2019 / Aviation*. Available at: <https://www.cso.ie/en/releasesandpublications/ep/p-tranom/transportomnibus2019/aviation/>.

<sup>628</sup> At the time of writing, the CSO has not yet published the *Transport Omnibus* for 2022.

### *The role of economic regulation*

5.36 The Commission assesses the Parties' arguments in this regard in paragraphs 5.244 to 5.369 below.

### *"Efficiencies" associated with the Proposed Transaction*

5.37 Regarding the Parties' arguments that there are "*significant efficiencies associated with the Proposed Transaction*" – in particular, "*economies of scale and economies of scope*"<sup>629</sup>- the Commission's findings are set out in Section 8 of this Determination.

### **Views of third parties**

5.38 As set out in Section 1, the Commission received a number of third-party submissions in relation to the Proposed Transaction. Furthermore, the Commission engaged with a number of third parties in relation to their views of the competitive effects of the Proposed Transaction. The Commission's engagement with third parties is outlined at paragraphs 1.20 to 1.27.

5.39 As set out in paragraph 4.89 above, to the extent that the Commission relied on evidence from third parties with an interest in the Target Site, the Commission took account of the risk that their evidence might be influenced by their own commercial incentives and took account of that risk in assessing the accuracy of that evidence and the weight that should be given to it.

### **Compecon Submission**

5.40 In a third-party submission to the Commission dated 30 August 2023, Compecon provided the following view in relation to the competitive effects of the Proposed Transaction:

*"The [Proposed Transaction] would essentially constitute a merger to monopoly as the merged entity would [have] a market share in excess of 90% with the only remaining competition provided by a competitive fringe with 6-7% of the market. [...] There is already evidence that [DAA] has increased prices due to the fact that the [Target Site] is not currently operating and has introduced pricing mechanisms designed to maximise its profits with a corresponding reduction in consumer welfare. Diversion ratios between the merging parties are extremely high which would indicate that any post-merger price increase is likely to be quite substantial. There are significant barriers to entry which mean that entry is unlikely to be timely, likely, or sufficient to offset any anti-competitive effects. Merger specific efficiencies are highly unlikely to be*

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<sup>629</sup> DAA Economic Report, page 5.



*sufficient to offset any post-merger price increase. Suggestions that increased profits due to higher prices post-merger could ultimately result in consumer benefits ignore the issue of deadweight loss. It is difficult to envisage any effective remedy to address the anti-competitive effects of the proposed transaction.”<sup>630</sup>*

#### Individual members of the public

5.41 Several members of the public expressed concerns in relation to the competitive effects of the Proposed Transaction:

- *“I’d like to register my opposition to the take over of the [Target Site] at Dublin Airport by DAA. In terms of the volume of available spaces this would amount to a very significant curtailment of consumer choice and an opportunity to keep parking costs high at the airport.”<sup>631</sup>*
- *“As a regular traveller, I believe that the sanctioning of [the Proposed Transaction] would be hugely detrimental to the flying public and indeed myself as a regular traveller. We have seen for the last two years that DAA’s parking charges have soared in the absence of any real competition and the rates charged are probably double what I used to pay when [QuickPark] was open.”<sup>632</sup>*
- *“Dublin Airport Authority has maintained a complete monopoly on all services in the area. This complaint is specifically on parking vehicles at the airport and the exorbitant charges. I request that to turn down their request to purchase the [Target Site] currently in the media.”<sup>633</sup>*
- *“Pre COVID the average rates for the DAA car parks were €11 per day whilst the [QuickPark] was €8. With the closure of [the Target Site] and DAA now having a monopoly, their daily rates shot up to a high of €16.50 per day during the summer, given no competition. I believe if this purchase does happen, DAA is now in control of a full monopoly of parking at Dublin Airport with no other options for independent operators to open given the planning cap. This I believe is anti-competitive...”<sup>634</sup>*

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<sup>630</sup> Compecon Submission, page 45, paragraph 4.39.

<sup>631</sup> Complainant 1 submission, page 2.

<sup>632</sup> Complainant 2 submission, page 1.

<sup>633</sup> Complainant 4 submission, page 1.

<sup>634</sup> Complainant 3 submission, page 8.

- *“When [QuickPark] operated there was healthy competition and prices were lower. Now you can’t get a decent price because it’s all controlled by the DAA.”*<sup>635</sup>
- *“The previous [QuickPark] operation kept the DAA “honest” and provided an excellent rival service and kept car parking costs reasonable. Without competition the DAA has sweated it’s [sic] asset and changed the manner in which booking take place. So rather than a flat fee, prices move with demand and can be extortionate as a result. They can do this in a monopoly situation, but it is less likely to happen if there is another player on the pitch.”*<sup>636</sup>
- *“I am appalled to hear you’re even considering DAA’s total monopoly on car parking at/near Dublin Airport.. DAA’s charges are usurous [sic] in the extreme.. when they had competition prices were bad. Now they are appalling.”*<sup>637</sup>

#### Stakeholders of the car parking industry

5.42 In a submission dated 5 April 2023, Euro Car Parks argued that the *“Proposed Transaction would result in a substantial lessening of competition in relation to car parking services at Dublin Airport.”*<sup>638</sup>

5.43 In further engagement with the Commission, Euro Car Parks stated that:

*“it genuinely believes that the Proposed Transaction is anti-competitive... as soon as the deal goes through, car parking at Dublin Airport will be “locked up”... it did a lot of investigation into pricing, including comparing average [QuickPark] prices with those of DAA... since [QuickPark] closed, DAA’s prices have increased from [REDACTED] per day... it does not believe DAA having a monopoly on parking at Dublin Airport would be a good thing.”*<sup>639</sup>

5.44 Third Party Submission 1 provided the following statement in relation to the competitive effects of the Proposed Transaction:

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<sup>635</sup> Complainant 6 submission, page 4.

<sup>636</sup> Complainant 8 submission, page 2.

<sup>637</sup> Complainant 10 submission, page 2.

<sup>638</sup> Euro Car Parks submission, page 9.

<sup>639</sup> Euro Car Parks call note, page 1.

*“the opportunity to maintain competition in supply of car parking in the vicinity of Dublin Airport would not be available if DAA took control of the [Target Site]... if the Proposed Transaction is approved, it will give DAA pretty much full control of parking facilities adjacent to Dublin Airport... this would not be good for the car-parking industry or the consumers as, ultimately, one car-park operator means higher pricing.”<sup>640</sup>*

#### **Other bidders in the 2022 Bidding Process**

5.45 In a submission dated 6 April 2023, ██████ expressed the opinion that the Proposed Transaction, if approved:

*“will prohibit the entry of a new participant into the market for the supply of long term car parking spaces within the vicinity of Dublin Airport to users of Dublin Airport (the “Relevant Market”) while simultaneously entrenching the existing dominant position (i.e. monopoly) held by DAA as sole supplier market participant in the Relevant Market”; and*

*“will eliminate supplier competition in the Relevant Market thus creating market conditions conducive to the creation and maintenance of potential negative effects for consumers, in particular whereby the sole monopoly supplier may continue existing negative market behaviour through the continued imposition of unfair pricing and potential further market abuse(s).”<sup>641</sup>*

5.46 ██████ also claimed that the pricing increases imposed by DAA since the closure of the Target Site were related to their dominant position:

*“██████ is of the firm belief that the circa 200% increase in the prices currently charged by DAA for long term car parking at Dublin Airport as against the charges imposed by [QuickPark] for long term car parking in 2019 are unjustifiable and representative of an abuse of a dominant position by DAA. DAA has historically shown a willingness to take advantage of an absence of competition in the Relevant Market to overcharge its customers and it is our client’s fear, belief and expectation that if the [Proposed Transaction] is approved, in the continued absence of any effective*

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<sup>640</sup> Third Party Submission 1 call note, page 1.

<sup>641</sup> ██████ submission, page 1.

*competition DAA will likely continue to impose unfair and unjustifiably high daily charges on long term car parking customers at Dublin Airport”.*<sup>642</sup>

5.47 ██████████ concluded its submission with the following statement:

*“The approval of the [Proposed Transaction] by DAA would, in ██████████’s opinion, lead to the entrenchment of the dominant position currently held by DAA in the Relevant Market and the effective creation of a monopoly in favour of DAA in that market. Such dominance would, in our client’s view, significantly increase the likelihood of the continuation of existing abusive behaviour by DAA as dominant party in the market through the imposition of unfair and unnecessarily expensive daily charges, which would have significant adverse effects for consumers and other parties seeking to avail of long term car parking services at Dublin Airport.”*<sup>643</sup>

5.48 ██████████ also stated that:

*“it believes the Proposed Transaction to be anti-competitive and unfavourable for consumers... it is not only making a complaint because it also bid for the site – its submission was made on the basis of the anti-competitiveness of the Proposed Transaction and also ██████████ knowledge of the asset... further consolidation of the dominant position DAA occupies in respect of providing car parking at Dublin Airport would not be in the best interest of consumers.”*<sup>644</sup>

5.49 ██████████ also expressed concerns relating to the barriers to entry to the car parking market at Dublin Airport and stated that:

*“DAA owns 100% of the car parking at Dublin Airport, and there is no opportunity for anyone else to enter this market due to planning issues with [FCC]... ██████████ does some business with the Clayton Hotel at Dublin Airport and believes that it is getting “grief” from DAA for marketing its car parking as ‘park and fly’... ██████████ also looked at purchasing another site in Swords to turn into car parking to serve Dublin Airport,*

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<sup>642</sup> ██████████ submission, page 3.

<sup>643</sup> ██████████ submission, page 3.

<sup>644</sup> ██████████ Call note, page 1.

*but was told by the seller that it could not market it as airport parking... it is not possible to get planning permission for airport parking from FCC.”<sup>645</sup>*

#### **Former operator of the Target Site - QuickPark**

5.50 When asked by the Commission to provide its overall view of the current competitive conditions in the supply of car parking spaces at Dublin Airport, QuickPark stated that:

*“there is practically no competition in the supply of car parking at Dublin Airport at present... there are a number of hotels supplying car parking... this may not be fully legal, as some of these hotels likely only have planning permission to sell car parking to guests, not third parties... DAA has restored the monopoly which it had enjoyed before [QuickPark] began supplying car parking at the [Target Site]”<sup>646</sup>*

#### **Competitors - hotels in the vicinity of Dublin Airport**

5.51 When asked by the Commission to provide its overall view of the competitive conditions in the car parking sector at Dublin Airport, the Carlton Hotel stated that:

*“it saw a lot of competition between [QuickPark] and DAA when [QuickPark] first opened, especially in Winter... [QuickPark] had radio ads advertising its car parking, and since it has closed there has been no more advertising for car parking at Dublin Airport... DAA’s red and green car parks used to fill first... [QuickPark] competed the most with DAA’s blue car park... while [QuickPark] was open it was incentivised, through pricing, to attract customers from DAA’s blue car park... if DAA were to acquire the [Target Site], it could apply dynamic pricing... this is the same model of pricing used by airlines, where prices are set based on supply and demand... DAA has previously closed some of its car parks due to extra capacity being available in the red car park...if DAA acquires the [Target Site] it could close the blue car park, leading to higher prices.”<sup>647</sup>*

### **Impact of the Proposed Transaction on market structure and concentration**

5.52 Paragraph 3.1 of the Commission’s Merger Guidelines states that “[a] central element in assessing the competitive impacts of a merger is identifying its effect on market structure.” Market structure can be characterised by the number, size, and distribution of firms in a

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<sup>645</sup> [REDACTED] call note, page 1.

<sup>646</sup> QuickPark call note, page 1.

<sup>647</sup> Carlton Hotel call note, page 2.

market. A merger or acquisition will have an impact on market structure as the merging parties which were two firms pre-acquisition become one firm post-acquisition. In the case of the Proposed Transaction, the impact on the market structure is the removal of the only significant competitive constraint on DAA in the Relevant Market. As acknowledged in the Vendor Economic Report, the Proposed Transaction “*is arguably a two-to-one merger*”.<sup>648</sup>

### Market structure

5.53 The Commission has assessed the market structure and market concentration in relation to the provision of car parking spaces to the public in the vicinity of Dublin Airport. Table 18 below shows shares limited to a potential market for long-term parking, and Table 19 shows market shares where short-term parking is included in a wider market for all parking.

5.54 The Commission has estimated shares based on information provided to the Commission by the Parties and by third parties active in the Relevant Market.<sup>649</sup> The Commission considers that the total number of spaces operated by each provider represents an appropriate measurement through which the structure of the market can be captured. As discussed in Section 3, these providers include DAA, the Target Site, and six hotels in the vicinity of Dublin Airport which provide car parking spaces and access to the terminals to passengers. The market structure of the provision of long-term car parking spaces to the public is set out in Table 18 below.

Table 18: Estimated market shares of long-term car parking at Dublin Airport, including the Target Site and including public hotel car parking<sup>650</sup>

Provider	Estimated Number of Total Spaces	Estimated Market Shares
DAA	19,019	68.25%
Target Site	6,122	21.97%
<b>Combined Market Share</b>	<b>25,141</b>	<b>90.22%</b>
Radisson Blu Hotel	305	1.09%

<sup>648</sup> Vendor Economic Report, page 16.

<sup>649</sup> Complete and comprehensive data on the car parking spaces for each hotel in the Relevant Market is not available to the Commission therefore, some data is based on upper-range estimates provided by hotels in the Relevant Market to the Commission.

<sup>650</sup> The Commission has calculated market share estimates based upon space estimates for the Hilton Hotel, the Metro Hotel Dublin Airport and the Crowne Plaza/ Holiday Inn Express provided by the Parties in the Merger Notification Form.

Clayton Hotel	1,500	5.38%
Carlton Hotel	250	0.90%
Hilton Hotel	170	0.61%
Metro Hotel	200	0.72%
Crowne Plaza Hotel/Holiday Inn Express	300	1.08%
<b>Total</b>	<b>27,866</b>	<b>100%</b>

Source: The Commission, based on information provided by the Parties and third parties

5.55 As can be seen in Table 19 below, following the implementation of the Proposed Transaction, DAA would control approximately 91.43% of the Relevant Market. The Commission notes that this is likely to understate the Parties' market share, because the figures used in the calculation represent the total number of parking spaces at the hotels and not the number of spaces they offer to the public (i.e., non-residents) for Dublin Airport parking.

Table 19: Estimated market shares of car parking at Dublin Airport, including the Target Site and including public hotel car parking<sup>651</sup>

Provider	Estimated Number of Total Spaces	Estimated Market Shares
DAA	22,951	72.18%
Target Site	6,122	19.25%
<b>Combined Market Share</b>	<b>29,073</b>	<b>91.43%</b>
Radisson Blu Hotel	305	0.96%
Clayton Hotel	1,500	4.72%
Carlton Hotel	250	0.79%
Hilton Hotel	170	0.53%
Metro Hotel	200	0.63%

<sup>651</sup> The Commission has calculated market share estimates based upon space estimates for the Hilton Hotel, the Metro Hotel Dublin Airport and the Crowne Plaza Hotel/ Holiday Inn Express provided by the Parties in the Merger Notification Form.

Crowne Plaza Hotel/Holiday Inn Express	300	0.94%
<b>Total</b>	<b>31,798</b>	<b>100%</b>

Source: The Commission, based on information provided by the Parties and third parties

5.56 The Target Site represents the only competitor in the Relevant Market with a share materially in excess of 5%. Following the implementation of the Proposed Transaction, the remaining competitors will collectively account for 8.57% of car parking spaces distributed among 6 hotels, three of which would each hold a market share of less than 1%.

5.57 With reference to the Parties’ views set out in paragraphs 5.9 and 5.10 above, the Commission understands that both Parties appear to accept that the structural change in the market following the implementation of the Proposed Transaction would be the removal of the only significant competitive constraint in the Relevant Market.<sup>652</sup> While DAA would have close to a monopoly on car parking at Dublin Airport, DAA considers that a regulated monopoly is “better” than a duopoly in which one entity is regulated and one is not.<sup>653</sup> This point is considered further in the discussion of economic regulation below.

5.58 In this regard, the Commission notes that the EC Horizontal Merger Guidelines explains the following concerning the relationship between high market shares and market power:

*“[t]he larger the market share, the more likely a firm is to possess market power. And the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power. The larger the increase in the sales base on which to enjoy higher margins after a price increase, the more likely it is that the merging firms will find such a price increase profitable despite the accompanying reduction in output. Although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment”.*<sup>654</sup>

**Market Concentration**

<sup>652</sup> See, for instance, Vendor Economic Report, page 16; DAA Economic Response, page 1, footnote 1; and Oral Submission Transcript, page 58, lines 3-12.

<sup>653</sup> DAA Written Response, page 101, paragraphs 462 and 463.

<sup>654</sup> EC Horizontal Merger Guidelines, paragraph 27.



5.59 Market concentration refers to the degree to which production or supply in a particular market is concentrated in the hands of a few large firms. The Commission’s Merger Guidelines state that:<sup>655</sup>

*“Market concentration provides a snapshot of market structure and is often a useful indicator of the likely competitive impact of a merger. It is of particular relevance to the assessment of horizontal mergers. A horizontal merger that has little impact on the level of concentration in the market under consideration is unlikely to lead to an SLC.*

*Market concentration, however, is not determinative in itself.*

*[...]*

*Market shares are important when measuring concentration. The market shares of firms in the market can give an indication of the extent of a firm’s market power. The combined market share of the merging parties, when compared with their respective market shares pre-merger, can provide an indication of the change in market power resulting from the merger. Competition concerns are more likely to arise when the merger creates a merged entity with a large market share.”*

5.60 Paragraphs 3.9 to 3.10 of the Commission’s Merger Guidelines set out that the Commission utilises the Herfindahl-Hirschman Index (“HHI”) as a measure of market concentration. The Commission’s Merger Guidelines state that the Commission will have regard to the following HHI thresholds:

*“A post-merger HHI below 1,000 is unlikely to cause concern.*

*Any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and highly concentrated if greater than 2,000.*

*Except as noted below, in a concentrated market a delta of less than 250 is unlikely to cause concern and in a highly concentrated market a delta of less than 150 is unlikely to cause concern.”*

5.61 The Commission’s Merger Guidelines explain, at paragraph 3.11 that:

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<sup>655</sup> The Commission’s Merger Guidelines, paragraphs 3.2 to 3.4

*“the purpose of the HHI thresholds is not to provide a rigid screen in order to determine whether or not a merger is likely to result in an SLC. Rather, the HHI is a screening device for deciding whether the Commission should intensify its analysis of the competitive impact of a merger.”*

5.62 The Commission calculated HHIs and HHI deltas based on the market share estimates in Tables 20 and 21, below.

*Table 20: HHI in the potential market for long-term car parking spaces at Dublin Airport based on the number of spaces*

	HHI
<b>Competitor operates the Target Site (Relevant Counterfactual)</b>	5173.74
<b>Post-implementation of the Proposed Transaction</b>	8172.65
<b>HHI delta</b>	2998.91

*Source: The Commission*

*Table 21: HHI in the potential market for car parking spaces at Dublin Airport based on the number of spaces*

	HHI
<b>Competitor operates the Target Site (Relevant Counterfactual)</b>	5605.9
<b>Post-implementation of the Proposed Transaction</b>	8384.83
<b>HHI delta</b>	2778.93

*Source: The Commission*

5.63 Based on the HHI calculations set out in Tables 20 and 21 above, and consistent with the Commission’s Merger Guidelines, the Commission finds that the provision of long-term car parking spaces to the public in the vicinity of Dublin Airport is highly concentrated under the Relevant Counterfactual (with HHI of 5,173.74). The HHI delta (2,998.91) is very significantly higher than the threshold of 150, below which the Commission would be able to conclude, on the basis of market concentration, that the Proposed Transaction is unlikely to cause

competition concerns. The inclusion of short-term parking in the market does not change this finding.

- 5.64 The Vendor Economic Report summarises the effect of the Proposed Transaction on market structure and concentration as follows:<sup>656</sup>

*“The Proposed Transaction results in a substantial increase in concentration. The market share of [DAA] increases from 70.7 per cent to 90.0 per cent (Table 2). [DAA] has acquired what appears to be its only serious potential rival, with a market share of 18.9 per cent. The market structure changes from a virtual duopoly to a virtual monopoly. It is arguably a two-to-one merger.”*

#### **Commission’s findings on market structure and concentration**

- 5.65 Based on the analysis set out above, the Commission finds that the Proposed Transaction essentially constitutes a two-to-one merger for the following reasons:

- (a) Following the implementation of the Proposed Transaction, DAA would control nearly the entirety of car parking in the vicinity of Dublin Airport, holding a share in excess of 90%; and,
- (b) The effect of the implementation of the Proposed Transaction would be to reduce the number of significant providers of car parking from two (DAA and an provider at the Target Site) to one (DAA) removing the only significant competitive constraint on DAA in the Relevant Market. The Relevant Market is already highly concentrated: the likely effect of the Proposed Transaction will be to substantially increase that concentration.

- 5.66 As stated in paragraph 5.63 above, the Commission’s overall conclusion of the competitive effects of the Proposed Transaction would be unaffected whether, or not, short-term car parking is included in the Relevant Market.

#### **Examination of the extent to which the Target Site provides an important competitive constraint in the Relevant Market**

- 5.67 This section sets out the Commission’s examination of the extent to which the Target Site provides an important competitive constraint in the Relevant Market. In this regard, the Commission assesses:

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<sup>656</sup> Vendor Economic Report, page 16.

- (a) the nature of competition between DAA and the Target Site;
- (b) DAA's intentions in the event that a competitor was to operate the Target Site;
- (c) DAA's plans if it had leased the Target Site on a short-term basis in 2022; and,
- (d) the likelihood that a competing provider at the Target Site would continue to be an important competitive constraint in the Relevant Market in the absence of the Proposed Transaction.

#### **Nature of competition between the Target Site and DAA**

5.68 All things being equal, a merger between firms which compete intensely will remove a strong competitive constraint and hence be more likely to raise competition concerns than a merger between competitors which do not compete as intensely.<sup>657</sup>

5.69 In assessing the nature of competition between the Target Site and DAA, the Commission has considered:

- (a) the characteristics of the Target Site and DAA car parks;
- (b) views of third parties; and,
- (c) the history of competition between DAA and the previous operator of the Target Site.

#### *Characteristics of the Target Site and DAA car parks*

5.70 Each of DAA's long-term car parks and the Target Site require users to transfer to the Dublin Airport terminals by a shuttle bus. In terms of closeness to the Dublin Airport terminals, the Target Site is closer than DAA's Holiday Blue car park (15 mins transfer)<sup>658</sup> but not as close as the Express Red<sup>659</sup> and Express Green car parks (both 5 mins transfer).<sup>660</sup>

#### *Views of third parties*

5.71 QuickPark informed the Commission that it:

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<sup>657</sup> The Commission's Merger Guidelines, paragraph 4.19.

<sup>658</sup> dublinairport.com (2023) *Holiday Blue*. Available at: <https://www.dublinairport.com/car-parks/long-term-parking/holiday-blue-car-park>.

<sup>659</sup> dublinairport.com (2023) *Express Red*. Available at: <https://www.dublinairport.com/car-parks/long-term-parking/express-red-car-park>.

<sup>660</sup> dublinairport.com (2023) *Express Green*. Available at: <https://www.dublinairport.com/car-parks/long-term-parking/express-green-car-park>.

*“believed it could compete with DAA’s short-term car parks, as [QuickPark] customers would probably be parked and shuttled to Dublin Airport in less time than it took to find a space in DAA’s multi-storey short-term car parks.”*

and that:

*“in recent times, DAA matched [QuickPark]’s prices and undercut [QuickPark]’s prices in the long-term blue car park. However... it did not believe it was competing with this car park, as [QuickPark] considered the long-term blue car park to be a last resort for travellers due to the fact that it is located far away from Dublin Airport, and it has a poor service offering.”<sup>661</sup>*

5.72 The Compecon Submission stated:

*“Apart from the fact that [DAA] and QuickPark account for more than 90% of the market, there are other indications that the two are each other’s closest competitors. First, apart from the [DAA] long-term Blue Car Park, their car parks are closer to the airport terminal than some of the hotels that offer airport car parking. [DAA] and QuickPark, when it was operating, also provided a far more frequent shuttle bus service to the airport than the hotels”<sup>662</sup>*

*History of competition between DAA and the previous operator of the Target Site.*

5.73 To further its understanding of the extent to which the Target Site may compete intensely with DAA’s long-term car parks, the Commission has considered the history of competition between DAA and the previous operator of the Target Site (i.e., QuickPark). Although the Commission recognises that an alternative purchaser to DAA would have its own commercial strategy which would not be identical to that of QuickPark, an examination of the history of competition between DAA and QuickPark may provide a useful illustration of the importance of the Target Site in the Relevant Market.

Entry of QuickPark to the Relevant Market

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<sup>661</sup> QuickPark call note, page 3.

<sup>662</sup> Compecon Submission, page 41, paragraph 4.26.

- 5.74 Information provided to the Commission by QuickPark and third parties suggests that QuickPark (operating from the Target Site) was an important competitor to DAA in the Relevant Market.
- 5.75 QuickPark stated that the opening of the car park “*sparked a price war*” as Aer Rianta’s “*monopoly on parking spaces had been challenged for the first time*”. In response, at the time, DAA noted that it expected QuickPark to undercut their prices and that they would build that into their competitive strategy in 2004.<sup>663</sup>
- 5.76 Information provided by QuickPark suggests that its entry to the market prompted DAA to react, stating that “*DAA brought prices down in response to QuickPark’s lower price offering and that DAA changed its entire car-parking model after QuickPark’s entry.*”<sup>664</sup>
- 5.77 The IAA also stated that, in its view, the entry of QuickPark to the Relevant Market prompted a response from DAA as it “*made DAA change their car parking business and business model completely*” and that “*DAA now run their car parking services like a commercial entity and more efficiently*”.<sup>665</sup>

#### Rivalry between QuickPark and DAA

- 5.78 In terms of QuickPark’s views on its closest competitors, it stated that DAA “*was its principal competitor*” and it attracted customers from DAA as “*people reacted to the decreased prices QuickPark introduced by moving their business to QuickPark.*” QuickPark further commented that “*DAA did a good job in chasing the competition*”, for example, “*DAA would put out special offers to undercut QuickPark when it was possible to do so.*”<sup>666</sup>
- 5.79 Evidence regarding the competitive rivalry between DAA and QuickPark is also seen in DAA’s internal documents, which the Commission considers demonstrates that DAA considered QuickPark as a competitive threat.
- 5.80 In one DAA internal document entitled [REDACTED] [REDACTED] dated 5 December 2012, DAA noted that “[QuickPark] *Have maintained their [REDACTED] in a growing market [REDACTED]*” and listed various [REDACTED] including: [REDACTED]

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<sup>663</sup> Newman, C. (2003) ‘New Dublin Airport car-park offers parking for €5 a day’, *Irish Times*, 19 December 2003. Available at: <https://www.irishtimes.com/news/new-dublin-airport-car-park-offers-parking-for-5-a-day-1.400950>.

<sup>664</sup> QuickPark call note.

<sup>665</sup> CAR call note.

<sup>666</sup> QuickPark call note, page 2.

[REDACTED]  
[REDACTED] official Dublin Airport Car parks".<sup>667</sup>

5.81 In another internal document entitled [REDACTED] dated 5 December 2012, DAA posed the question "Do we perceive [REDACTED] to our car parks business? Are they a [REDACTED] In this same document, under a heading [REDACTED] DAA stated [REDACTED] [REDACTED] [REDACTED]".<sup>668</sup>

5.82 The Focus Group Presentation, dated 20 February 2023, included a section entitled "Quick Park Evaluation" setting out an evaluation of each individual DAA car park. This section analysed QuickPark in terms of [REDACTED]" which include: [REDACTED] [REDACTED] [REDACTED] [REDACTED]".<sup>669</sup>

5.83 The Focus Group Presentation set out customer comments including: "[REDACTED] [REDACTED] [REDACTED]". This DAA internal document also stated that customers have [REDACTED]".<sup>670</sup>

5.84 For each positive or negative feature of [REDACTED] set out in the Focus Group Presentation, DAA included a comment in relation to one of DAA's car parks. For example, when describing the "[REDACTED]" of QuickPark as a [REDACTED]", DAA made a comment in relation to the DAA Holiday Blue car park, citing a customer review stating: "[REDACTED] [REDACTED]".<sup>671</sup> The Commission considers that the feedback from [REDACTED] customers included in the Focus Group Presentation suggests that

<sup>667</sup> DAA Phase 1 RFI Response, document entitled [REDACTED] dated 5 December 2012.

<sup>668</sup> DAA Phase 1 RFI Response, document entitled [REDACTED] dated 5 December 2012.

<sup>669</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 20 February 2023.

<sup>670</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 20 February 2023.

<sup>671</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 20 February 2023.

DAA's car parks and [REDACTED] were rivals both in terms [REDACTED]  
[REDACTED]

- 5.85 In another DAA internal document entitled "Commercial Revenue Forecast 2010-2014", DAA stated that:

*"the primary competitor [to DAA] in Long Term car parking is currently QuickPark. The 'online/ pre booked' price is [REDACTED], this online rate is a [REDACTED] (in response to QuickPark offering [REDACTED] per day online rate for [REDACTED]*

*[REDACTED]"<sup>672</sup>*

- 5.86 Internal DAA documents provided to the Commission by DAA suggest that DAA regularly considered and evaluated QuickPark's operations and pricing.

#### Monitoring of QuickPark promotions by DAA

- 5.87 Internal documents provided in the DAA Phase 1 RFI Response and the DAA Phase 2 RFI Response demonstrate that DAA regularly monitored QuickPark's online promotions and special offers, which in the Commission's view illustrates that DAA considered QuickPark as a close competitor.

- 5.88 Internal email correspondence between DAA employees with the subject line "QuickPark Social Media Activity" dated 17 May 2017 illustrates DAA's monitoring [REDACTED]  
[REDACTED] stating: "as discussed in the trading meeting yesterday, please see below the [REDACTED]"<sup>673</sup>

- 5.89 In another email, with the subject line "[REDACTED]" dated 3 January 2019, DAA stated that it has "[REDACTED] they sent by email" so that if a customer attempted to use the [REDACTED]  
[REDACTED] and, consequently, DAA would "[REDACTED]"<sup>674</sup> – i.e., DAA was trying to win [REDACTED] potentially through [REDACTED]  
[REDACTED] booking website switching to [REDACTED] website if they realised their mistake. It appears that DAA did not want to [REDACTED]  
[REDACTED] since the internal DAA email correspondence referred to above states: "Please

<sup>672</sup> DAA Phase 2 RFI Response, correspondence contained in document entitled [REDACTED] dated 19 May 2023.

<sup>673</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 17 May 2017.

<sup>674</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 3 January 2019.



only talk about the [REDACTED]  
[REDACTED].”

5.90 The Commission’s interpretation of this document, in particular when considered alongside other internal documents, is that this appeared to be a regular tactic used by DAA to [REDACTED] [REDACTED] (inadvertently) attempted to use a [REDACTED] [REDACTED] on the DAA website. In another internal DAA document (a monthly review for August 2018), DAA noted the following:

“... [REDACTED]  
[REDACTED]  
[REDACTED]”<sup>675</sup>

5.91 One of DAA’s internal documents, entitled ‘ [REDACTED] [REDACTED] set out some of DAA’s marketing plans and noted the following:

[REDACTED] than this time last year. On the converse we have more [REDACTED] spaces and [REDACTED] capacity this year, so they [REDACTED] are gaining [REDACTED]. Our pricing is on [REDACTED] but we don’t have any Dublin Airport [REDACTED] running (we do [REDACTED] so it works on our pre-book engine). There are possibly two reasons why this is: 1. They got their [REDACTED] last year and we gained, 2. They are currently active in the market place with [REDACTED] [REDACTED] Can you come up with some quick win marketing options for us to [REDACTED]?”<sup>676</sup>

5.92 Further to this, DAA monitored [REDACTED] at that time with comments such as “[REDACTED]”<sup>677</sup>

#### Monitoring of QuickPark prices by DAA

5.93 The Commission notes that DAA also regularly monitored and discussed the prices offered by QuickPark more generally, which in the Commission’s view demonstrates that DAA considered QuickPark as a close competitor.

<sup>675</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 9 August 2018.

<sup>676</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]?’ dated 8 August 2018.

<sup>677</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 16 October 2020.

- 5.94 In an internal DAA document entitled “[REDACTED]”, DAA stated that it will monitor [REDACTED].<sup>678</sup> In a further document, DAA stated that it will conduct a “[REDACTED]” to see how successful a contemporaneous [REDACTED].<sup>679</sup>
- 5.95 In another DAA internal document entitled “[REDACTED]” dated 6 April 2018, DAA stated that “*long term pricing continues to be* [REDACTED] [REDACTED]”<sup>680</sup>
- 5.96 One internal DAA email chain with the subject line “[REDACTED]” and dated 1 March 2017 included a table setting out [REDACTED] applied by [REDACTED] and stated that: “[REDACTED] [REDACTED]” with an internal reply stating: “[REDACTED] [REDACTED]”<sup>681</sup>
- 5.97 In a further email with the subject line “[REDACTED]” and dated 1 November 2017, DAA discussed [REDACTED] prices with two tables comparing [REDACTED] before and after the weekend of 31 October 2017.<sup>682</sup>
- 5.98 In an internal DAA document (a monthly review for [REDACTED]), DAA noted that:
- [REDACTED] – on 18<sup>th</sup> of July vs 10<sup>th</sup> of August last year. [REDACTED] on 6-10 day durations ...”<sup>683</sup>
- 5.99 Another DAA internal email thread, with the subject line “[REDACTED]” and dated 22 June 2020 also demonstrated this monitoring, noting the following: “no changes on [REDACTED] [REDACTED]”<sup>684</sup>
- 5.100 Internal DAA documents suggest to the Commission that DAA monitored [REDACTED] with a view to attracting potential [REDACTED]. In one internal DAA document

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<sup>678</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 31 January 2023.

<sup>679</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 24 September 2018.

<sup>680</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 6 April 2018.

<sup>681</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 1 March 2017.

<sup>682</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 1 November 2017.

<sup>683</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 9 August 2018.

<sup>684</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED]’ dated 22 June 2020.

entitled “ [REDACTED] ” dated June 2020, DAA appeared to consider how it would respond to [REDACTED]:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>685</sup>

5.101 In another email chain with the subject line “ [REDACTED] ”, DAA analysed the average pricing for both DAA long-term car parks (on average, and individually for each of the Express Red, Express Green, and Holiday Blue car parks) to determine which [REDACTED] was cheaper.<sup>686</sup>

5.102 One internal DAA document entitled “ [REDACTED] ” set out tables and charts detailing the difference between DAA 2019 pricing and [REDACTED] 2019 pricing for the “ [REDACTED] ”. DAA commented that “ [REDACTED] ” [REDACTED]  
[REDACTED]  
[REDACTED]<sup>687</sup>

5.103 In the same DAA internal document, as part of its decision as to whether or not DAA should open the [REDACTED] car park, DAA considered the following:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>688</sup>

#### Monitoring of QuickPark occupancy by DAA

<sup>685</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 21 June 2020.

<sup>686</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 14 August 2020.

<sup>687</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 14 February 2023.

<sup>688</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 21 June 2020.

- 5.104 The evidence available to the Commission suggests that DAA monitored occupancy in QuickPark in addition to monitoring QuickPark’s promotions and pricing, which again, in the Commission’s view demonstrates that DAA considered QuickPark as a close competitor.
- 5.105 In some internal documents, DAA appears to attempt to correlate [REDACTED] [REDACTED] For example, in an internal DAA document entitled [REDACTED] [REDACTED]” dated 26 September 2013, DAA appeared to keep a [REDACTED] [REDACTED] car parking spaces.<sup>689</sup>
- 5.106 This [REDACTED] also appears to be referred to in the internal document noted above entitled “ [REDACTED] ” dated 11 June 2020 where DAA refers to setting up [REDACTED] alongside an existing [REDACTED] exercise.<sup>690</sup>
- 5.107 Another DAA internal document entitled “ [REDACTED] ” dated 28 December 2018 sets out results from a “ [REDACTED] ” exercise and states that “*customers are finding it easier to find spaces [REDACTED] than in [REDACTED].*”<sup>691</sup>
- 5.108 Another internal DAA document entitled [REDACTED]” dated 18 January 2019 set out analysis regarding “ [REDACTED] ” with the conclusion that “ [REDACTED] *less competitive this year vs previous year’s however they sent [REDACTED]*”<sup>692</sup>
- 5.109 Another DAA internal document entitled “ [REDACTED] ” dated 15 March 2019 set out further monitoring of [REDACTED] with DAA stating that it “ [REDACTED] *and compared results vs Previous Year*” commenting that “ [REDACTED] [REDACTED]”<sup>693</sup>
- 5.110 Another internal DAA document entitled “ [REDACTED] ” dated 8 July 2020 further showed this ongoing monitoring, stating the following:

[REDACTED]  
[REDACTED]

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<sup>689</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled ‘RE: AD 18 Quick Park Space Count’ dated 26 September 2013.

<sup>690</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled ‘FW: QP\_Pricing.csv’, dated 11 June 2020.

<sup>691</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled ‘RE: Mystery shopper 2018 highlights (1)’ dated 28 December 2018.

<sup>692</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled ‘RE: QuickPark performance update’ dated 18 January 2019.

<sup>693</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled ‘RE: QuickPark update’ dated 15 March 2019.

[REDACTED]

[REDACTED] <sup>694</sup>.

5.111 DAA also appeared to monitor when QuickPark was at full-occupancy and therefore could not accommodate potential customers who had not pre-booked a parking space (so called “gate customers”). In one internal DAA email thread, DAA set out: “an update on [REDACTED]

[REDACTED] <sup>695</sup>.

Another internal DAA email sought clarification on whether [REDACTED] was [REDACTED] [REDACTED] asking [REDACTED]

[REDACTED] <sup>696</sup>

Introduction of new services by QuickPark and DAA

5.112 The evidence available to the Commission suggests that QuickPark offered an approach to car parking at Dublin Airport that included additional services/features other than car parking, which were newly introduced services and which DAA replicated. Again, in the Commission’s view, this is a strong indicator that DAA considered QuickPark as a close competitor.

5.113 For example, QuickPark stated to the Commission “that it was the first car park operator at Dublin Airport to introduce online booking” and that “DAA began offering online booking after QuickPark.”<sup>697</sup> [REDACTED] views are consistent with those of QuickPark:

*“QuickPark’s presence in the sector led to online booking platforms and pre-booking both being used to try and increase customer numbers, and [REDACTED] noted that these innovations may not exist if QuickPark had not entered the market.”<sup>698</sup>*

5.114 Information available to the Commission suggests that QuickPark offered valet parking to customers as “an enhancement for the customer who wanted superior services and it enabled QuickPark employees to park cars more densely, increasing capacity” and that such a service was not offered by DAA.<sup>699</sup>

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<sup>694</sup> DAA Phase 1 RFI Response, correspondence contained in the document entitled [REDACTED] dated 8 July 2020.

<sup>695</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 17 April 2019.

<sup>696</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 22 August 2019.

<sup>697</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 28 December 2018.

<sup>698</sup> [REDACTED] call note, page 3.

<sup>699</sup> QuickPark call note, page 2.

5.115 QuickPark also stated that *“if one competitor dropped its price, consumers would switch their business to this operator”* and that *“when [QuickPark] advertised special offers for valet parking, it would see a surge in the number of bookings ... [and] that consumers of Dublin Airport react to offers.”*<sup>700</sup>

5.116 [REDACTED] also stated to the Commission that another example of innovation/increased level of services offered by QuickPark was:

*“the reliability and frequency of buses from the QuickPark car park to Dublin Airport. These buses left the car park every five minutes and only took five minutes to reach the airport and the reliability and consistency of this service was, again, an important factor in QuickPark establishing a foothold in the sector.”*<sup>701</sup>

5.117 The examples referred to above are important considerations in the Commission’s assessment of the closeness of competition between DAA and the Target Site, and historic competition between DAA and QuickPark. The Commission considers these examples to be illustrative of non-price aspects of competition which may be affected by the Proposed Transaction and the elimination of the Target Site as a competitive constraint following the implementation of the Proposed Transaction.

#### *Commission’s conclusion on nature of competition between the Target Site and DAA*

5.118 On the basis of the information and evidence considered above, the Commission concludes that the Target Site competed vigorously with DAA in the Relevant Market and the Target Site and DAA are each other’s closest competitors.

5.119 The internal documents set out above demonstrate to the Commission that the former operator of the Target Site (i.e., QuickPark) was regularly monitored and considered by DAA in its commercial strategy. The evidence set out above demonstrates to the Commission that DAA regularly considered [REDACTED] when making commercial decisions regarding its car park operations. The evidence demonstrates that DAA monitored and responded to [REDACTED] decisions (such as accepting [REDACTED] [REDACTED] through opening [REDACTED] car park) in an effort to win business from [REDACTED].

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<sup>700</sup> QuickPark call note, page 3.

<sup>701</sup> [REDACTED] call note.

5.120 The Commission’s conclusion is that DAA’s monitoring of QuickPark’s promotions, pricing, and occupancy was methodical and regular. Other car parks (such as hotels) were seldom (if ever) monitored and considered by DAA in its internal documents.<sup>702</sup>

5.121 This evidence demonstrates to the Commission that QuickPark was considered by DAA as a very close competitor and strongly suggests that if the Target Site were operated again as a car park by a third party (i.e. other than DAA), it would also be a very close competitor and compete vigorously with DAA.

5.122 The Commission’s conclusion is that the evidence demonstrates that the Target Site is and was a relevant factor in DAA’s commercial decisions regarding its car park operations. The evidence demonstrates that DAA’s approach to managing its car parks is not simply one of “*facilitating as many passengers as possible*”.<sup>703</sup> Nor is it credible to assert that DAA’s “*car parking portfolio is dynamically priced to manage capacity – to price at a level to cover costs, earn sufficient profit and at a level so as to enable passengers to use the car parks as a secondary element of their primary purpose (i.e., to fly from/to Dublin Airport)*”.<sup>704</sup>

5.123 In the Oral Submission, DAA stated the following:

*“... we would have kept quite close in terms of understanding the capacity of [QuickPark] in terms of their operations at Dublin Airport, but very much through the lens of ensuring that there was enough capacity in the market for people who needed to travel to Dublin Airport, that there would be available carparking there for them.”*<sup>705</sup>

Therefore, DAA argues that its monitoring of QuickPark was simply done so it could understand and forecast demand in its own car parks and passenger demands at Dublin Airport. While the Commission does not dispute that DAA may have other reasons for monitoring the former QuickPark, the Commission concludes that the body of evidence discussed above strongly indicates that the primary driver of this monitoring was to enable DAA to respond to QuickPark’s commercial behaviour in an attempt to win business – in other words, DAA was actively competing with QuickPark for customers.

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<sup>702</sup> The nature of competition between DAA and the various hotels providing long-term car parking in the vicinity of Dublin Airport is discussed in paragraphs 5.170 - 5.205 below.

<sup>703</sup> Merger Notification Form, pages 53-54.

<sup>704</sup> Merger Notification Form, page 28.

<sup>705</sup> Oral Submission Transcript, page 99, lines 32-34 and page 100, lines 1-5.

**DAA's intentions if a competitor was to operate the Target Site**

5.124 The Commission has also considered the evidence contained in DAA's internal documents regarding DAA's intentions in the event that a competitor was to operate the Target Site following the closure of QuickPark. The internal documents set out below are very informative as to how DAA may be expected to competitively respond to a competitor at the Target Site in the absence of the Proposed Transaction.

5.125 An internal DAA document entitled "[REDACTED]" dated December 2020 suggests that DAA considered that it would need to [REDACTED] prices to [REDACTED] customers from a [REDACTED] (or to retain customers who had switched to DAA following the [REDACTED]) in the summer of 2021:

[REDACTED], frequent customers such as contractors, Airline staff and Pilots will [REDACTED]

[REDACTED] per day flat fee for these customer has been created – the overall Net effect will [REDACTED]

We assume that a [REDACTED] will operate the [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]<sup>706</sup>

5.126 In a DAA internal document entitled "[REDACTED]" DAA explored the possibility in [REDACTED] that the Target Site would be [REDACTED]. In terms of its proposed response DAA stated that it would "[REDACTED]"  
[REDACTED]  
[REDACTED] d).<sup>707</sup>

<sup>706</sup> DAA Phase 1 RFI Response, Question 2, document entitled [REDACTED].

<sup>707</sup> DAA Phase 2 RFI Response, document entitled [REDACTED] dated May 2021, page 16.



5.127 The evidence provided to the Commission by DAA demonstrates that a potential re-opening of QuickPark at the Target Site was an issue that DAA regularly considered and assessed. For example, in an internal document of the DAA entitled ‘ [REDACTED] [REDACTED] and dated 1 May 2021, DAA stated the following:

[REDACTED]  
[REDACTED]  
[REDACTED]<sup>708</sup>

5.128 The internal documents of DAA demonstrate that DAA had prepared a detailed marketing plan which would be deployed in response to a re-opening by QuickPark. An internal DAA email with the subject line [REDACTED] [REDACTED] and dated 28 January 2022, sets out DAA’s “*agreed Car Parks plan that includes activity to [REDACTED] based on our 2022 planning sessions in October & November and my follow up planning meeting ... in December.*”. As part of this plan, it is stated that:

- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]<sup>709</sup>

5.129 Attached to this email was a presentation entitled “[REDACTED] [REDACTED] [REDACTED]” which set out a “*Marketing Strategy – [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]* and some steps DAA may have taken in the event that [REDACTED] were to have re-opened in Q1/Q2 2022, including:

- ‘ [REDACTED] ;

<sup>708</sup> DAA Phase 1 RFI Response, slide 9 in the document entitled ‘ [REDACTED] ’ dated 1 May 2021.

<sup>709</sup> DAA Phase 1 RFI Response, document entitled [REDACTED], dated 2 February 2022.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]<sup>710</sup>

5.130 [REDACTED]

5.131 [REDACTED]

[REDACTED]

[REDACTED]

<sup>710</sup> DAA Phase 1 RFI Response, document entitled [REDACTED], dated 18 October 2021.

<sup>711</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED], dated 17 January 2022.

5.133 In the Oral Submission, DAA addressed the evidence in relation to DAA's proposed [REDACTED] as follows:

[REDACTED]

5.134 Further, when the Commission asked DAA whether the decision to [REDACTED] [REDACTED], DAA stated the following:

[REDACTED]

<sup>712</sup> Oral Submission Transcript, page 97, lines 9-24.

<sup>713</sup> Oral Submission Transcript, page 97, lines 25-26.

[REDACTED]

[REDACTED]<sup>714</sup>

5.135 However, while the Commission has no reason to dispute that the former operator of QuickPark at the Target Site owed money to DAA, the explanation put forward by DAA appears at least partly inconsistent with evidence seen by the Commission for the following reasons:

- (a) First, whilst DAA mentions the debt owed to it by QuickPark in one internal document,<sup>715</sup> DAA documents referred to by the Commission in paragraph 5.131 above are concerned entirely with DAA’s proposed *competitive* response to a rumoured re-opening of a car park at the Target Site.
- (b) Second, these documents consider, in a general sense, the re-opening of the Target Site without distinction as to the provider, and in fact refers to a “*potential operator*” rather than a specific party (i.e., QuickPark).
- (c) Third, in DAA’s engagement with [REDACTED] in November 2022, DAA stated that “*the former [QuickPark] [REDACTED] is no longer available*” as the area was “*being redeveloped*

[REDACTED]

<sup>714</sup> Oral Submission Transcript, page 98, lines 5-17 and 32-34; and page 99, lines 1-3.

<sup>715</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled ‘AD 3 RE\_ QuickPark - CP short term plan.msg’, dated 29 September 2020.

<sup>716</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED], dated 3 November 2022.

5.136 The presentation entitled “ [REDACTED] ”<sup>717</sup> also considered online marketing through [REDACTED] [REDACTED]

5.137 Further consideration was given in this presentation to DAA’s potential “ [REDACTED] ”<sup>718</sup>. This included an assessment of past [REDACTED] which were run in 2019 on [REDACTED]. This presentation also suggested that DAA considered “ [REDACTED] ”<sup>719</sup> which, as noted in paragraph 5.114 above, was a service previously offered by [REDACTED] and represented a [REDACTED] that may be lost following the implementation of the Proposed Transaction. In the Commission’s view, it is notable that the rumoured re-opening of QuickPark did not occur in 2022 and it does not appear to the Commission that DAA introduced this product.

5.138 Planning for the re-opening of the Target Site appears to have continued into 2022. An internal DAA email with the subject line “ [REDACTED] ” and dated 2 February 2022 refers to “ [REDACTED] ” suggesting that [REDACTED] was planned to re-open in “ [REDACTED] ”.<sup>720</sup> In response to this, DAA had aimed to be “ [REDACTED] ”<sup>721</sup>

5.139 This email set out a number of proposed scenarios and responses (which had been alluded to in the internal email dated 28 January 2022 and the internal DAA presentation discussed above). These potential responses ranged from [REDACTED] response from DAA if the provider at the Target Site had [REDACTED] and only accepted [REDACTED] to an “ [REDACTED] ”<sup>722</sup> in the event the provider launched “ [REDACTED] ”. This internal DAA email stated “ [REDACTED] ”

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<sup>717</sup> DAA Phase 1 RFI Response, document entitled [REDACTED], dated 18 October 2021.

<sup>718</sup> DAA Phase 1 RFI Response, slide 9 of document entitled [REDACTED], dated 18 October 2021.

<sup>719</sup> DAA Phase 1 RFI Response, slide 12 of Document entitled [REDACTED], dated 18 October 2021.

<sup>720</sup> DAA Phase 1 RFI Response, correspondence dated 2 February 2022 contained in document entitled [REDACTED] dated 9 February 2022.

<sup>721</sup> DAA Phase 1 RFI Response, correspondence dated 2 February 2022 contained in document entitled [REDACTED] dated 9 February 2022.

<sup>722</sup> DAA Phase 1 RFI Response, correspondence dated 2 February 2022 contained in document entitled [REDACTED], dated 9 February 2022.

campaign is ready and we can amend to include [REDACTED] also if required”.<sup>723</sup> The internal DAA email also stated that:

*“Regardless of the [REDACTED] there is opportunity for DAP [Dublin Airport] to get out in front with a [REDACTED] similar to previous campaigns. Also in terms of getting out in front can we consider that [REDACTED] as an immediate action?*

[REDACTED] ...”<sup>724</sup>

5.140 The Commission considers that this document demonstrates clearly that DAA considered a provider at the Target Site to be a significant competitive threat to DAA’s car parking business. This internal document also demonstrates that DAA regularly monitored the Target Site stating:

*“We expect to have at least a couple of weeks’ notice in advance of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]”*<sup>725</sup>

5.141 It is noteworthy that DAA considered that this re-opening may be temporary and that “... [REDACTED] [REDACTED] [REDACTED]”<sup>726</sup>

5.142 Finally, the evidence demonstrates to the Commission that DAA considered the re-opening of the Target Site would have a [REDACTED] effect on its car parking business both through a reduction in [REDACTED], and the [REDACTED] on DAA to [REDACTED] in response to the new provider.

5.143 An internal DAA document entitled “[REDACTED]” dated 4 December 2022 set out tables produced by DAA comparing DAA’s [REDACTED]

<sup>723</sup> DAA Phase 1 RFI Response, correspondence dated 2 February 2022 contained in document entitled [REDACTED], dated 9 February 2022.

<sup>724</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 9 February 2022.

<sup>725</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED], dated 9 February 2022.

<sup>726</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED] dated 9 February 2022.

[REDACTED].<sup>727</sup> The Commission’s interpretation of this document is that DAA would [REDACTED] prices in circumstances where the Target Site [REDACTED]. In this document, DAA stated that “[t]he assumption for [REDACTED] [REDACTED] (Please note, this doesn’t mean the [REDACTED])”. The Commission understands this to mean that DAA would have [REDACTED] if QuickPark were to have re-opened [REDACTED] [REDACTED]

5.144 In another internal DAA email [REDACTED] [REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>728</sup>

*Commission’s conclusion on DAA’s intentions if a competitor was to operate the Target Site*

5.145 The evidence shows that DAA was concerned about a rumoured re-opening of the Target Site and considered how this will likely impact on its car park business and discussed potential responses including through reducing prices.

5.146 The Commission concludes that DAA considers the Target Site as a significant competitor in the Relevant Market.

[REDACTED]

5.147 The Commission notes that DAA was considering [REDACTED] [REDACTED]<sup>729</sup>

5.148 As part of this consideration, DAA assessed options which may be open to it to address insufficient car parking capacity in the absence of the Target Site in summer 2022. One internal DAA document entitled “DAP Commercial Car Parks – Quick Park Analysis” dated May 2022 sets out a “Risk Assessment” in relation to a short-term lease of the Target Site compared with:

<sup>727</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled ‘RE: QuickPark revenue estimation Aug-Dec 2022’ dated 4 December 2022.

<sup>728</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled ‘AD 3 FW\_ REVISED\_ April 2023.msg’, dated 20 April 2023.

<sup>729</sup> DAA Phase 1 RFI Response, slide 2 of document entitled [REDACTED], dated May 2022.

(i) seeking a potential Ministerial Order for additional capacity in the Red Extra car park;<sup>730</sup> and, (ii) doing nothing.

5.149 Regarding “Pricing for passengers” this document stated the following under the scenario of DAA’s operation of the Target Site: “Pricing stabilisation at c.25% increase on peak 2019”.<sup>731</sup> DAA also noted the potential for this short-term lease to “Protect future revenue by keeping loyal customers as Car Parking customers”.<sup>732</sup> The Commission considers it noteworthy that DAA’s estimations of occupancy at the Target Site were as follows: “occupancy average of [REDACTED]”<sup>733</sup> and that one potential concern identified by DAA was [REDACTED].<sup>734</sup> In addition, DAA had intended that the Target Site would be “Priced at +20% Blue car park”.<sup>735</sup>

5.150 Another DAA internal email with subject line “[REDACTED]” and dated 18 May 2022 appears to identify potential [REDACTED] that DAA may experience in the event that the Target Site was operated by it on a short-term basis and [REDACTED]. This email contains a screenshot of the [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>730</sup> See paragraph 2.67 above (industry background).  
<sup>731</sup> DAA Phase 1 RFI Response, slide 2 of document entitled ‘6.8 Car Park Summer 2022 May 2022.pdf’, dated May 2022.  
<sup>732</sup> DAA Phase 1 RFI Response, slide 2 of document entitled ‘6.8 Car Park Summer 2022 May 2022.pdf’, dated May 2022.  
<sup>733</sup> DAA Phase 1 RFI Response, slide 3 of document entitled ‘6.8 Car Park Summer 2022 May 2022.pdf’, dated May 2022.  
<sup>734</sup> DAA Phase 1 RFI Response, slide 14 of document entitled [REDACTED], dated May 2022.  
<sup>735</sup> DAA Phase 1 RFI Response, slide 4 of document entitled ‘6.8 Car Park Summer 2022 May 2022.pdf’, dated May 2022.



[REDACTED]  
[REDACTED]<sup>736</sup>

*Commission's conclusion on DAA's intentions if a competitor was to operate the Target Site*

5.151 In summary, the internal documents submitted to the Commission by DAA regarding its plans for a short-term lease of the Target Site in 2022 suggest that:

- (a) DAA planned for [REDACTED] to be approximately [REDACTED];
- (b) DAA did not expect the Target Site to be [REDACTED] and was concerned that it may [REDACTED]  
[REDACTED]; and,
- (c) DAA was concerned about potential [REDACTED].

**Assessment of the likelihood that a competing provider at the Target Site would continue to be an important competitive constraint in the Relevant Market in the absence of the Proposed Transaction.**

5.152 As to whether a competing provider at the Target Site would continue to be an important competitive constraint in the Relevant Market in the absence of the Proposed Transaction, the Commission has considered that the plans of some of the entities who were also involved in the 2022 Bidding Process<sup>737</sup> provide a good indication of likely outcomes.

5.153 [REDACTED] (who intended to contract the operation of the Target Site to QuickPark) stated that were QuickPark to operate the site again, it *"projected that it would price daily car parking rates... [at] roughly [REDACTED] per space per day in its first year of operating the site."* [REDACTED] further stated that *"daily prices currently charged in DAA's car parks are around €15... but, based on its projections, [REDACTED] would never charge anything close to €15 per day."*<sup>738</sup>

5.154 [REDACTED] (who intended to contract the operation of the Target Site to [REDACTED]) stated that *"it only intended to use it as a car park"*.<sup>739</sup>

5.155 [REDACTED] (who originally intended to operate the Target Site itself, but later spoke to specialist operators) stated that *"it planned to operate the site as a car park, but to upgrade it by resurfacing it and inserting a waiting room"*<sup>740</sup> and that in terms of pricing *"the cheapest car*

<sup>736</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled 'AD 24 Confidential - re QPark.msg' dated 18 May 2022.

<sup>737</sup> As set out in the discussion of the Counterfactual in Section 4, the Counterfactual is not restricted to the entities involved in the 2022 Bidding Process.

<sup>738</sup> [REDACTED] call note, page 3.

<sup>739</sup> [REDACTED] call note, page 1.

<sup>740</sup> [REDACTED] call note, page 1.

parking by DAA is currently offered at €13.50 a day, whereas [REDACTED] would charge €10 a day”.<sup>741</sup>

5.156 [REDACTED] (who intended to contract the operation of the Target Site to an established car park operator) stated that if the Target Site were to be operated under their control their strategy would be to have “more competitive rates than DAA’s red, blue and green car parks which are priced at around €14/€15 a day. [REDACTED] was considering charging a daily rate of €7.50 and aiming for 70% occupancy. [REDACTED] considered that its best chance of success in operating the “[QuickPark]” site would be to offer a cheaper product than DAA.”<sup>742</sup>

5.157 [REDACTED] (who intended to operate the Target Site as a car park itself) stated that it “planned to operate the [QuickPark] site as a car park, and added that it would attempt to do so in a carbon neutral fashion”, and that its plans “would not have to reduce the number of car-parking spaces, as it planned to install the solar panels overhead on walkways, so that the solar panels could also serve as shelter for pedestrians in the car park”.<sup>743</sup>

5.158 The Commission further notes that DAA has also carried out a competitive assessment of the competitive landscape surrounding car parking at Dublin Airport if a [REDACTED] [REDACTED] were to be active from the Target Site. In this regard, the following DAA slide from a presentation in November 2021 provides DAA’s thoughts on scenarios in which [REDACTED] [REDACTED] [REDACTED] [REDACTED].<sup>744</sup>

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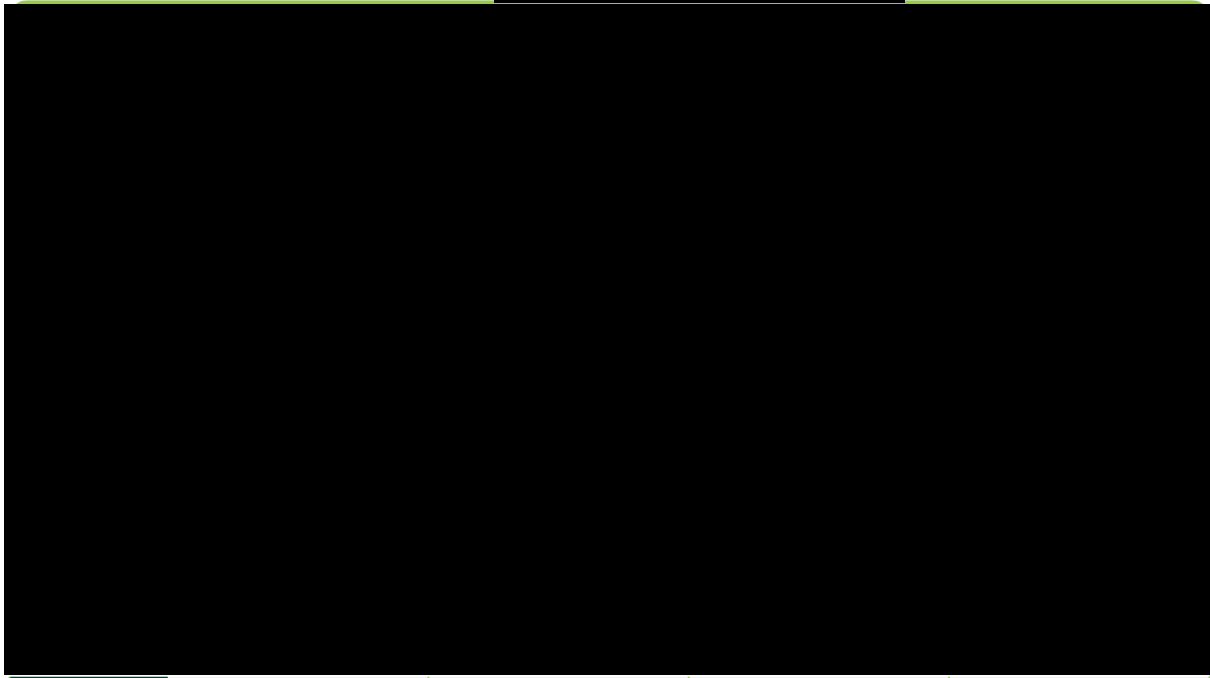
<sup>741</sup> [REDACTED] call note, page 3.

<sup>742</sup> [REDACTED] call note, page 2.

<sup>743</sup> [REDACTED] call note, page 1.

<sup>744</sup> DAA Phase 1 RFI Response, slide 5 of document entitled [REDACTED] dated November 2021.

Figure 14: Extract from DAA presentation entitled [REDACTED] dated November 2021.



Source: Document entitled [REDACTED] dated November 2021, submitted as part of the response to the DAA Phase 1 RFI

5.159 The Commission finds that, based on the third-party engagement conducted over the course of its investigation, none of the alternative bidders for the Target Site intended to reduce the number of spaces made available for car parking at the Target Site.

5.160 The Commission further notes that in calls with the Commission, three alternative purchasers of the Target Site indicated to the Commission that they would offer daily parking rates that are lower than DAA's pricing.<sup>745</sup>

(a) [REDACTED] stated that it was planning on charging a daily parking rate that is "significantly lower"<sup>746</sup> than the daily rate DAA currently charges for parking in its car parks and aimed to charge approximately € [REDACTED] per day<sup>747</sup> and that it would aim to go "toe-to-toe" with DAA when it came to delivery of service.<sup>748</sup> In subsequent engagement with the Commission, [REDACTED] reiterated that its intention remained to charge lower prices than DAA although it stated that its prices may be higher than those envisaged in 2022.<sup>749</sup>

<sup>745</sup> These being [REDACTED] call note, page 3), [REDACTED] call note, page 3) and [REDACTED] call note, page 2).

<sup>746</sup> [REDACTED] call note, page 2.

<sup>747</sup> [REDACTED] call note, page 3.

<sup>748</sup> [REDACTED] call note, page 3.

<sup>749</sup> [REDACTED] call note, page 5.

- (b) [REDACTED] explained that had it been successful in its bid for the Target Site, it estimated that it would charge €10 per day per space for parking at the Target Site.<sup>750</sup> In subsequent engagement with the Commission, [REDACTED] stated that it anticipated charging a flat rate of €12 per day all year round and noted the very low overhead costs of operating the car park.<sup>751</sup>
- (c) [REDACTED] explained that its strategy would have been to have more competitive rates than DAA's Red, Blue, and Green car parks.<sup>752</sup> It considered that it would charge a daily rate of €7.50, and aim for an occupancy rate of 70%<sup>753</sup> and that it believed that its best chance of success would be to offer a cheaper product than DAA.<sup>754</sup>

*Commission's conclusions on the likelihood that a competing provider at the Target Site would continue to be an important competitive constraint in the Relevant Market in the absence of the Proposed Transaction*

- 5.161 The Commission notes DAA's submission that there is no single price for its car parks and that therefore comparisons between DAA car park prices and those planned by potential competitors are not appropriate. The Commission recognises that there is no single price. The value of this evidence for the Commission's analysis is not the specific differences between DAA prices and prices expected to be charged by alternative providers—but rather that these entities are consistent in their view that their business model would be to undercut DAA.
- 5.162 The evidence above indicates that some of the potential alternative purchasers planned to compete on the basis of both price and non-price factors (such as resurfacing the car park and adding new facilities such as a waiting room).
- 5.163 In light of this evidence, including the fact that DAA itself, per the slide above,<sup>755</sup> has assessed a scenario whereby an alternative purchaser to DAA could offer a competitive constraint (either a re-opened QuickPark or another provider) on DAA's car parking business, the Commission finds that a competing provider at the Target Site would be an important competitive constraint in the Relevant Market in the absence of the Proposed Transaction.

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<sup>750</sup> [REDACTED] call note, page 2.

<sup>751</sup> [REDACTED] call note 2, page 2.

<sup>752</sup> [REDACTED] call note, page 2.

<sup>753</sup> [REDACTED] call note, page 2.

<sup>754</sup> [REDACTED] call note, page 2.

<sup>755</sup> Presentation entitled "[REDACTED]", described in paragraph 5.129 above.

**The Commission’s findings on the extent to which the Target Site provides an important competitive constraint in the Relevant Market**

5.164 Based on the evidence considered above, the Commission makes the following findings:

- (a) the Target Site competed vigorously with DAA in the Relevant Market and the Target Site and DAA are each other’s closest competitors;
- (b) the former provider of car parking spaces at the Target Site (i.e., QuickPark) was regularly monitored and considered by DAA in its commercial strategy regarding its car parking businesses. The evidence demonstrates that DAA monitored and responded to [REDACTED] (such as accepting [REDACTED] or planning to respond to [REDACTED] [REDACTED]) in an effort to win [REDACTED];
- (c) the evidence seen by the Commission demonstrates that the Target Site was and is a relevant factor in DAA’s commercial decisions regarding its provision of car parking businesses and that DAA’s approach to managing its car parks is not simply one of *“facilitating as many passengers as possible”*.<sup>756</sup> The Commission did not find evidence to support DAA’s assertion that *“car parking portfolio is dynamically priced to manage capacity – to price at a level to cover costs, earn sufficient profit and at a level so as to enable passengers to use the car parks as a secondary element of their primary purpose (i.e., to fly from/to Dublin Airport)”*.<sup>757</sup>
- (d) The importance of the Target Site as a significant competitive constraint on DAA was demonstrated when DAA considered, in detail, how it would [REDACTED] [REDACTED] of the Target Site, including through:

- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]

<sup>756</sup> Merger Notification Form, pages 53-54.

<sup>757</sup> Merger Notification Form, page 28, paragraph 57.

- [REDACTED]  
[REDACTED]  
[REDACTED]
- (e) DAA considered that the re-opening of the Target Site by a competitor would result in [REDACTED]  
[REDACTED]  
[REDACTED];<sup>758</sup>
- (f) As set out in paragraph 5.149 and paragraph 5.150 above, DAA's internal documents regarding the option of operating the Target Site on [REDACTED] show the level of competitive constraint the Target Site exerts on DAA, insofar as, by operating the Target Site:
- (i) DAA planned for [REDACTED]  
[REDACTED]
- (ii) DAA did not expect the Target Site to be [REDACTED] and was concerned that it may [REDACTED]; and,
- (iii) DAA was concerned about [REDACTED]  
[REDACTED];
- (g) Alternative providers would have sought to compete with DAA in the Relevant Market in the absence of the Proposed Transaction; and,
- (h) the Target Site (irrespective of who, other than DAA) provides an important competitive constraint in the Relevant Market and represents a competitive threat to DAA's car parking business. The Proposed Transaction would have the effect of eliminating this constraint and result in DAA having the ability and incentive to increase prices (or degrade service quality) following the implementation of the Proposed Transaction.

5.165 Therefore, the overall conclusion of the Commission is that the Target Site (irrespective of who, other than DAA, operates it) provides an important competitive constraint in the Relevant

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<sup>758</sup> DAA Phase 1 RFI Response, correspondence contained in document entitled [REDACTED], dated 20 April 2023.

Market and represents a material threat to DAA's car parking business. The Proposed Transaction would have the effect of eliminating this significant competitive constraint.

### **Summary of the competitive effects arising from the removal of the Target Site as a competitive threat to DAA in the absence of significant countervailing factors**

- 5.166 Based on the evidence and analysis set out above, the Commission's view is that the impact of the Proposed Transaction on market structure and concentration will be the elimination of the Target Site as important competitive constraint.
- 5.167 In particular, the Commission finds that the evidence above, in isolation, demonstrates that DAA will likely have the ability and incentive to exercise market power in the form of increasing prices or reducing quality of service following the implementation of the Proposed Transaction. For example, this could manifest through either directly increasing prices or by not having to reduce prices to attract potential customers from the Target Site or by not having to offer discounts in response to campaigns from a competitor at the Target Site. Therefore, prices would be higher than they would be in the absence of the Proposed Transaction.
- 5.168 In order to reach its overall conclusion on its Theory of Harm, in the following sections, the Commission assesses whether, notwithstanding the above, there are sufficient countervailing factors which would prevent an SLC. In particular, the Commission examines: (i) whether other firms are likely to constrain DAA from exercising market power following the implementation of the Proposed Transaction; and (ii) economic regulation of DAA's airport charges and DAA's statutory obligations.

### **Examination of the extent to which other firms are likely to constrain DAA from exercising market power following the implementation of the Proposed Transaction**

- 5.169 In this section, the Commission examines the extent to which other competitors are likely to constrain DAA from exercising market power if the Proposed Transaction were to proceed and the Target Site were eliminated as a competitive constraint. In this regard, the Commission sets out:
- (a) whether other competitors could replace the competitive constraint provided by the Target Site;
  - (b) the extent to which other competitors are considered by DAA in its internal documents;

- (c) barriers to entry and barriers to expansion in the Relevant Market; and,
- (d) out of market constraints.

#### **Whether other competitors could replace the competitive constraint provided by the Target Site**

5.170 As discussed in paragraph 3.703.82 to paragraph 3.82 above, the Commission considers that hotels which offer car parking to the public (i.e., not only to their own residents) and which offer regular access to the airport (e.g., via a shuttle service) offer a service which is part of the Relevant Market. The Commission has therefore considered the extent to which such hotels could replace the competitive constraint provided by the Target Site.

5.171 As discussed in paragraph 1.22 above, during the Phase 1 investigation, the Commission contacted 12 hotels in the vicinity of Dublin Airport and received responses from the Carlton Hotel, the Clayton Hotel, the Crowne Plaza Hotel, and the Radisson Blu Hotel. The Commission conducted desk research on hotels which did not respond and, for the purposes of calculating market shares, included hotels (Hilton Hotel and Metro Hotel) which offer parking to non-residents and a shuttle service to Dublin Airport terminals. The remaining hotels do not offer these services.

5.172 As noted in paragraph 5.55 above, in considering the concentration of the Relevant Market, the Commission has taken the total number of car parking spaces available in each hotel. In so doing, the Commission has likely overestimated the market share of each hotel, and underestimated the level of concentration, because the total number of car parking spaces in hotels includes spaces that are only available to residents of the hotel and not to the public.

5.173 As an initial point, the Commission notes that, notwithstanding the fact that there are 2,725 car parking spaces divided across six hotels, as opposed to these being provided by a single provider, the Target Site has more than twice as many long-term car parking spaces as there are on the premises of the six hotels combined. In order to replace the competitive constraint provided by the Target Site, the number of car parking spaces available to the public on the premises of at least one of these hotels would have to increase significantly.

#### *Views of third parties*

##### Carlton Hotel

5.174 The Carlton Hotel has 250 car parking spaces at its hotel located close to Dublin Airport. During its engagement with the Commission, the Carlton Hotel stated that car parking is not a big part



of its business, and it does not consider itself to be a significant player in the market. The Carlton Hotel informed the Commission that it does not have any future plans to change the number of car parking spaces at its hotel. It stated that it has obtained, but has not yet used, planning permission for an extension to the hotel, which would not affect the number of car parking spaces. The Carlton Hotel also told the Commission that it is considering building a basement for car parking but that the cost of such a development is off-putting and that it is more likely to reduce the number of car parking spaces it operates than to increase them.

5.175 The Carlton Hotel estimated that, typically, no more than 20 to 30 of its 250 car parking spaces are sold to non-residents (i.e., the public). This suggests that the competitive constraint provided by the Carlton Hotel in respect of the Relevant Market has been significantly overestimated in the analysis of market concentration above.

5.176 Furthermore, the Carlton Hotel stated that it has to price its car parking spaces higher than DAA's in order to offset demand and ensure there is a sufficient number of car parking spaces available for hotel residents. This suggests to the Commission that the Carlton Hotel is providing, at most, an extremely limited competitive constraint upon DAA in the Relevant Market.

#### Clayton Hotel

5.177 The Clayton Hotel has 1,500 car parking spaces at its hotel.<sup>759</sup> During its engagement with the Commission, the Clayton Hotel stated that the number of car parking spaces at its hotel has not changed for at least five years.<sup>760</sup> The Clayton Hotel also stated that it always endeavours to ensure that there are enough car parking spaces for customers staying at the hotel.<sup>761</sup>

5.178 The Clayton Hotel stated that the price it charges for parking is capped at €14 per day for non-residents.<sup>762</sup> The Clayton Hotel is most closely comparable to the Holiday Blue car park in terms of distance to the airport (4.8km from the Holiday Blue car park to Dublin Airport Terminal 1 compared to 5.2km from the Clayton Hotel to Dublin Airport Terminal 1); DAA's other car parks are considerably closer to Dublin Airport. However, the Holiday Blue car park is more than five times the size of the car park at the Clayton Hotel, and this disparity increases when car parking spaces reserved for hotel residents are taken into account, thereby decreasing the spaces

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<sup>759</sup> Clayton Hotel call note, page 1.

<sup>760</sup> Clayton Hotel call note, page 1.

<sup>761</sup> Clayton Hotel call note, page 1.

<sup>762</sup> Clayton Hotel call note, page 2.

available to the public. The limited capacity of the Clayton Hotel car park relative to the Holiday Blue car park suggests to the Commission that its ability to impose a significant competitive constraint on DAA, and upon the Holiday Blue car park in particular is limited.

#### Crowne Plaza Hotel

5.179 The Crowne Plaza Hotel is located in Santry approximately 4 kilometres from Dublin Airport meaning, like the Clayton Hotel, its closest comparator DAA car park in terms of proximity to the airport is the Holiday Blue car park. It has 300 car parking spaces which it shares with the Holiday Inn Express. During its engagement with the Commission, the Crowne Plaza Hotel stated that it is not a big player in the supply of car parking near Dublin Airport and added that it currently has no plans to increase the capacity of its car park by building a new multi-storey car park. The Crowne Plaza Hotel also stated that it views the provision car parking spaces to the public [REDACTED]

5.180 In the Commission's call with the Crowne Plaza Hotel, the Crowne Plaza Hotel stated that it does not provide car parking spaces to non-residents. However, the Commission notes that car parking spaces at the Crowne Plaza Hotel are available to book via [airpark.ie](http://airpark.ie). The Commission further notes that the Holiday Inn Express neither provides car parking spaces to non-residents, nor offers spaces online via [airpark.ie](http://airpark.ie). The Commission therefore notes that the number of spaces in respect of the Relevant Market has been significantly overestimated in the analysis of market concentration above, as this number assumes that all of the spaces in the shared car park would be sold by the Crowne Plaza to non-residents online. This is unlikely to be the case in practice.

5.181 According to [airpark.ie](http://airpark.ie),<sup>763</sup> the Crowne Plaza Hotel is currently charging non-residents €12 for a one-day stay in its car park. The Commission notes that the Crowne Plaza Hotel's car park is of limited size in comparison to the Holiday Blue car park (the closest DAA car park). Moreover, guests of both the Crowne Plaza Hotel and the Holiday Inn Express use this car park. Taken together, both of these factors suggest to the Commission that the Crowne Plaza Hotel and Holiday Inn Express shared car park imposes, at most, a minor competitive constraint on DAA's long-term public car parks, and in particular the Holiday Blue car park.

#### Radisson Blu Hotel

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<sup>763</sup> [airpark.ie](http://airpark.ie) is the business name used by AirParkandFly Ltd which "markets cheap airport parking facilities convenient to Dublin Airport and other Airports around Ireland". [airpark.ie](http://airpark.ie) appears to act as an online agent allowing customers to book car parking at the Clayton Hotel, the Crowne Plaza Hotel, and Metro Hotels.

- 5.182 The Radisson Blu Hotel has 305 car parking spaces at its Dublin Airport hotel. During its
- 5.183 engagement with the Commission, the Radisson Blu Hotel stated that the car parking spaces it provides are largely related to its hotel operations.<sup>764</sup> A condition of the Radisson Blu Hotel's planning permission is that "[a]ll car parking within the site shall be reserved for the exclusive use of patrons/residents of the hotel and shall not be used for airport related car parking, for commercial/revenue raising purposes or for the purposes of 'park-stay-fly' or similar arrangements."<sup>765</sup> When asked by the Commission whether it has considered – or would ever consider – providing car parking spaces to non-residents, the Radisson Blu Hotel stated that it did not anticipate making any changes to its current approach.<sup>766</sup>
- 5.184 When asked by the Commission whether it has considered or would ever consider increasing the number of car parking spaces available in its car park, the Radisson Blu Hotel stated that it has not considered this and noted that it has obtained planning permission to increase the size of the hotel, which would reduce the ratio of car parking spaces relative to hotel rooms. The Radisson Blu Hotel stated that it is unaffected by what happens in the broader environment of Dublin Airport and that it would not alter the number of car parking spaces in its car park in response to the shortage of long-term public car parking spaces at Dublin Airport.<sup>767</sup>
- 5.185 The Radisson Blu Hotel stated that the daily rate for parking in its car park is €20. The Radisson Blu Hotel stated that the hotel business is more about what is being sold inside the hotel and it views car parking as an ancillary service that it wants to provide as part of its overall business model. The Radisson Blu Hotel stated that it is disconnected from what is happening in DAA's public car parks and it does not consider the prices of DAA's public car parks when setting its own car parking prices.<sup>768</sup>
- 5.186 When asked by the Commission for its view of the competitive conditions in the car parking sector at Dublin Airport, the Radisson Blu Hotel stated that it is conscious of the potential public commentary and potential negative publicity if it does not have sufficient car parking

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<sup>764</sup> Radisson Blu Hotel call note, page 1.

<sup>765</sup> See Condition 18 of the Radisson Blu Hotel's planning permission, which is available at: <https://planning.agileapplications.ie/fingal/application-details/88492>.

<sup>766</sup> Radisson Blu Hotel call note, page 1.

<sup>767</sup> Radisson Blu Hotel call note, page 1.

<sup>768</sup> Radisson Blu Hotel call note, page 2.

spaces for hotel residents. The Radisson Blu Hotel stated that it does not see itself as a competitor to DAA in relation to the provision of car parking spaces at Dublin Airport.<sup>769</sup>

5.187 Considering the above, the Commission's conclusion is that the Radisson Blu Hotel currently exerts, at most, a minor competitive constraint upon DAA's long-term public car parks.

#### QuickPark

5.188 As noted in paragraph 4.89 above, to the extent that the Commission relied on evidence from third parties with an interest in the Target Site, the Commission took account of the risk that their evidence might be influenced by their own commercial incentives. The Commission took account of that risk in assessing the accuracy of that evidence and the weight that should be given to it. The Commission took a similar approach in its treatment of evidence obtained from QuickPark, as a former competitor of DAA in the Relevant Market, and its interest in the outcome of the merger review process – especially in light of the owner of QuickPark being so heavily involved in [REDACTED] bid.

5.189 QuickPark informed the Commission that it considers that there is *“practically no competition in the supply of car parking at Dublin Airport at present”*.<sup>770</sup> While QuickPark acknowledged that there are a number of hotels supplying car parking in the Relevant Market, it noted that some of these hotels likely only have planning permission to sell car parking to guests, not third parties.

5.190 QuickPark also informed the Commission that, while it was providing car parking spaces to the public, DAA was its principal competitor. QuickPark stated that *“certain hotels tried to compete”* once they saw QuickPark's success but the *“numbers of spaces provided by these hotels was not significant enough”* for QuickPark to attempt to compete with them on pricing.<sup>771</sup>

5.191 QuickPark further noted that *“the prices of hotels were somewhat insignificant, as the scale of their volume didn't impact upon [QuickPark]'s business.”*<sup>772</sup> QuickPark continued by stating that *“it knew it would not succeed if it were to chase the prices that hotels were charging for*

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<sup>769</sup> Radisson Blu Hotel call note, page 1.

<sup>770</sup> QuickPark call note, page 1.

<sup>771</sup> QuickPark call note, page 1.

<sup>772</sup> QuickPark call note, page 6-7.

*car parking. Sometimes hotels may offer free car parking just to sell a bedroom; so, it wasn't feasible for QuickPark to attempt to compete with hotel car parking.*<sup>773</sup>

5.192 The Commission's engagement with QuickPark suggests that it is unlikely that other competitors could replace the competitive constraint provided by the Target Site, in particular as it does not consider that hotels competed particularly closely with either QuickPark or DAA in the Relevant Market.

*Potential for hotels to expand their offer of long-term car parking in the vicinity of Dublin Airport*

5.193 The Commission has noted limitations on hotels being able to expand their offering of public car parking in paragraphs 2.60 above and 5.209 below. Given the overall cap on car parking spaces imposed by FCC, and FCC's practice of imposing planning conditions on hotels in the vicinity of Dublin Airport limiting the use of their car parks, the Commission's view is that it is very unlikely that any hotel would be able to increase its offer of long-term car parking to the public in the vicinity of Dublin Airport.

*The extent to which other providers of long-term car parking are considered by DAA in its internal documents*

5.194 The Commission considers that although DAA has in the past monitored competitors other than QuickPark with respect to the Relevant Market, the degree of consideration of other competitors is significantly more limited.<sup>774</sup> Below, the Commission sets out its findings on the extent to which competitors other than QuickPark are considered in DAA's internal documents.

5.195 As noted in paragraph 5.158 above, a slide from a presentation in November 2021 provided a competitive assessment of DAA's views on hotels providing car parking in the vicinity of Dublin Airport. The Commission notes that under the heading of hotels DAA described the capacity of these hotels as "██████████", and their pricing as "██████████".<sup>775</sup>

5.196 ██████████, discussed in paragraphs 3.58 to 3.61 above, classified the user group who use the hotels for car parking as "██████████".<sup>776</sup> The report further stated that the ██████████ of these hotel car parks are the Clayton Hotel "having a "stay and fly" deal"; a "██████████"

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<sup>773</sup> QuickPark call note, page 7.

<sup>774</sup> For completeness, the Commission notes that a number of internal documents of DAA also consider other modes of transport when looking at their own car parking operations, but as discussed in section 3 above, the Commission considers that these fall outside the Relevant Market for the purposes of this Determination.

<sup>775</sup> DAA Phase 1 RFI Response, slide 5 of document entitled ██████████' dated November 2021.

<sup>776</sup> DAA Phase 2 RFI Response, slide 4 of the document entitled ██████████ dated February 2023.

[REDACTED]  
[REDACTED]<sup>777</sup> The [REDACTED]” cited for hotel car parks were “*some mention that the spaces available in the* [REDACTED]  
[REDACTED]  
[REDACTED].<sup>778</sup>

5.197 In a [REDACTED] from January 2015 entitled “[REDACTED]”, only [REDACTED] of surveyed passengers who got to the airport by car on last occasion, were cited as having used a “[REDACTED]”, compared to [REDACTED] having used [REDACTED], and the remainder having used DAA.<sup>779</sup> These hotel car parks and QuickPark are grouped under “[REDACTED]” in the presentation of the survey results. In this presentation there is a slide dedicated to why surveyed customers [REDACTED],<sup>780</sup> however there is no slide dedicated to why surveyed customers [REDACTED].

5.198 A DAA internal presentation entitled [REDACTED]  
[REDACTED]” dated 10 November 2017 noted that hotels made up “[REDACTED]”<sup>781</sup>, that they are “[REDACTED]” and that “[REDACTED]”  
[REDACTED].<sup>782</sup>

5.199 In a DAA internal presentation entitled “[REDACTED]”, dated October 2020 DAA appeared to have been monitoring [REDACTED]  
[REDACTED] regarding airport car parking. This presentation noted that “[REDACTED]  
[REDACTED] *appear to be the only competitors* [REDACTED]  
[REDACTED]  
[REDACTED].<sup>783</sup>

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<sup>777</sup> DAA Phase 2 RFI Response, slide 74 of document entitled [REDACTED], dated February 2023.

<sup>778</sup> DAA Phase 2 RFI Response, slide 75 of document entitled [REDACTED], dated February 2023.

<sup>779</sup> DAA Phase 2 RFI Response, slide 11 of document entitled [REDACTED], dated January 2015.

<sup>780</sup> DAA Phase 2 RFI Response, slide 16 of document entitled [REDACTED], dated January 2015.

<sup>781</sup> DAA Phase 2 RFI Response, slide 3 of document entitled [REDACTED], dated 10 November 2017.

<sup>782</sup> DAA Phase 1 RFI Response, slide 7 of document entitled [REDACTED], dated 10 November 2017.

<sup>783</sup> DAA Phase 1 RFI Response, slide 17 of document entitled [REDACTED], dated October 2020.

5.200 A document furnished to the Commission as part of the DAA Phase 1 RFI Response showed DAA preparing answers to various potential questions it anticipated being asked in advance of a meeting with the Commission in April 2023. DAA responded to one of the potential questions regarding hotels as follows: *“We monitor the following hotel car park sites during summer peak period/high demand events. Generally the hotel car parks will apply a fixed price ranging from €8 to €14 per day depends [sic] on the site. The price rarely change [sic] seasonally as the price on off-peak and peak are relatively the same.”* DAA then went on to list *“Clayton”, “Holiday Inn / Premier”, “Metro Hotel”, “Radisson”* and *“Maldron”*<sup>784</sup> as the hotels it monitors.<sup>785</sup>

5.201 In a document entitled [REDACTED], in relation to its car parking operations, DAA noted that it faced [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>786</sup> This is also stated in a document entitled [REDACTED]  
[REDACTED]<sup>787</sup> Similar views were expressed in a document entitled [REDACTED], dated 1 June 2015 which stated *“while short term parking has [REDACTED], there are many strong competitive offerings for [REDACTED] on the airport’s doorstep. [REDACTED]”*<sup>788</sup>

5.202 [REDACTED] dated 13 August 2021, [REDACTED]  
[REDACTED]  
[REDACTED]

Competitor	Pricing Comment
<i>Crowne Plaza [Hotel]</i>	[REDACTED]
<i>Metro Hotel</i>	[REDACTED]

<sup>784</sup> The Commission does not consider the Maldron Hotel in its analysis of the Relevant Market because the Maldron Hotel only offers car parking as an add-on to room bookings. Furthermore, the Maldron Hotel’s website states that *“secure on-site car parking is available to hotel patrons only”* (emphasis added). See [maldronhoteldublinairport.com](https://www.maldronhoteldublinairport.com/frequently-asked-questions/) (2024) *Frequently Asked Questions*. Available at: <https://www.maldronhoteldublinairport.com/frequently-asked-questions/>.

<sup>785</sup> DAA Phase 1 RFI Response, correspondence dated 20 April 2023 contained in the document entitled, ‘AD 24 RE\_ CCPC.msg’, dated 21 April 2023.

<sup>786</sup> DAA Phase 1 RFI Response, document entitled [REDACTED], dated 3 July 2023, page 8.

<sup>787</sup> DAA Phase 1 RFI Response, document entitled [REDACTED], dated 7 February 2019, page 102.

<sup>788</sup> DAA Phase 1 RFI Response, document entitled ‘daa submission fv.pdf’, dated 1 June 2015, page 69.

<sup>789</sup> DAA Phase 1 RFI Response, slide 4 of document entitled, [REDACTED], dated 13 August 2021.

<i>Travel Lodge</i> <sup>790</sup>	[REDACTED]
<i>Holiday Inn [Express]</i>	[REDACTED]
<i>Clarion</i> <sup>791</sup>	[REDACTED]
<i>Clayton [Hotel]</i>	[REDACTED]
<i>Quick Park [QuickPark]</i>	[REDACTED]
<i>Radisson [Blu] Hotel</i>	[REDACTED]
<i>Maldron Hotel</i> <sup>792</sup>	[REDACTED]

5.203 Finally, DAA submitted a series of approximately 73 documents dated from January 2023 to September 2023 with DAA car park pricing lists, which were produced between 4 and 15 times each month.<sup>793</sup> These pricing list documents included the pricing of hotel car parks such as the Clayton Hotel, the Carlton Hotel, and the Holiday Inn. A similar type of document was also produced in 2019 (which included the Clayton Hotel, the Metro, and the Carlton Hotel),<sup>794</sup> and in 2020, (which included the Clayton Hotel and the Carlton Hotel).<sup>795</sup>

5.204 It is clear to the Commission that while DAA does monitor the prices of hotels which provide long-term parking in the vicinity of Dublin Airport the evidence suggests that they impose a weak competitive constraint on DAA’s car parking business, relative to the Target Site.

*The Commission’s finding on whether other competitors could replace the competitive constraint provided by the Target Site*

5.205 Based on the evidence and analysis above, the Commission finds that other competitors in the Relevant Market could not – individually or collectively – replace the competitive constraint provided by the Target Site.

<sup>790</sup> Travelodge Dublin Airport Hotel, CRO number [REDACTED].

<sup>791</sup> Note the Clarion Hotel Dublin Airport was acquired by DAA in 2014. See DAA Phase 1 RFI Response, Question 3, document entitled [REDACTED] page 44; and ‘Clarion Hotel renamed Maldron Dublin Airport’ *Irish Independent*, 18 February 2014. Available at: <https://www.independent.ie/regionals/dublin/fingal/clarion-hotel-renamed-maldron-dublin-airport/30018958.html#:~:text=THE%20Clarion%20Hotel%20Dublin%20Airport,the%20group's%2013th%20Maldron%20Hotel>.

<sup>792</sup> Maldron Hotel Dublin Airport, CRO number [REDACTED].

<sup>793</sup> See for instance the DAA Phase 2 RFI Response, document entitled ‘Pricing list 22.09.2023.xlsx’, dated 22 September 2023.

<sup>794</sup> DAA Phase 1 RFI Response, document entitled ‘AD 02 Other CPs pricing 2019.xlsx’, dated 2019.

<sup>795</sup> DAA Phase 1 RFI Response, document entitled, ‘AD 02 Other CPs pricing 2020.xlsx’, dated 2020.



- 5.206 The number of long-term car parking spaces offered to the public by hotels in the vicinity of Dublin Airport is considerably less than the number of spaces which would be controlled by DAA following the implementation of the Proposed Transaction. Collectively, the hotels in the vicinity of Dublin Airport account for 9.78%<sup>796</sup> or 8.57%<sup>797</sup> of parking spaces distributed among 6 hotels, three of which would each hold a market share of less than 1%.
- 5.207 Further, the number of hotel car parking spaces available to the public in each hotel is less than the total number of spaces available in the hotel, further diluting the impact of the hotel car parks as competitors.
- 5.208 There is no particular incentive for hotels to increase the availability of their car parking spaces to the public – indeed, the Commission’s engagement with the hotels indicates that the sale of car parking spaces to the public is generally treated as a means of utilising any spaces left once guests are accommodated. This limits the extent to which hotels can aggressively compete in the Relevant Market, and, in turn, the extent to which they could – individually or collectively – impose a competitive constraint on DAA.
- 5.209 Finally, the planning regime actively discourages the use of hotel long-term car parking for passengers who are not resident in the hotel. This further limit the extent to which hotels can aggressively compete in the Relevant Market, and, in turn, the extent to which they could – individually or collectively – impose a competitive constraint on DAA.

#### Barriers to entry and expansion in the Relevant Market

5.210 In considering barriers to entry and barriers to expansion, the Commission seeks to assess the extent to which market power may be constrained by the occurrence or threat of new entry, or by the ability of existing rivals to profitably expand supply. In both cases, any actual or threatened entry and/or expansion would have to fulfil the following three conditions before it could be considered a sufficient competitive constraint:

- (a) **Timeliness.** The Commission’s Merger Guidelines note that *“the longer it takes for potential entrants to become effective competitors, the less likely it is that market participants will be deterred from causing harm to competition”* and that *“[w]hile entry that is effective within two years is normally considered timely, the appropriate*

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<sup>796</sup> If short-term car parks are excluded from the Relevant Market.

<sup>797</sup> If short-term car parks are included in the Relevant Market.

*timeframe for effective new entry will depend on the characteristics and dynamics of the market under consideration.”<sup>798</sup>*

- (b) **Likelihood.** The Commission’s Merger Guidelines set out that “[t]he Commission will assess whether a new entrant would be likely to make a commercial return on its investment at or above current premerger market prices taking into account the entry costs involved (including sunk costs that would not be recovered if the new entrant later exited) and the likely responses of incumbent firms”<sup>799</sup> and that “other factors that would affect the likelihood of entry include the level of demand at existing prices, whether demand is growing, the output level the entrant is likely to obtain, the likely impact of entry on prices post-merger, and the scale at which the entrant would operate”.<sup>800</sup>
- (c) **Sufficiency.** The Commission’s Merger Guidelines set out that “[f]or entry to be sufficient, it must be likely that incumbents would lose significant sales to new entrants” and that “[e]ntry that is small-scale, localised, or targeted at niche segments is unlikely to be an effective constraint post-merger”.<sup>801</sup>

5.211 The Commission considers potential expansion in this case by reference to the information on planning permission and capacity restrictions obtained during its engagement with FCC.

5.212 For the reasons set out below, the Commission concludes that there are limitations on the entry or expansion that could occur in the Relevant Market.

5.213 The remainder of this section is set out as follows:

- (a) Parties’ Views on Entry and Expansion;
  - (b) Third Parties’ Views on Entry and Expansion;
  - (c) Potential entry by a new provider of long-term car parking spaces to the public;
  - (d) Potential expansion by existing providers of long-term car parking spaces to the public;
- and,

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<sup>798</sup> The Commission’s Merger Guidelines, paragraph 6.5.

<sup>799</sup> The Commission’s Merger Guidelines, paragraph 6.6.

<sup>800</sup> The Commission’s Merger Guidelines, paragraph 6.7.

<sup>801</sup> The Commission’s Merger Guidelines, paragraph 6.8.

- (e) The Commission’s findings on barriers to entry and expansion in the Relevant Market.

#### *Parties’ Views on Entry and Expansion*

5.214 In response to the DAA Phase 1 RFI, in which the Commission asked DAA to provide a detailed account of the costs associated with setting up a car park in the vicinity of Dublin Airport, DAA stated the following:

*“Costs of setup will vary depending on the circumstances and existing resources available to a potential service provider e.g. having existing infrastructure of a Hotel, having IT available as an existing provider and many other potential variants”.*<sup>802</sup>

5.215 In response to the DAA Phase 1 RFI, in which the Commission asked DAA to provide a detailed account of any legal or regulatory barriers to setting up a car park in the vicinity of Dublin Airport, DAA stated the following:

*“Planning Permission is capped by Fingal County Council for provision of Public Car Park spaces to service Dublin Airport and development plan sets out intention to prohibit future expansion due to Green/Environmental principles and stated wish to promote public transport mode of access.”*<sup>803</sup>

#### *Third Parties’ Views on Entry and Expansion*

5.216 During its engagement with the Commission, when asked whether it had experienced any barriers when setting up the long-term car park at the Target Site, QuickPark stated that the biggest barrier to establishing a car park at Dublin Airport is obtaining planning permission from FCC. QuickPark stated that this is *“a complete barrier”*.<sup>804</sup>

5.217 During its engagement with the Commission, Third Party Submission 1 stated that there is *“an anti-car thrust of government policy”*.<sup>805</sup> Furthermore, Third Party Submission 1 stated that, in order for a provider of long-term car parking spaces to enter the Relevant Market, the provider would first need to purchase land and then apply for planning permission to operate a car park on this land. Third Party Submission 1 stated that it believes FCC would reject this planning application.

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<sup>802</sup> DAA Phase 1 RFI Response, Question 35(a).

<sup>803</sup> DAA Phase 1 RFI Response, Question 35(b).

<sup>804</sup> QuickPark call note, page 4.

<sup>805</sup> Third Party Submission 1 call note, page 2.

*Potential entry by a de novo provider of long-term car parking spaces to the public*

5.218 For the reasons set out below, and based on the evidence available to it, the Commission has formed the view that the threat of entry by a *de novo* provider of long-term car parking spaces to the public is not likely to have a significant impact on the market power of the merged entity or address the SLC concerns set out above for the reasons set out below.

Timeliness

5.219 The Commission considers that it is theoretically possible that a *de novo* provider of long-term car parking spaces to the public could acquire land in the vicinity of Dublin Airport, receive planning permission to establish a public car park on the acquired land, and set up a long-term public car park on the land within the next two years.

5.220 During its engagement with the Commission, FCC stated that there are timelines associated with planning applications and FCC must make the decision to either: grant the permission; refuse the permission; or request more information, within eight weeks of receiving the application. FCC stated that an applicant may have planning approval within three to six months of submitting its application.

5.221 Therefore, in a hypothetical scenario where land in the vicinity of Dublin Airport is put up for sale, and depending on how long it takes for the sales process, the planning application, and the setting up of the public car park to conclude, it is theoretically possible that a *de novo* provider of long-term car parking spaces to the public could set up a long-term public car park in the vicinity of Dublin Airport within the next two years.

Likelihood

5.222 The Commission considers that it is not likely that a *de novo* provider of long-term car parking spaces to the public would set up a long-term public car park in the vicinity of Dublin Airport within the next two years. The Commission has formed this conclusion on the basis of its engagement with FCC, during which FCC stated that it has received proposals to open new car parks in the vicinity of Dublin Airport but none of these proposals have been successful.<sup>806</sup> The Commission further notes that, in respect of a number of planning applications, FCC's grant of

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<sup>806</sup> See, for instance, Fingal County Council (2007) Case reference F06A/1697, "Development located on a 3.63 ha site located to the immediate west of the North Point NCT Centre in the townland of Ballymun and adjoining the townland of Silloge on its west boundary, Ballymun...", decided 23 January 2007. Available at: <https://planning.agileapplications.ie/fingal/application-details/46909>.

planning permission was **conditional on prohibition of the car parking on these sites** being used for serving Dublin Airport, including F14A/0465,<sup>807</sup> F16A/0587,<sup>808</sup> and F17A/0255.<sup>809</sup>

5.223 Therefore, it is not likely that a *de novo* provider of long-term car parking spaces to the public would set up a long-term public car park in the vicinity of Dublin Airport within the next two years.

#### Sufficiency

5.224 As discussed above, during its engagement with the Commission, FCC confirmed that the number of long-term public car parking spaces permitted to serve Dublin Airport is capped at 26,800 by Condition 23 of An Bord Pleanála's 2007 decision, which granted planning permission to DAA for the development of Dublin Airport Terminal 2.<sup>810</sup> This cap of 26,800 long-term public car parking spaces permitted to serve Dublin Airport has not yet been reached – the total number of long-term car parking spaces is roughly 1,659 (1,727 total, including short-term) spaces below the cap, (i.e., these spaces have not been developed).<sup>811</sup>

5.225 Following implementation of the Proposed Transaction, DAA would have 25,141 long-term public car parking spaces and a 91.43% share of the Relevant Market. As shown in Table 21 on page 189 above, the HHI of the Relevant Market following implementation of the Proposed Transaction would be 8384.83. In a hypothetical scenario where a *de novo* provider of long-term car parking spaces to the public enters the Relevant Market with 1,659 long-term public parking spaces following implementation of the Proposed Transaction, DAA's share of the Relevant Market would decrease to 86.90%. The *de novo* entrant would have a 4.96% share of the Relevant Market. By way of comparison, the Target Site has a 19.25% share of the Relevant Market. This share would be reduced to 18.30% in the event that the car park at the Target Site was being operated by a third party and a *de novo* operator entered the Relevant Market. The HHI of the Relevant Market following entry of the *de novo* provider of long-term car

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<sup>807</sup> Fingal County Council (2015) Case reference F14A/0465, "Development including new buildings and alterations to Bewleys Hotel Dublin Airport, which was granted permission under previous Register References F03A/0660, F05A/0972, F05A/1489, F05A/1592 and F06A/0231...", decided 29 July 2015. Available at: <https://planning.agileapplications.ie/fingal/application-details/69849>.

<sup>808</sup> Fingal County Council (2017) Case reference F16A/0587, "A new standalone five storey over basement level hotel comprising 100 bedrooms, meeting rooms and ancillary services including snack bar, breakfast area, fitness room, toilets, plant rooms etc. with associated elevational signage...", decided 30 November 2017. Available at: <https://planning.agileapplications.ie/fingal/application-details/75720>.

<sup>809</sup> Fingal County Council (2017) Case reference F17A/0255, "Permission for an extension of c. 3,369 m<sup>2</sup> to the Holiday Inn Express Hotel...", decided 30 June 2017. Available at: <https://planning.agileapplications.ie/fingal/application-details/76979>.

<sup>810</sup> Condition 23 of An Bord Pleanála decision in case number PL 06F.220670. Available at: <https://archive.pleanala.ie/api/documents/Order/220/D220670.pdf>.

<sup>811</sup> Note that hotel long-term car parking spaces are not included in the cap.

parking spaces to the public would be 7598.5. As discussed in paragraph 5.63 above, this would still be considered a highly concentrated market.

*Findings on potential entry by a de novo provider of long-term car parking spaces to the public*

5.226 On the basis of its analysis as set out above, the Commission finds that entry by a *de novo* provider of long-term car parking spaces to the public into the Relevant Market by way of acquiring land in the vicinity of Dublin Airport, receiving planning permission to establish a public car park on the acquired land, and adhering to the cap on the number of long-term car parking spaces to the public may theoretically be timely, but is not likely to occur, and is not likely to be sufficient to remove any SLC concerns identified by the Commission.

*Potential expansion by existing providers of long-term car parking spaces to the public*

5.227 Based on the evidence available, the Commission's conclusion is that expansion by existing providers of long-term car parking spaces to the public is not likely to occur. The Commission therefore concludes that potential expansion of existing provider is not likely to provide any competitive constraint on DAA following the implementation of the Proposed Transaction or prevent an SLC.

5.228 The Commission's conclusion is based on its engagement with FCC, during which FCC confirmed that hotels in the vicinity of Dublin Airport need appropriate planning permission to allow non-residents to park in the hotels' car parks for the purposes of travelling through Dublin Airport. FCC stated that, according to the hotels' planning permissions, hotels' car parking spaces are supposed to serve residents only.

5.229 In any event, FCC stated that it considers the presence of the hotels in the car parking sector to be very minor and it does not see hotels being able to expand their offering under FCC's planning policies.

*Findings on potential expansion by existing providers of long-term car parking spaces to the public*

5.230 The Commission therefore finds that expansion by existing providers of long-term car parking spaces to the public is not likely to occur due to the regulatory barriers in place and the potential for FCC to launch an investigation into planning permission violations should a hotel attempt to compete more vigorously with DAA in the Relevant Market.

*The Commission's overall findings on barriers to entry and expansion in the Relevant Market.*

- 5.231 In considering barriers to entry and barriers to expansion in the Relevant Market, the Commission has assessed the extent to which the exercise of any market power post-merger may be constrained by the ability of rivals in the Relevant Market to profitably expand their service offering and/or by the threat or occurrence of new entry by new competitors.
- 5.232 Weighing up all the factors and the evidence provided by the Parties and third parties, the Commission finds that the evidence does not support a view that entry by rivals would be timely, likely and sufficient to constrain any exercise of market power following implementation of the Proposed Transaction.
- 5.233 Furthermore, given the regulatory barriers in place, the Commission finds that the evidence does not support the view that expansion by existing hotel providers of long-term car parking spaces to the public is likely to occur.

#### Out of market constraints

##### *Public transport and taxis*

5.234 As explained in the Commission's Merger Guidelines "*many factors relevant to defining markets will also be relevant to analysing competitive effects, and vice versa*". In its identification of the Relevant Market in Section 3, the Commission identified and assessed the most significant competitive alternatives available to customers impacted by the competitive effects of the Proposed Transaction.<sup>812</sup> In coming to its conclusions on market definition, the Commission examined the extent to which public transport and taxis may be considered to be substitutes for car parking, and thus, the extent to which these products might act as sources of competition to providers of car parking spaces in the vicinity of Dublin Airport. In coming to its conclusions on product market definition, regarding public transport the Commission found that:

- in terms of functionality and characteristics, for customers of long-term car parking, an insufficient number are likely to find bus or coach travel to be a functional substitute for driving their own car and parking at the airport such that bus and coach services are considered in the same market as the provision of long-term car parking spaces to the public; and,

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<sup>812</sup> See paragraph 2.3 of the Merger Guidelines.

- when DAA increased the price of long-term car parking, there was no discernible switching to any alternative form of access to the airport, including public transport. Further, DAA's price increases were implemented over a time that included a period when some public transport prices were reduced by an average of 20%.

Regarding taxis, the Commission found that:

- travelling to the airport by taxi becomes more expensive the further the passenger lives from Dublin Airport - particularly for passengers travelling from outside Dublin<sup>813</sup> and that collection from the airport is limited to licensed taxis, meaning there is relatively more limited availability for collection than drop off. For these reasons, the Commission's view is that a 5-10% increase in the price of long-term parking would not lead to sufficient switching to taxis to render a price increase unprofitable to the car park provider.

5.235 These factors are also relevant to the Commission's assessment of the competitive effects of the Proposed Transaction in this section. The Commission considers that the evidence assessed above in respect of market definition demonstrates that that the potential for public transport and taxis to act as out of market constraints and potentially prevent an SLC is limited. The Commission considers it significant that DAA's price increases in car parking have not resulted in customers switching to public transport and taxis and are illustrative of the weakness of these forms of airport access as out of market constraints.

5.236 Finally, the Commission also notes that the internal documents provided to it by DAA and discussed in paragraphs 5.79 to 5.163 above contain substantially fewer references to public transport and taxis as products which DAA considers itself to be in competition with compared to the Target Site and other providers of car parking. There are some references to DAA's attempts to attract passengers from public transport and taxis and into car parks, However, these appear to the Commission to be broader considerations of the environment in which DAA's car parks operate rather than a vigorous competitive rivalry comparable in nature to that observed in DAA's internal documents in respect of the Target Site.

5.237 Therefore, the Commission's conclusion is that that the potential for public transport and taxis to act as strong out of market constraints and potentially prevent an SLC is limited.

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<sup>813</sup> Which over half of passengers do.



### Drop offs

5.238 It was noted in Section 3 that the main increase in mode of access to the terminals at Dublin Airport, since the airport fully reopened in 2022, appears to be in the use of drop offs, and it is likely that the number of passengers being dropped off at the airport includes passengers who may otherwise have parked or used alternative transport. It is therefore necessary to consider whether the potential for passengers to switch to drop offs could constrain DAA's ability to raise prices, relative to the counterfactual.

5.239 Similar to the analysis set out in Section 3 as to whether other modes of access are in the same product market as the provision of car parking spaces to the public, the question is whether a sufficient number of consumers would be willing and able to switch to being dropped off at the airport to render a price increase in long-term car parking unprofitable.

5.240 First, the Commission notes that the degree to which consumers can and would substitute drop offs for driving and parking at the airport may depend on several factors such as:

- Availability: the ability to be dropped off at Dublin Airport is reliant on having a friend or family member available to drive the passenger(s) to the airport;
- Flight time: related to the availability point, it may be more difficult to avail of a drop off if the flight is at certain times of the day or week; and,
- Place of origin: all else equal, passengers originating further from Dublin Airport may find it more difficult to avail of drop offs, as the journey time and thus cost and inconvenience to the driver would be greater.

5.241 Second, according to Figure 5, the increase in the proportion of passengers using drop offs to access Dublin Airport increased most significantly (c. 6 percentage points) between Q4 2019 and Q1 2022. Passenger numbers would not return to levels close to pre-pandemic levels until Q2 2022. While DAA's Holiday Blue and Express Red car park prices were higher in Q1 2022 than in Q4 2019 in general,<sup>814</sup> the biggest price increases and price levels at these car parks were seen in Q2-Q3 2022.<sup>815</sup> Drop offs have not increased or decreased significantly as a proportion of trips to Dublin Airport between Q1 2022 and Q1 2023, despite these significant price increases in that period.

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<sup>814</sup> Source: DAA Phase 1 RFI Response, Question 18, document entitled '13.2 Price by Durations.xlsx'.

<sup>815</sup> Source: Slide 13 of DAA Phase 1 RFI Response, Question 18, document entitled 'AD 3 - B2C - Update to KJ March '23\_pptx.msg'.

5.242 Third, while DAA does not charge passengers or vehicles to drop passengers at Dublin Airport, DAA has sought the ability to do so.<sup>816</sup> Therefore, to the extent that drop offs could be a competitive constraint on long-term parking, it is one ultimately controlled, including price levels, by DAA.<sup>817</sup>

**The Commission’s findings on the extent to which other firms are likely to replace the competitive constraint provided by the Target Site.**

5.243 In light of the above, the Commission finds that other firms are not likely to constrain DAA from exercising market power following the implementation of the Proposed Transaction for the following reasons:

- (a) although there are six very small competitors present in the Relevant Market (i.e., hotels in the vicinity of Dublin Airport), the Commission finds that other competitors (individually or cumulatively) in the Relevant Market could not replace the competitive constraint provided by the Target Site. The number of long-term car parking spaces offered to the public by hotels in the vicinity of Dublin Airport is considerably less than the number of spaces available in the Target Site. Further, the number of hotel car parking spaces available to the public in each hotel is less than the total number of spaces available in the hotel, so their impact would be further diluted. There is no particular incentive for hotels to increase their public parking – indeed, the Commission’s engagement with the hotels indicates that the sale of car parking spaces to the public is generally treated by hotels as a means of utilising any spaces left when guests are accommodated. Finally, the planning regime actively discourages the use of hotel long-term parking for Dublin Airport passengers who are not resident in the hotel;
- (b) while it is theoretically possible that entry or expansion in the Relevant Market could be timely, it is unlikely to occur and unlikely to be sufficient. Regarding new entry by way of the establishment of a new car park, the Commission has identified a significant barrier to entry in the form of planning conditions specified by An Bord Pleanála which impose an overall cap on the number of car parking spaces which may serve Dublin Airport. This cap has almost been reached and planning permission to use the remaining 1,659 spaces allowed by the cap has been refused by FCC in the past. This

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<sup>816</sup> Source: DAA Phase 2 RFI Response, Question 38, document entitled 13.2 Price by Durations.xlsx’.

<sup>817</sup> McCárthaigh, S. (2023) ‘Dublin Airport gets green light to charge drivers for dropping off and collecting family and friends’ *Irish Independent*, 22 March 2023. Available at: <https://www.independent.ie/irish-news/dublin-airport-gets-green-light-to-charge-drivers-for-dropping-off-and-collecting-family-and-friends/42399694.html>.

indicates that any new entry is unlikely to occur and, in the unlikely circumstances that permission is granted for the remaining 1,659 spaces, this competitor would only account for approximately 5.62% of the Relevant Market. In circumstances of this hypothetical new entrant, DAA would still control in excess of 85% of the capacity in the Relevant Market, meaning that this new entry would be unlikely to be sufficient. Therefore, the occurrence or threat of new entry or expansion will not prevent an SLC;

- (c) the extent to which other competitors (i.e., hotels) are likely to replace the competitive constraint provided by the Target Site in the Relevant Market is minimal; and,
- (d) the evidence does not support a conclusion that out-of-market factors would be sufficient to constrain DAA's exercise of market power following the implementation for the Proposed Transaction.

### **Examination of whether economic regulation of DAA's airport charges and DAA's statutory obligations negate an SLC**

5.244 In this section, the Commission examines whether economic regulation of airport charges at Dublin Airport and DAA's statutory obligations mean that the Proposed Transaction does not result in an SLC in the provision of car parking spaces to the public in the vicinity of Dublin Airport.

5.245 In this regard, the Commission has assessed two questions:

- (a) whether the economic regulation of airport charges and DAA's statutory objectives affect DAA's ability and incentive to exercise market power resulting from the Proposed Transaction in the Relevant Market; and,
- (b) whether the inclusion of commercial revenues from the Target Site in the single-till regulatory model will, all else being equal, result in lower airport charges, and in turn, lower airfares for passengers improving consumer welfare such that the Proposed Transaction does not result in an SLC.

5.246 Before setting out its findings in respect of each of these questions, the Commission first sets out the views of the Parties and then discusses how economic regulation is implemented at Dublin Airport.

#### **Views of the Parties**

5.247 The DAA Written Response stated the following:

*"In any event, a sale to a third party, in the counterfactual, would involve a reversion to a situation of two providers, whereas the situation of a regulated monopoly is preferable from a competition policy perspective. IAA regulation is trying to do something better than a duopoly.*

*A regulated monopoly creates effective conditions of competition. If the seven car parks were regulated by IAA, then the consumer is better off. The regime under which IAA operates will regulate all seven car parks. The regulatory regime tries to substitute in perfect competition. Regulation is equivalent to perfect competition in this context."*<sup>818</sup>

5.248 The Parties have argued that DAA has no ability or incentive to exercise market power in the provision of car parking for a number of reasons:

- (a) According to the Vendor Written Response, DAA's *"ability to raise car parking charges as a result of any market power flowing from the Proposed Transaction is constrained by [DAA's] statutory objective to set price equal to average cost."*<sup>819</sup> The Vendor makes this argument on the basis that DAA is not a *"conventional profit maximising firm"*<sup>820</sup> but a *"semi-State company with a statutory remit that arguably sets as [DAA]'s objective average cost pricing rather than maximising profits"*.<sup>821</sup> As a result of utilising average cost pricing, DAA *"would not exploit any market power it might have as a result of the Proposed Transaction, since average cost pricing results in prices being set to cover costs"*.<sup>822</sup> The Vendor Written Response makes this claim on the basis of the statutory objectives set out for DAA by section 9(4) of the State Airports Act 2004;

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<sup>818</sup> DAA Written Response, page 101, paragraphs 462 and 463.

<sup>819</sup> Vendor Written Response, page 72.

<sup>820</sup> Vendor Written Response, page 67.

<sup>821</sup> The Vendor Written Response notes that "[s]pecific reference" to DAA's average cost pricing is made in paragraph 18 of the Merger Notification Form. On closer inspection, it appears that the term *"average cost"* is used in this instance as a synonym for the term *"average price"*. This view is taken based on the wider context of this section of paragraph 18, which reads as follows: *"[DAA] operates a dynamic pricing model to manage the capacity of its car parks, and a significant increase in capacity would decrease the average cost for all parking spaces at Dublin Airport."*

<sup>822</sup> Vendor Written Response, page 67.

- (b) According to the DAA Written Response, DAA does not have the ability to increase prices because it *“has public law and public service obligations, is closely supervised by the Minister for Transport (Minister) (including under the State Airports Act 2004), is overseen by the Oireachtas (and its committees), is subject to comment by the media and is liable to scrutiny from various stakeholders. None of them would tolerate excessive prices and under-utilisation of the car parking spaces”*;<sup>823</sup> and
- (c) According to the DAA Written Response, the *“single till” model operated at Dublin Airport under the supervision of IAA means that any excess profit / rent which [DAA] could gain from car parking will offset the income which [DAA] may earn from another activity in the next regulatory cycle. The revision by the IAA at the time of the next regulatory cycle will remove the incentive for [DAA] to overcharge in terms of car parking. It is easier for [DAA] to earn income from most other sources (whether aeronautical or non-aeronautical) than to seek to earn more from car parking. The record shows that where [DAA] has achieved an outcome greater than the regulator expected, the regulator has then raised the bar for [DAA] in the next cycle. As such, [DAA] knows better than to seek a short-term advantage.*”<sup>824</sup>

*Views on the relationship between the single-till regulatory model and consumer welfare*

5.249 The Parties argue that the Commission must take into account that, under the single-till model, higher car park revenues will lead to lower airport charges for airlines. The Parties contend that these lower airport charges will be passed through to passengers in the form of lower airfares due to competition between the airlines in operation at Dublin Airport.

5.250 DAA has set out its understanding of the relationship between the price cap on airport charges and car parking revenues in a number of submissions:

- *“[w]ithin the present context, and as mentioned previously there is a regulatory importance to recognising the relationship between airport charges on the one hand and the prices of commercial activities such as public car parking on the other hand. As such, if there was to be expected an increase (or indeed decrease) in car parking charges this would be offset (in future Determinations) by an essentially one-to-one decrease (or indeed increase) in car parking charges. [...] In summary, a very significant proportion (if*

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<sup>823</sup> DAA Written Response, page 12, paragraph 43.

<sup>824</sup> DAA Written Response, page 11, paragraph 40.

*not all) of any increase (and/or decrease) in economic profits from [DAA] providing public car parking airport charges are passed on in decreased (increased) airport charges and in decreased (increased) air fares to passengers.”<sup>825</sup>*

*“..there would be considerable overlap between the users of the public car parks at Dublin Airport and the passengers that ultimately pay the airport charges, i.e. what the users of the public car parks could conceivably lose on higher public car parking charges (in this hypothetical world) they would win on lower airport charges (again, in this hypothetical world and assuming that at least some of these lower charges would be passed on to final consumers, as would be the standard expectation).”<sup>826</sup>*

5.251 The Vendor has expressed similar views in relation to the relationship between car park revenues and the price cap on airport charges:

- *“The more car parking revenues exceed car parking costs, other things being equal, the lower will be  $P_{cap}$  [Price cap].....*

*Under this formulation or characterisation if the [DAA] as a result of the Proposed Transaction obtains market power in setting car parking charges and chooses to exercise that market power, then the [DAA’s] profits (and its expected profits) from its car parking operations,  $\pi_{car}$ , will increase.*

*The result of this increase in the [DAA] profits will, however, be a euro for euro decrease in the [DAA’s] aeronautical costs that are covered by airport charges. In other words, if (say), the [DAA] were as a result of the Proposed Transaction to increase its car parking profits by €10 million, then there would be an offsetting reduction of €10 million in the aeronautical costs to be covered by airport charges.”<sup>827</sup>*

- *“if [DAA], on acquiring the Target Site, were to raise car parking rates this would result in lower airport charges. In other words, while car park customers would pay increased parking rates, all airport passengers (including car park customers) would be pay [sic] lower airfares due to reduced airport charges.”<sup>828</sup>*

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<sup>825</sup> DAA Economic Response, page 14.

<sup>826</sup> DAA Economic Report, page 4.

<sup>827</sup> Vendor Economic Report, page 8 and 9.

<sup>828</sup> Vendor Economic Report, page 12.

- *“As car parking charges are raised – they are part of commercial revenues – that increases the magnitude of the transfer that goes towards funding aeronautical costs. The transfer reduces – euro for euro – the revenue that needs to be raised from airport charges.”<sup>829</sup>*
- *“The extent to which reductions in airport charges are passed on to passengers depends on the degree of airline competition at Dublin Airport. The more competitive the airlines are with each other the greater the pass through to passengers of any reduction in airport charges, albeit with a lag.”<sup>830</sup>*

5.252 Both Parties appear to acknowledge that the assertion of reduced airport charges resulting in a reduction in airfares is dependent on airlines (on whom airport charges are levied) passing on such changes to air passengers:

- (a) The DAA Economic Response stated that it is clear *“that the state and IAA believe that their changes in airport charges (decreases and increases) are passed on by the airlines to their passengers. Indeed, if this was not the case, why would the state assign this task to IAA in the first place.”<sup>831</sup>* The DAA Economic Response sets out arguments based on economic theory as to the degree of pass-through which would be expected in circumstances where the airline market is perfectly competitive, and that which would be expected in circumstances where the airline market is a monopoly.<sup>832</sup>
- (b) The Vendor Written Response cites paragraph 6.26 of the IAA’s ‘Decision on an Interim Review of the 2019 Determination in Relation to 2023-2026’, which states that *“the European Commission found strong evidence of competitive behaviour among airlines at Dublin Airport in 2013.”<sup>833</sup>*

5.253 In considering how to weigh up the welfare of users of car parks in the vicinity of Dublin Airport relative to the welfare of Dublin Airport passengers, the Vendor Written Response refers to the Kaldor Hicks efficiency test, which suggests that an *“outcome is efficient if those who are made better off could in theory compensate those who are made worse off and so produce a*

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<sup>829</sup> Vendor Written Response, page 80.

<sup>830</sup> Vendor Written Response, page 80.

<sup>831</sup> DAA Economic Response, page 12.

<sup>832</sup> DAA Economic Response, page 13.

<sup>833</sup> Commission for Aviation Regulation (2022) *Decision on an Interim Review of the 2019 Determination in Relation to 2023-2026*. Available at: [final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf \(iaa.ie\)](https://www.iaa.ie/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf).

*Pareto efficient outcome.”<sup>834</sup> As such, according to the Vendor Written Response, “[s]ince the excess profits due to the [DAA] raising car parking charges are exactly set off by lower airport charges feeding through to lower airfares for passengers, in theory passengers could compensate car park users for the increased charges that they incur.”<sup>835</sup>*

5.254 The Parties appear to differ on the extent to which higher car parking prices should result in lower airfares for consumers. The Vendor seems to suggest that this is a “*a euro for euro*”<sup>836</sup> relationship where higher car park charges are “*exactly set off*” by lower airfares.<sup>837</sup> DAA appears less convinced that the relationship is exact, stating that it can be assumed that “*at least some of the these [sic] lower [airport] charges would be passed on to final consumers*”.<sup>838</sup>

5.255 In the Assessment, the Commission set out its preliminary view that this amounted to an “*argument that the Proposed Transaction may generate benefits to consumers which would offset any SLC resulting from the Proposed Transaction in the market for the provision of car parking spaces to the public in the vicinity of Dublin Airport rather than an argument that the Proposed Transaction would not result in an SLC in the Relevant Market in the first place*”.<sup>839</sup> The Commission’s preliminary assessment of this argument was therefore set out as an assessment of efficiencies generated by the Proposed Transaction.

5.256 In their respective responses to the Assessment, the Parties asserted that this argument is not an efficiencies defence. For example, the Vendor state that, “*discussion of efficiencies in the [Commission’s] Merger Guidelines reveals that the topics covered refer to network effects, economics of scale and scope that involve reductions in marginal cost and one-stop shopping stemming from conglomerate mergers. Such efficiencies do not feature with respect to whether or not the reductions in airport charges feed through to lower airfares for passengers.*”<sup>840</sup>

5.257 The Commission has considered the objections of the Parties and has therefore addressed this argument in this section of its Determination rather than as an efficiencies defence.

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<sup>834</sup> Vendor Written Response, page 82.

<sup>835</sup> Ibid.

<sup>836</sup> Vendor Economic Report, page 9.

<sup>837</sup> Vendor Economic Report, page 24.

<sup>838</sup> DAA Economic Report, page 4.

<sup>839</sup> Assessment, page 161, paragraph 5.35.

<sup>840</sup> Vendor Written Response, page 86.



## Views of the Commission on whether economic regulation of DAA's airport charges and DAA's statutory obligations negate an SLC

### *Principles of economic regulation*

5.258 As discussed in Section 2, generally, economic regulation is introduced to address market failings, and in particular, to address natural monopolies which limit the prospects for effective competition. This is the case in the IAA's regulation of DAA's airport charges. While regulatory structures are intended to mimic conditions of competition, there are always limits in what can be achieved, and a regulated market is not the same as a competitive market. For example, the informational asymmetry between a regulator and a regulated entity means that the regulator will not be in a position to remove all economic profits, and this is the case for all economic regulation.<sup>841</sup>

5.259 Ensuring a well-functioning and competitive market for the provision of car parking spaces to the public in the vicinity of Dublin Airport is neither the aim nor a consequence of IAA's economic regulation of airport charges at Dublin Airport. In the Commission's view, the economic regulation of airport charges does not mean that DAA will not have the ability and incentive to exercise market power following the implementation of the Proposed Transaction. The Commission explains below why it considers that this is the case.

### *The price cap on airport charges*

5.260 As set out in section 2 above, under the single-till model, the IAA sets the maximum levels of airport charges that DAA may levy for the forthcoming regulatory period. This is expressed as an annual euro per passenger yield and is referred to as the "price cap".<sup>842</sup> This price cap on airport charges is set in advance of a regulatory period and is determined in accordance with the "regulatory building blocks" set out in paragraphs 2.100 and 2.101 above. A forecast of future commercial revenues is one such regulatory building block. The regulatory model therefore takes revenues from the basket of commercial activities into account when determining the price cap on airport charges. Car parking revenue contributes around 20% of overall commercial revenue.<sup>843</sup>

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<sup>841</sup> See Viscusi W. K., Harrington J. E. Jr., and Sappington D. E. M. (2018) *Economics of Regulation and Antitrust*. 5<sup>th</sup> Edition. The MIT Press; Armstrong M., Cowan S., and Vickers J. (1994) *Regulatory Reform: Economic Analysis and British Experience*. The MIT Press; and, Train K. (1991) *Optimal Regulation: The Economic Theory of Natural Monopoly*. The MIT Press.

<sup>842</sup> Commission for Aviation Regulation (2020) Commission Paper 5/2020, *Determination on the Maximum Level of Airport Charges at Dublin Airport 2020-2024*, paragraph 1.1. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3_0).

<sup>843</sup> Commission for Aviation Regulation (2022) *Decision on an Interim Review of the 2019 Determination in relation to 2023-2026*, page 121, table 9.2. Available at: [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3\\_1](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf?sfvrsn=6b8110f3_1).

- 5.261 Higher forecasted commercial revenues, all else being equal, will result in a lower price cap on airport charges in the subsequent regulatory period since the single-till approach is based on the premise that commercial activities generate economic profits which then subsidise aeronautical activities.<sup>844</sup> As explained in paragraph 2.102 above, IAA’s commercial revenue forecasts are based on recent commercial revenues as a baseline, with an “*elasticity*” applied to account for (for example) forecasted changes in passenger numbers relative to the previous period.<sup>845</sup> Therefore, an increase in commercial revenues in one regulatory period would, if deemed by the IAA to be non-transitory, result in a decrease in the price cap on airport charges in the subsequent regulatory period, all else being equal.
- 5.262 However, this does not equate to DAA forfeiting higher revenues earned through its commercial activities, including the provision of car parking spaces. Within a regulatory period, DAA keeps all revenue in excess of those forecast from car parking (this is by design)—it is only to the extent that revenues are components of a future price cap calculation that a forecasted increase in revenues is offset by a lower price cap.

#### *Incentive regulation*

- 5.263 The premise of the single-till model is that non-aeronautical activities generate revenues as a result of aeronautical activities and that these revenues should be used to cross-subsidise aeronautical costs.<sup>846</sup> Within a regulatory period, non-aeronautical revenues in excess of those forecast are retained by DAA. If those revenue levels are forecasted to continue into the next regulatory period, they will be reflected by the IAA in the price cap determination for the next period as commercial revenue targets which result in a lower price cap than would be the case absent the increased revenues. This is explained by the IAA and DAA itself.
- 5.264 For example, in explaining its “*Approach to Regulation*”, the IAA stated as follows:

*“this allocation of risk creates powerful incentives for Dublin Airport to outperform our targets. This outperformance is retained by the airport within the period and redistributed to users in the following period.”*

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<sup>844</sup> Paragraphs 2.88 to 2.96 above describe the operation of the single-till model and the setting of a price cap.

<sup>845</sup> IAA call note, page 3.

<sup>846</sup> See paragraph 2.88 above.

[...] *Dublin Airport benefits from outperformance within the period, while it must deal with underperformance rather than pass associated costs on to airport users; Dublin Airport is encouraged to perform as a competitive company would.*<sup>847</sup>

5.265 In its “Commercial Revenue Forecast 2023 – 2026” the DAA states that:

*“We are currently incentivised to increase the revenues raised from commercial activities as we retain any additional revenues above the target, and bear the cost where revenues are below target, until prices are reset.”*<sup>848</sup>

5.266 DAA’s “Commercial Revenue Forecast 2023 – 2026” further states the following regarding “Rolling Incentives”:

*“The 2019 [CAR Price] Determination maintained the rolling incentive scheme for commercial revenue to ensure Dublin Airport was incentivised to grow commercial revenues at all stages throughout the regulatory cycle. **The application of a rolling scheme allows us to retain incremental revenues for a period of five years.** The rolling incentive is based on a per passenger target for retail, car parking and advertising and a gross revenue scheme for commercial property.*

*Although the rolling incentive scheme was suspended for 2021, our view is that **it remains an important regulatory tool in ensuring that there are appropriate and consistent incentives in place for us to grow commercial revenues**, thereby helping to deliver lower aeronautical charges in the long run. This is particularly valuable in the context of a single till regulatory framework where the incentives to increase commercial revenues are otherwise diluted. The rolling scheme should continue to apply in the next period” (emphasis added).*<sup>849</sup>

5.267 Paragraph 5.245 above noted that the Commission has considered two questions in examining whether economic regulation of airport charges at Dublin Airport and DAA’s statutory obligations mean that the Proposed Transaction does not result in an SLC in the Relevant Market. Having considered the principles of economic regulation, in general, and specifically

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<sup>847</sup> See paragraph 2.100 above. Commission for Aviation Regulation (2019) Commission Paper 5/2020, *Determination on the Maximum Level of Airport Charges at Dublin Airport 2020-2024*, paragraph 1.7 and 1.8. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3_0).

<sup>848</sup> DAA Phase 1 RFI Response, document entitled ‘38.5 Commercial Revenues Forecast 2023 – 2026.pdf’, dated 3 July 2023, page 2, paragraph 1.1.3.

<sup>849</sup> DAA Phase 1 RFI Response, document entitled ‘38.5 Commercial Revenues Forecast 2023 – 2026.pdf’, dated 3 July 2023, page 49, paragraphs 1.27.1 and 1.27.2.

how airport charges are regulated at Dublin Airport, as well as the views of the Parties in this regard, the Commission now sets out its assessment in respect of the first question referred to in paragraph 5.245: whether DAA's ability and incentive to exercise market power in the provision of car parking is affected by economic regulation and/or DAA's statutory objectives.

#### *Ability and incentive to exercise market power*

5.268 In paragraphs 5.166 to 5.168 above, the Commission stated that the competitive effects arising from the removal of the Target Site as a competitive threat to DAA means DAA will likely have the ability and incentive to exercise market power in the form of increasing prices or reducing quality of service following the implementation of the Proposed Transaction. In this subsection, the Commission sets out its views on the Parties' arguments that economic regulation of airport charges and DAA's statutory objectives mean that it does not have such ability nor, if it did, the incentive to do so.

#### *Ability to exercise market power*

5.269 In assessing first of all DAA's **ability** to exercise market power following the Proposed Transaction, the Commission has considered the following:

- Whether supervision from the IAA removes DAA's ability to exercise market power;
- Whether possible intervention by some other authority removes DAA's ability to exercise market power; and
- Whether DAA's statutory obligations removes DAA's ability to exercise market power.

Whether supervision from the IAA removes DAA's ability to exercise market power

5.270 According to the Parties: "[a]ll of [DAA]'s relevant activities (including revenue from car parking) are regulated, directly or indirectly, ... on an on-going sustained basis."<sup>850</sup>

5.271 While the Parties acknowledge that any regulation by the IAA of car parking prices is indirect rather than direct,<sup>851</sup> it does not seem to the Commission to be the case that car parking prices are even indirectly regulated, except at arm's length and subject to many qualifications.

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<sup>850</sup> Merger Notification Form, page 10, paragraph 18.

<sup>851</sup> See, for example, the DAA Economic Report and the Vendor Economic Report.

5.272 The IAA explicitly states on its website that DAA's car parking prices at Dublin Airport are not regulated by it.<sup>852</sup>

5.273 In its 2023 Interim Review of the price cap on airport charges, the IAA stated as follows in considering its forecast of car parking revenues over the period covered by the determination:

*"We agree with [a submission received by the IAA] regarding the sharply higher [car parking] yields observed in 2022, and from a Government policy perspective, **consider that it would preferable for these to return closer to 2019 levels, rather than us building the currently elevated levels into ongoing targets. While we cannot enforce such an outcome on Dublin Airport, we can use a forecasting approach which should enable Dublin Airport to improve the value of its carparking services to customers relative to 2022.**"*

5.274 The "forecasting approach" used by the IAA means that the IAA's forecasts of car parking revenues act as a target for DAA. In particular, they are a target of the minimum level of commercial revenue that DAA should achieve from that particular service to mitigate against the risk of having to absorb costs of underperformance. The IAA's approach does not determine any particular outcome. As set out above, the regulatory model and allocation of risk therein "creates powerful incentives for Dublin Airport to outperform [the IAA's] targets" and means that "Dublin Airport benefits from outperformance within the period, while it must deal with underperformance rather than pass associated costs on to airport users".<sup>853</sup>

5.275 Therefore, while the IAA can mitigate against reinforcing high car parking yields in the price cap determination (as it did in 2022), it has no mechanism by which it can enforce lower car parking prices. A lower target would be to the benefit of DAA since it keeps any revenues it makes in excess of the IAA's forecast within a regulatory period.

5.276 In addition, the Commission notes that DAA is not subject to regulation in terms of non-price aspects of the provision of car parking (for example, the service quality associated with its long-term car parks). Evidence considered by the Commission (discussed in paragraphs 5.112 to 5.117 above) demonstrates that the former operator of the Target Site (QuickPark) introduced new services, some of which were copied by DAA, and that, as discussed in

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<sup>852</sup> See "What the Irish Aviation Authority does not do" at IAA.ie (2023) *The Irish Aviation Authority's Role*. Available at: <https://www.iaa.ie/commercial-aviation/economic-regulation>.

<sup>853</sup> Commission for Aviation Regulation (2019) Commission Paper 5/2020, *Determination on the Maximum Level of Airport Charges at Dublin Airport 2020-2024*, paragraph 1.7 and 1.8. Available at: [https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3\\_0](https://www.iaa.ie/docs/default-source/car-documents/2019-determination/final-determination/2020-2024-determination.pdf?Status=Master&sfvrsn=1fcb14f3_0).

paragraphs 5.82 and 5.84 above, DAA has previously compared some non-price aspects of its and QuickPark's respective offerings, including lighting and surface quality in the car parks. Rivalry between firms under conditions of competition is not limited to price alone and this is an important aspect of the Commission's consideration of the potential competitive effects of the Proposed Transaction.

Whether possible intervention by some other authority removes DAA's ability to exercise market power

5.277 According to DAA:

*"[DAA] has public law and public service obligations, is closely supervised by the Minister for Transport (**Minister**) (including under the State Airports Act 2004), is overseen by the Oireachtas (and its committees), is subject to comment by the media and is liable to scrutiny from various stakeholders. None of them would tolerate excessive prices and under-utilisation of the car parking spaces."<sup>854</sup>*

5.278 The Commission notes that DAA cited [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>855</sup>

5.279 The Commission understands that DAA pays attention to general scrutiny from its stakeholders, but this is not the same as regulatory oversight.<sup>856</sup> The Commission has found no evidence of Ministerial supervision of commercial activity, nor of wider scrutiny of DAA's car parking prices which would result in DAA keeping car parking prices at the levels which would be observed in a competitive market, either put forward by the Parties or in the Commission's own evidence gathering.

5.280 In the Oral Submission, DAA stated the following to the Commission:

*"Competition law, as is often said, is about protecting competition, not competitors. [...] Now if that competition doesn't exist, that's where you and fellow regulators come in. If there's a problem, you will step in. IAA certainly will step in, ComReg would have, Telecoms, Central Bank, et cetera et cetera. Their reward is greater market share, and*

<sup>854</sup> DAA Written Response, page 12, paragraph 43.

<sup>855</sup> DAA Phase 2 RFI Response, Question 9, document entitled [REDACTED] dated May 2023.

<sup>856</sup> The only instance in which a proposed price increase was rejected by DAA was when there had already been a gate price increase of 25% in the Express Red car park and a gate price increase of 40% in the Holiday Blue car park less than twelve months prior.

*you know, a greater market share, it's a reward is not a burden. [...] Competition law does not outlaw economic power, only it's abuse, and IAA will tackle us if there's abuse and you will tackle us if there's abuse, and you have the powers of the section five [of the Act] to do so.”<sup>857</sup>*

5.281 As a fundamental matter, it is no answer to the SLC question in merger control to say that future competition problems may be addressed by *ex-post* antitrust enforcement.

5.282 The Commission notes that the purpose of the merger review process set out in Part 3 of the Act is to provide for the *ex-ante* control of concentrations giving rise to a substantial lessening of competition to ensure that such transactions are remedied or not put into effect. In particular, the Commission is required under section 22(3) of the Act to form a view as to whether the result of a notified merger or acquisition would be to substantially lessen competition in markets for goods or services in the State. This is wholly distinct from the Commission’s *ex post* enforcement of relevant competition law (namely sections 4 and 5 of the Act and Articles 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”)).<sup>858</sup> Broadly, merger review is concerned with preventing the accretion of market power as a consequence of mergers or acquisitions, whereas the Commission’s enforcement powers are concerned with anti-competitive behaviour and breaches of relevant competition law. In other words, merger review is preventative whereas enforcement of relevant competition law is corrective.

5.283 Consequently, the Commission cannot accept a claim that DAA would not exercise market power because doing so *may* attract intervention by some regulator in the future. This claim is speculative, uncertain, and disregards the purpose of merger review – to prevent mergers which substantially lessen competition in the first place. In the Commission’s view, the best constraint against attempts to exercise market power is competition.

Whether DAA’s statutory obligations removes DAA’s ability to exercise market power

5.284 As noted in paragraph 5.248(a) above, the Vendor argues that DAA has a “*statutory remit that arguably sets as [DAA]’s objective average cost pricing rather than maximising profits*”<sup>859</sup> and

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<sup>857</sup> Oral Submission Transcript, page 79, lines 30-31; and page 80, lines 4-7, and 9-15.

<sup>858</sup> Pursuant to section 3 of the Act, the term “*relevant competition law*” refers to any of section 4, section 5, Article 101 TFEU and Article 102 TFEU.

<sup>859</sup> The Vendor Written Response notes that “[s]pecific reference” to DAA’s average cost pricing is made in paragraph 18 of the Merger Notification Form. On closer inspection, it appears that the term “*average cost*” is used in this instance as a synonym for the term “*average price*”. This view is taken based on the wider context of this section of paragraph 18, which reads as follows: “[DAA] operates a dynamic pricing model to manage the capacity of its car parks, and a significant increase in capacity would decrease the average cost for all parking spaces at Dublin Airport.”

that this claim is made on the basis of the statutory objectives set out for DAA by Section 9(4) of the State Airports Act 2004. However, the Commission notes that it does not state anywhere in Section 9(4) of the State Airports Act 2004 that DAA must implement average cost pricing.

Conclusion on DAA's ability to exercise market power following the implementation of the Proposed Transaction

5.285 The Commission concludes that the evidence demonstrates that supervision by the IAA and other authorities does not remove or reduce DAA's ability to exercise market power following implementation of Proposed Transaction in the Relevant Market.

*Incentive to exercise market power*

5.286 In assessing DAA's **incentive** to exercise market power, the Commission has considered the following:

- Whether redistribution of projected future commercial revenues through the single-till removes DAA's incentive to exercise market power
- Whether DAA's primary function as an airport operator removes DAA's incentive to exercise market power

Whether redistribution of projected future commercial revenues through the single-till removes DAA's incentive to exercise market power

5.287 In the Merger Notification Form, the Parties stated that "[DAA] *cannot gain excessively from increasing car park charges because any gain is in the medium term effectively neutralised in respect of its other Operations.*"<sup>860</sup>

5.288 In the Vendor Economic Report, the Vendor expressed the view that:

*"if [DAA] were to raise car parking charges post the Proposed Transaction that economic regulation by the IAA would result in a levy of 100 per cent on the excess profits.*

*As such the incentive for [DAA] to raise car parking charges is reduced, if not eliminated. The second leg of the unilateral theory of harm falls and as a result there can be no SLC.*"<sup>861</sup>

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<sup>860</sup> Merger Notification Form, paragraph 107, page 47.

<sup>861</sup> Vendor Economic Report, page 22.



5.289 The DAA Economic Report expressed a similar view, stating:

*“However, the single till regulatory model does imply that [DAA] must from an economics/commercial perspective be very mindful of CAR/IAA’s future regulatory decisions when [DAA] is considering their current public car parking charges, i.e. CAR/IAA (albeit arguably indirectly as opposed to directly) influences [DAA’s] public car parking charge”<sup>862</sup>*

5.290 The Parties reiterated these views on pages 2 and 3 of the DAA Economic Report Update and between pages 3 and 8 of the Vendor Economic Report Update.

5.291 As set out between paragraphs 2.80 and 2.106 above, Dublin Airport is subject to economic regulation by the IAA. The Parties have argued that the economic regulation of Dublin Airport’s airport charges means that DAA has little or no incentive to exercise any market power gained as a result of the Proposed Transaction through increasing car parking prices.

5.292 During the Phase 2 investigation, the Commission invited DAA to substantiate this claim. DAA was invited to provide evidence of instances where DAA considered increasing some commercial revenues but ultimately elected not to out of concern that it would result in a lower price cap on airport charges. DAA provided no such evidence to the Commission.

5.293 As set out in paragraphs 5.264 and 5.265 above, the Commission’s understanding of the IAA’s incentive-based regulation is that DAA is encouraged and incentivised to act commercially, and, indeed, this is the purpose of incentive-based regulation. The Commission’s view is that this incentive applies to all revenue from commercial activities, and this includes the incentive to increase car parking prices.

5.294 As explained above, the Commission’s understanding is that DAA is incentivised to increase commercial revenues (including car park revenues) during the period for which a given price cap on airport charges is in effect since DAA is allowed to retain revenues above the IAA’s forecast during this period. The Commission also considers it important to state that whilst any increased revenues in excess of forecast revenues are taken into account by IAA in forecasting DAA’s commercial revenues for the next regulatory period, the IAA does not remove the revenue in excess of the forecast earned during the regulatory period from DAA.

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<sup>862</sup> DAA Economic Report, pages 1 and 2.

- 5.295 Furthermore, the Commission notes that when the IAA determines the price cap for the next regulatory period (potentially taking into account higher than forecasted car park revenues earned during the immediately preceding period):
- (a) there is nothing to prevent DAA from further increasing the car park prices and keeping the excess revenues for the duration of the new regulatory period; and,
  - (b) any increases in car parking prices are likely to be reinforced by the single-till mechanism since they will become the baseline for the IAA's target in the next regulatory period.
- 5.296 The IAA can either reflect higher projected car parking revenues in the price cap determination in an attempt to redistribute these revenues (and thereby reinforcing them as a target for DAA), or it can avoid setting these revenues as a baseline allowing these increased revenues to be retained by DAA. In the Commission's view, neither of these scenarios represents an outcome that would prevent the Proposed Transaction from resulting in an SLC.

Whether DAA's primary function as an airport operator removes DAA's incentive to exercise market power

- 5.297 DAA has also argued that as its main purpose is to operate Dublin Airport, and its main business is not operating car parks, that its incentives differ from those of another firm. As previously mentioned, in the DAA Written Response, DAA stated that it *"has every incentive to facilitate and grow the number of passengers using Dublin Airport. This means that [DAA] also has every incentive to have adequate and affordable car parking to accommodate its passengers"*.<sup>863</sup> DAA also stated in the DAA Written Response that *"its mission is to run its airports. It does not seek to deter entry by charging too high a price for car parking, taxi access, bus access and so on. [...] In a similar way, the car park pricing should not act as a deterrent to people using Dublin Airport."*<sup>864</sup>
- 5.298 During the DAA Oral Response, DAA stated that its rationale for the Proposed Transaction is *"to bring this [Target] site online in reality so that there will be spaces, so that people will not be deterred from using Dublin Airport. And that's what their [DAA's] incentive [is]. It's not to get bigger carpark business; it is actually to get passengers into the airport to facilitate that process."*<sup>865</sup>

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<sup>863</sup> DAA Written Response, page 104, paragraph 474.

<sup>864</sup> DAA Written Response, page 52, page 213.

<sup>865</sup> Oral Submission Transcript, page 33, lines 14-17.

5.299 In the Merger Notification Form, the Parties stated the following:

*“[DAA] does not want excessively high prices for its car parking – for [DAA], parking is just an enabler to get some passengers (and probably a declining proportion over time) to use Dublin Airport and want to drive and park there. [DAA] does not want parking to be an obstacle to consumers and businesses choosing Dublin Airport. [DAA] (with its public service obligations) would prefer ample supply of car parking at a cheaper price than too little parking at too high a price. Without buying the Target Site, [DAA], cannot easily guarantee this desirable outcome”<sup>866</sup>.*

Furthermore, in the DAA Written Response, DAA stated that it “operates with a very different incentive structure to other purchasers who make merger notifications to the CCPC” because of the fact that it views car parking as an enabler to get passengers to use Dublin Airport.<sup>867</sup>

5.300 In the Vendor Economic Report and Vendor Economic Report Update, while it is recognised that DAA is subject to incentive-based regulation (discussed further below), it is suggested that:

*“[DAA] is a semi-State company as opposed to a profit maximizing firm such as the third party competitor to the [DAA]. Such a difference may seriously limit the ability of the [DAA] to exploit any market power that it may acquire as a result of the Proposed Transaction”<sup>868</sup>.*

5.301 The Commission’s view is that this argument is not in any way consistent with the evidence it has seen.

5.302 First, as set out in paragraphs 5.73 to 5.162, DAA historically monitored, assessed, and responded to competitive pressures on its car parking business which threatened to reduce the number of customers using its car parks, and therefore its revenues. If DAA were completely indifferent to the levels of revenue its car parks generate, the Commission’s view is that this behaviour would not be observed – it would not matter to DAA whether passengers parked in QuickPark or in a DAA car park and there would be no rivalry observed between them for custom.

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<sup>866</sup> Merger Notification Form, page 56.

<sup>867</sup> DAA Written Response, page 12, paragraphs 45.

<sup>868</sup> Vendor Economic Report, page 18.

5.303 Second, the Commission has considered DAA’s recent pricing strategy. As set out in Section 3 (see paragraphs 3.95 to 3.101), price levels at DAA’s long-term car parks were significantly higher in 2022 than 2019. DAA has argued that this was to manage capacity in the absence of the Target Site being operated as a car park. Internal documents are consistent with this being part of the rationale, for example:

*“The current car parking strategy aims to manage availability, ensure we have visibility to support the operation and to generate revenue.*

[...]

*Managing demand through price allows us to maintain a [sic] offering online. Without price management over the Easter period, car parks across the portfolio of Long and Short Term would have sold out weeks in advance.*

*This has the potential to be chaotic for the Operation Team on the ground and support Team in SSC. A worst case scenario has potential to see passengers missing flights, back up of traffic and congestion onto the road network outside car parks, illegally parked or abandoned cars and extremely annoyed passengers, particularly those who have pre-booked and paid online.”<sup>869</sup>*

5.304 However, internal documents also highlight that revenue generation was part of the rationale behind the price increases in 2022. In the same internal document, DAA states this explicitly:

*“The DAP car parks portfolio has been actively yield managed for two main reasons, to generate revenue and to manage volumes”.<sup>870</sup>*

5.305 Were revenue generation not part of DAA’s reasoning behind its price increases in 2022, the Commission is of the view that DAA may have considered or implemented non-price mechanisms to manage demand (particularly demand from air passengers attempting to park at a DAA car park without a pre-booking) as a response to the capacity constraints resulting from the Target Site not being operated as a car park.<sup>871</sup> Furthermore, it is not clear to the Commission why, if demand management was the sole objective, prices were increased

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<sup>869</sup> DAA Phase 1 RFI Response, Question 21, slide 10 of document entitled ‘Car Park Summer 2022 May 2022.pptx’.

<sup>870</sup> DAA Phase 1 RFI Response, Question 21, slide 9 of document entitled ‘Car Park Summer 2022 May 2022.pptx’.

<sup>871</sup> For example, if DAA was concerned that car parks were selling out a number of days in advance, it is not clear to the Commission why DAA could not have reserved a greater number of spaces for customers who arrived at the car park without pre-booking or adjusted the number of spaces which were available for pre-booking on a given day downwards to ensure these spaces could be made available at a later date.

outside of peak demand periods—prices in each month of 2022 in both the Express Red and Holiday Blue car parks were higher than in the corresponding month of 2019.<sup>872</sup>

5.306 Additionally, the view that “[DAA] (*with its public service obligations*) would prefer ample supply of car parking at a cheaper price than too little parking at too high a price” is directly contradicted by the evidence seen by the Commission.

5.307 The DAA internal document entitled “[REDACTED]” dated June 2020<sup>873</sup> sets out internal DAA considerations as to whether or not DAA should open the [REDACTED] car park. This internal correspondence suggests that DAA was concerned that opening the [REDACTED] car park [REDACTED] [REDACTED].<sup>874</sup>

5.308 This internal correspondence also appears to suggest that additional costs from operating the Express Green car park was not of particular concern to DAA, setting out that:

*“[t]here is little incremental cost, if we can use the Express Red bus (one bus two CP’s) and the return of the static Security Guard”; and,*

*“No additional cost to run Green CP [car park]– same buses will be serving Green and Red CPs, Red CP customers will be prioritised”.*

5.309 Moreover, this document suggests that the Holiday Blue car park is also not (fully) open at all times, referring to *“the threshold calculated for opening LT Blue”*.

5.310 Other internal DAA documents [REDACTED] [REDACTED] [REDACTED]. Therefore, based on the evidence available to the Commission, it appears that DAA does not, in fact, prefer to offer “[REDACTED] [REDACTED]” since DAA appears to attempt to control its [REDACTED] [REDACTED]. This, in the Commission’s view, suggests that DAA can already exercise

<sup>872</sup> Commission analysis of evidence provided by the Parties, DAA Phase 1 RFI Response, Question 13, document entitled ‘13.2 Price by Durations.xlsx’. Adjusted for inflation using the Consumer Price Index. cso.ie (2023) *Consumer Price Index*. Available at: <https://www.cso.ie/en/statistics/prices/consumerpriceindex/>.

<sup>873</sup> DAA Phase 1 RFI Response, Question 18, document entitled “[REDACTED]” dated 3 July 2023.

<sup>874</sup> DAA Phase 1 RFI Response, Question 18, correspondence dated 22 June 2020 contained in document entitled “[REDACTED]” dated 3 July 2023.

<sup>875</sup> See, for example, DAA Phase 1 RFI Response, Question 25, document entitled ‘AD 25 RE\_ LT Car Parks Pricing update - Easter 19.msg’ dated 17 April 2019; DAA Phase 1 RFI Response, Question 3, document entitled ‘10. MD Dublin Slides October 2022.pptx’, dated 8 November 2022; DAA Phase 1 RFI Response, Question 25, document entitled ‘AD 25 RE\_ Opening Express Green Car Park - Friday 10th May 2019 - last entries Monday 23rd September 2019.msg’, dated 26 August 2019.

some market power through [REDACTED] and, as the Proposed Transaction will result in DAA controlling almost all of the capacity in the Relevant Market, the Proposed Transaction is likely to increase DAA's ability to exercise market power in this way.<sup>876</sup>

- 5.311 Finally, the Commission notes that the view that “[DAA] *does not want parking to be an obstacle to consumers and businesses choosing Dublin Airport*” suggests that DAA would be concerned that it might lose business (from airlines and passengers) to other airports on the basis of the availability of car parking. Given the rationale for the continued economic regulation of Dublin Airport is that it has significant market power and is not constrained by competition with other airports (see the reference in paragraph 2.74), the Commission does not consider this to be a credible argument.

Conclusion on DAA's incentive to exercise market power following the implementation of the Proposed Transaction

The Commission concludes that the evidence demonstrates that DAA's primary function as an airport operator does not remove or reduce DAA's incentive to exercise market power following implementation of the Proposed Transaction in the Relevant Market.

*Findings on whether economic regulation of airport charges and DAA's statutory objectives affects its ability and incentive to exercise its market power in the provision of car parking*

- 5.312 The Commission has reached the view that the evidence supports a finding that DAA has the ability and incentive to exercise market power through increasing car parking prices, reducing available car parking capacity, or reducing service quality in the Relevant Market following implementation of the Proposed Transaction.
- 5.313 The Commission finds that any “supervision” by the IAA does not remove DAA's ability to raise prices since the IAA has no ability to enforce lower car parking prices, nor an ability to regulate non-price aspects of the provision of car parking (for example, service quality).
- 5.314 The Commission also finds that arguments that the Commission or some other authority would intervene in the event of “*excessive pricing*” must be dismissed because, as a fundamental matter, it is not appropriate to equalise an *ex-ante* merger control regime and *ex-post* antitrust enforcement tools.
- 5.315 The Commission also finds that DAA's statutory obligations do not oblige it to price car parking on an “*average cost*” basis.

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<sup>876</sup> Commission's Merger Guidelines, paragraph 4.10.

5.316 The evidence discussed above regarding the effect of regulation on DAA’s incentives demonstrates that DAA is incentivised to increase commercial revenues and is “*encouraged to perform as a competitive company would*”. This appears to the Commission to be an explicit goal of the regulatory model applied to Dublin Airport, and the evidence is clear that DAA retains any revenues resulting from “*outperformance*” during a regulatory period.

5.317 The evidence discussed above also demonstrates that DAA has behaved in a manner consistent with a firm with incentives to maximise revenues. The evidence indicates that increased revenue generation formed part of the rationale behind [REDACTED] and that DAA preferred to make certain capacity in the [REDACTED] to customers at certain times to avoid “[REDACTED]”. Based on the evidence it has seen, it is simply not credible for the Commission to accept that car parking is a mere [REDACTED]” of access to Dublin Airport as far as DAA is concerned or that [REDACTED]

[REDACTED]<sup>877</sup>

5.318 Having set out its assessment of whether DAA’s ability and incentive to exercise market power in the provision of car parking is affected by economic regulation and/or DAA’s statutory objectives, the Commission now sets out its assessment in respect of the second question referred to in paragraph 5.245: whether purported potential reductions in airport charges resulting from increased car parking revenues improves consumer welfare such that the Proposed Transaction does not result in an SLC.

**Views of the Commission on whether purported potential reductions in airport charges resulting from increased car parking revenues improves consumer welfare such that the Proposed Transaction does not result in an SLC**

*Relevance of economic regulation of Dublin Airport charges to assessment of competitive effects in the provision of car parking*

5.319 Before considering in detail whether and to what extent the inclusion of commercial revenues from the Target Site under the single till model will, all else equal, result in lower airport charges and, in turn, lower airfares for passengers, it is important to place this argument in its proper context.

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<sup>877</sup> Merger Notification Form, page 56.

5.320 First, the Commission considers that the assessment of a merger cannot be reduced to an exercise of balancing overall welfare losses against overall gains and permitting any transaction that does not reduce the measure of total welfare. As explained above in paragraphs 5.258-5.257, an SLC is not shorthand for a reduction in total welfare, summed over a (potentially very broad) set of markets. Further, the fact that there may be welfare gains enjoyed by some customers in a given market following a merger, even if they were of the same magnitude as the welfare losses suffered by other customers in a different market, does not automatically imply no SLC.

5.321 Second, even accepting that competition law can be reduced to a conceptionally simple welfare calculation as described above (which the Commission does not), to sustain their argument on overall welfare benefits, the Parties would have to be able to show that:

- (a) there is full pass-through; and
- (b) the deadweight losses on both sides (i.e., on parking and on airfares) are negligible.

5.322 In relation to full pass-through of economic profits, anything short of this would fail such an SLC test. This is because there is already a loss of allocative efficiency, where resources are used so that their marginal benefit to society is equal to their marginal cost, which comes from prices being too high in one market and being too low in the related market. If there were a full pass through,<sup>878</sup> the welfare gains in the related market or markets would have to exceed the welfare loss in the market affected, unless it could be demonstrated that there was negligible welfare loss associated with customers choosing not to park, or choosing not to fly due to higher prices (deadweight loss). Anything less than a full pass-through would reduce the benefits that could potentially offset the harm caused in the related market.

5.323 In relation to the magnitude of deadweight loss on the side of both parking and airfares, the Commission notes that the deadweight loss from prices for car parking services being above their competitive level has been acknowledged in the Vendor's Economic Response. However, the Parties appear to have ignored the deadweight loss associated with aeronautical charges and thus airfares (under the Parties' presumed full pass-through) being lower than they would

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<sup>878</sup> This is why the issue is not strictly speaking one of efficiencies created by the Proposed Transaction, as the issue at hand is only a transfer of welfare from a market in which the merger is expected to lead to higher prices to a related market where prices would be lower, which – unlike efficiencies – does not generate any value. For this reason, the reference to Kaldor-Hicks efficiency in various documents submitted by the Vendor (e.g. the Vendor Written Response of 17 January, page 82) is misleading, as the dissipation of economic profits through lower prices in a related market can never create more benefits than costs.



be in a competitive market.<sup>879</sup> This means that the Parties have only taken into account the welfare deadweight loss from customers choosing not to park due to prices being higher, but have not taken into account the corresponding loss on the airfare side.

5.324 Finally, the Commission notes that the eventual outcome of such an analysis would be likely to show simply that the harm caused by the Proposed Transaction in one market may potentially be compensated to some extent by benefits enjoyed in another. This is very far from demonstrating that potential benefits could counteract an SLC.

5.325 The Commission also observes that if the Parties were correct that the dissipation of economic profits through lower regulated charges under economic regulation with a single-till model means no SLC, this would constitute a blanket permission for DAA (or other firms regulated in a similar fashion) to monopolise any unregulated activity. This would clearly be untenable.

5.326 The Commission expands on these points below.

Views of the Parties on the compatibility of this argument with merger review under Part 3 of the Act

5.327 During the Oral Submission, the Commission asked the Parties whether they were aware of any precedent of a competition authority accepting that a potential SLC involving a price increase in the relevant market could be prevented by a corresponding price decrease in a separate market with different consumers (i.e., take into account ‘out of market’ benefits in an exercise of balancing total welfare over multiple markets).<sup>880</sup> The Parties were unable to provide such a precedent, though DAA suggested that there was an opportunity for the Commission to take an innovative approach here and to set this precedent.<sup>881</sup>

5.328 In the Vendor Written Response and during the Oral Submission, the Vendor argued that the basis on which ‘out of market’ benefits can be taken into account in an exercise of balancing total welfare over multiple markets can be found at paragraph 1.10 of the Commission’s Merger Guidelines, which states:

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<sup>879</sup> As noted by [REDACTED] on page 5 of the Vendor Accompanying Note, “[t]here is, of course, a qualification to this conclusion. Although the IAA in effect recycles or taxes back through lower airport charges  $P_{ACT}DFP_{CF}$ , it nevertheless remains the case that under the Actual Situation from 2027 onwards that the  $P_{ACT}$  is above  $P_{CF}$ . Hence some passengers that would have used the Target Site do not do so because of this price difference. As result this loss in consumer welfare – represented by the triangle DFE – that needs to be taken into account when comparing the Actual Situation with the Relevant Counterfactual. This triangle is referred to as the deadweight welfare loss (DWL).” No argument has been put forward as to why this deadweight loss should be negligible. Also, the existence of a corresponding deadweight loss from car parking customers subsidising airport charges and thus – according to the Parties – airfares has not been mentioned.

<sup>880</sup> While the Commission does not dispute that consumers outside the relevant market may be relevant to the Commission’s considerations in certain circumstances, it would not be in the way the Parties propose, nor in the way the Parties have interpreted the Guidelines.

<sup>881</sup> Oral Submission Transcript, page 89, lines 14-17.

*“In applying the SLC test the Commission will examine not only the competitive effects on the immediate customers of the merged entity but also effects on subsequent, intermediate and final customers. For example, retailers or final customers may be affected by a merger in the supply chain upstream from the retail level.”*

The Vendor Written Response also argued that taking into account ‘out of market’ benefits in an exercise of balancing total welfare over multiple markets *may extend to consumers in tied markets, as per paragraph 5.21 of the Commission’s Merger Guidelines, and consumers in markets that are part of a portfolio of markets, as per paragraph 5.20 of the Commission’s Merger Guidelines.*<sup>882</sup>

5.329 In the Vendor Query Note, the Vendor again referred to these paragraphs in the Commission’s Merger Guidelines and further argued that precedent for taking into account ‘out of market’ benefits in an exercise of balancing total welfare over multiple markets can be seen in the guidance and decisional practice of the European Commission and European courts in the application of Article 101(3) TFEU. In particular, this submission cites *Case T-21 3/00 CMA, CGM and others*<sup>883</sup> which states:

*“In order to determine whether the first three conditions [of Article 101(3)] are satisfied it is necessary to have regard to the benefits redounding from the agreement, not specifically on the relevant market, but for any market on which the agreement in question might have beneficial effects. Thus, both Article 81(3) EC ... envisage the possibility of exemption for, amongst others, agreements which contribute to promoting technical or economic progress, without requiring a specific link with the relevant market”.*

Do the Commission’s Merger Guidelines provide scope for this argument to be considered?

5.330 In the Commission’s view, the Vendor misunderstands the paragraphs cited in the Commission’s Merger Guidelines. Paragraph 1.10 of the Commission’s Merger Guidelines explains that competitive effects of a merger may also arise on markets which are upstream or downstream from the market in which the parties to that merger overlap. This may occur when firms have an ability to pass on price increases they experience as a result of a merger

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<sup>882</sup> Vendor Written Response, page 80.

<sup>883</sup> Case T-21 3/00 *CMA, CGM and others v Commission of the European Communities* [2003] ECR II paragraph 227.

to their customers or to exercise some degree of monopsonistic power, harming upstream suppliers. For this to be relevant, the markets in which supposed wider effects may be observed must be vertically related (in the same supply chain). This is not the case in respect of the Proposed Transaction. Airport charges are levied on airlines (who may – but are not obliged to – pass these on in whole or in part), whereas car parking charges are levied directly on users of the car park. Car parking is not an ‘input’ to an airline’s business.

5.331 Equally, DAA does not sell airline tickets together with car parking spaces. As such, the references in paragraphs 5.20 and 5.21 of the Commission’s Merger Guidelines are of little relevance to the Commission’s assessment of the Proposed Transaction. These paragraphs relate to so-called ‘conglomerate mergers’<sup>884</sup> rather than a situation comparable to the horizontal effects of the Proposed Transaction. The Commission’s explanation of ‘portfolio effects’ and ‘tying and bundling’ at paragraphs 5.20 and 5.21 of its Merger Guidelines concern the potential for conglomerate mergers to afford a merged entity the opportunity to leverage market power in one market to benefit its position in another market. It does not concern, as the Vendor seems to contend, a weighing up of competitive effects across multiple markets by the Commission in coming to a merger determination.

5.332 The Commission does not consider that the Commission’s Merger Guidelines support the Parties’ argument that conglomerate portfolio effects which take into account ‘out of market’ benefits are relevant to the case of a horizontal merger which gives rise to an SLC.

Is Article 101(3) TFEU an appropriate analytical and legal framework?

5.333 For the reasons set out below, the Commission considers that Article 101(3) TFEU is not an appropriate analytical and legal framework on which the Parties may rely for the proposition that ‘out of market’ benefits should be taken into account in a merger control review generally and in relation to the Proposed Transaction specifically.<sup>885</sup>

5.334 First, Article 101(3)(b) TFEU provides that the exemption to the prohibition of an agreement/decision/concerted practice (or category thereof) which would otherwise breach Article 101(1) TFEU does not apply in circumstances where the agreement/decision/concerted

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<sup>884</sup> Paragraph 5.3 of the Commission’s Merger Guidelines explains that “*Conglomerate mergers are neither horizontal nor vertical, i.e., there is no vertical relationship and no overlap in the products or services supplied by the merging parties. For example, a merger between two firms selling non-substitutable products would be an example of a conglomerate merger.*”

<sup>885</sup> For completeness, the Commission considers that the analogous provisions of section 4(2) and 4(5) of the Act also do not represent an appropriate analytical and legal framework on which the Parties may rely for the same reasons expressed in this sub-section.

practice (or category thereof) “*afford[s] such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.*”

- 5.335 In paragraph 5.65 above, the Commission has already set out its serious concerns that the Proposed Transaction is essentially a two-to-one merger. Therefore, the Commission considers that even if Article 101(3) TFEU were the appropriate analytical and legal framework which should be applied by the Commission in carrying out its merger review function,<sup>886</sup> the Commission’s view is that the Proposed Transaction would fall foul of Article 101(3)(b) TFEU.
- 5.336 Second, as explained by the Commission above, it is not appropriate to equalise *ex-ante* merger control with *ex-post* enforcement of relevant competition law. Merger control is preventative and is concerned with preventing the accretion of market power, whereas enforcement of Article 101 TFEU is corrective and intended to address anticompetitive behaviour which has already occurred (or is occurring).

The SLC test as set out in the Act

- 5.337 The Commission is required to determine “*whether the result of the merger or acquisition would be to **substantially lessen competition in markets for goods or services in the State***”<sup>887</sup> (emphasis added). Competition, in this context, means “*rivalry between businesses to sell goods and/or services to consumers*”.<sup>888</sup> The Commission’s Merger Guidelines explains how an SLC may manifest:

*“In applying the SLC test the Commission analyses not only the effect on the price of affected products but also other effects that can impact on consumers, such as changes to output (quantity), quality, consumer choice and innovation (e.g., development of new products or enhancements to existing products).”*

- 5.338 In its merger reviews, the Commission therefore focuses its analysis of these indicia of SLC on the relevant market(s) which are structurally affected by the merger concerned or in which the nature of competition may be affected by the merger concerned. It is not apparent to the Commission how it could find, in a way that is compatible with the statutory test set out in the Act, that an identified SLC in one market is obviated by potential beneficial consequences

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<sup>886</sup>For the avoidance of doubt, the Commission does not consider this to be the case.

<sup>887</sup> Section 20(1)(c) of the Act.

<sup>888</sup> Commission’s Merger Guidelines paragraph 1.4

elsewhere. If balancing a potential SLC in one market with potential benefits elsewhere were the test envisaged by the Oireachtas, it would have specified as such in the Act.

5.339 The Commission is not aware of any **merger control decision** where a competition authority has permitted a merger on the basis that identified competition concerns were negated by benefits which might be realised in a different market and in respect of a different activity to that relevant to the merger review.

5.340 However, the Commission is aware of one case where such an approach was explicitly rejected. In *United States v Philadelphia National Bank*,<sup>889</sup> the US Supreme Court rejected two claims by the merging parties that the merger in that case would result in benefits outside of the relevant market affected by the merger:

(a) First, regarding an argument that the merger would allow the merged entity to compete more strongly in a different geographic market to that relevant to the merger, the US Supreme Court stated:

*"If anticompetitive effects in one market could be justified by procompetitive consequences in another, the logical upshot would be that every firm in an industry could, without violating § 7 [of the US Clayton Act], embark on a series of mergers that would make it, in the end, as large as the industry leader."<sup>890</sup>*

(b) Second, regarding an argument that the merger would benefit the Philadelphia economy more generally, the US Supreme Court held:

*"We are clear, however, that a merger the effect of which "may be substantially to lessen competition" is not saved because, on some ultimate reckoning of social or economic debits and credits, it may be deemed beneficial. A value choice of such magnitude is beyond the ordinary limits of judicial competence, and, in any event, has been made for us already, by Congress when it enacted the amended § 7 [of the US Clayton Act]. Congress determined to preserve our traditionally competitive economy. It therefore*

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<sup>889</sup> *United States v Philadelphia National Bank* 374 US 321 (1963).

<sup>890</sup> *United States v Philadelphia National Bank* 374 US 321, 370.

*proscribed anticompetitive mergers, the benign and the malignant alike, fully aware, we must assume, that some price might have to be paid.*<sup>891</sup>

- 5.341 Although this judgment concerns a different legal regime, the Commission considers that this same logic applies in respect of its assessment of mergers notified under Part 3 of the Act.
- 5.342 The Commission's view is that accepting the Parties' argument that the Commission should take into account 'out of market' benefits in an exercise of balancing total welfare over multiple markets would be to disregard its statutory duty to determine whether or not the result of the Proposed Transaction will be to substantially lessen competition in markets for goods and services in the State (i.e., the provision of car parking spaces to the public in the vicinity of Dublin Airport) and instead conduct some sort of broader utilitarian assessment of the total welfare effects of the Proposed Transaction – an exercise not contemplated by the Act.

#### Conclusion

- 5.343 For the reasons set out above, the Commission's strong view is that alleged benefits in a different market to that relevant to a merger under review are of little to no relevance when determining whether or not that merger results in a substantial lessening of competition. The Commission's statutory duty to determine whether or not the result of the Proposed Transaction will be to substantially lessen competition in markets for goods and services in the State (i.e., the provision of car parking spaces to the public in the vicinity of Dublin Airport) cannot be reduced to a broader utilitarian assessment of the total welfare effects of the Proposed Transaction.
- 5.344 Against this background, and notwithstanding the Commission's position that the welfare balancing exercise advanced by the Parties is inappropriate in the context of determining whether the Proposed Transaction will give rise to a substantial lessening of competition, for completeness, the Commission now considers each of the steps linking higher parking charges to lower airfares, which in the Parties' view means that the Proposed Transaction does not result in an SLC.

#### *Substantive assessment of claims made by the Parties*

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<sup>891</sup> *United States v Philadelphia National Bank* 374 US 321, 371.

5.345 In the Commission's view, there is no reasonable basis on which to believe that there would ever be a complete off-set of higher car parking charges through lower airfares so that lower airline prices to passengers could compensate car park users paying higher car parking charges. The link between increased car parking revenues and consumer benefits in the form of reduced airport charges is not as direct as suggested by the Parties for the following reasons:

- (a) First, the generation of revenues and the redistribution of those revenues are not contemporaneous;
- (b) Second, it is only to the extent that higher revenues are forecast to endure by the regulator that they will be taken into account in the next regulatory period. Given the informational asymmetries that are pervasive in all economic regulation, there is scope for the DAA to try to distort downwards revenue forecasts used by the regulator; and
- (c) Third, airport charges are paid, in the first instance, by airlines who may or may not pass these on in full to air passengers.

5.346 The Commission expands on these reasons below.

*The generation of revenues and the redistribution of those revenues are not contemporaneous.*

5.347 It is important to recognise that the generation of excess revenues through higher car parking charges and the redistribution of those revenues through lower airport charges are not contemporaneous. As set out above, within a regulatory period DAA retains any revenues generated in excess of those forecast. Any redistribution only takes place following the IAA's next price cap determination. This means that there may be a delay of up-to 5 years between car parking customers who pay car parking charges (which, in the Commission's view, would be higher as a result of the Proposed Transaction) and any redistribution in the form of reduced airport charges.

5.348 The Parties acknowledge that the timing and sequencing of the implementation of the forecasting and application of a price cap on airport charges may be significant. For example, the Vendor Economic Report noted that the effects of the Proposed Transaction are unlikely to be reflected by the IAA until its next price cap determination which will likely take effect from 2027 onwards:

*“The IAA typically sets its price caps for Dublin Airports [sic] for several years in advance. Currently the IAA set the price cap for 2023 to 2026. Hence the earliest that car parking revenues and costs could be taken into account by the IAA in setting Dublin Airport’s price cap would be from the start of 2027 onwards.*

*In other words, if [DAA] were to acquire the Target Site in (say) 2024 and raise its car parking charges, [DAA] would realise a short-term increase in profits. These increased profits would not feed through in lower 2023-2026 airport charges. However, the higher [DAA] revenues from increased car parking charges would form the base for setting airport charges from the start of 2027 onwards.*

*Nonetheless, were there some unexpected dramatic event such as the pandemic then the IAA might revisit the setting of Pcap before 2027, thus raising the possibility, albeit unlikely, that revenues and costs from the Target Site could be included in the IAA’s price cap regulation before 2027”.*<sup>892</sup>

5.349 This point is also reflected in the Vendor Written Response, which stated as follows:

*“The price cap sets the maximum airport charge per passenger that [DAA] may charge airlines for using its aeronautical facilities. It is fixed for a certain period of time, currently 2023-2026. If the [DAA] performs better than the forecasted stream of costs and revenues on which the price cap is based by, for example, lowering its costs or raising its revenues, thus generating increased returns, the [DAA] retains those increased returns for the period of the price cap.*

*These lower costs or higher revenues, however, provided they are viewed as non-transitory by the IAA, then become the basis for setting the price cap by the IAA for the next period (i.e. from 2027 onwards). In other words, the [DAA] gets to keep the increased returns for the duration of a given price cap, but these gains are essentially taxed back at a 100 per cent rate in the next period for which the price cap is set.”*<sup>893</sup>

5.350 The Vendor Written Response further stated that “[i]n other words, even if [DAA] raised car parking charges, consumers as a group would be no worse off. This conclusion is of course subject to the caveat that during any given period (2023-2026) for which the price cap is set

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<sup>892</sup> Vendor Economic Report, page 10.

<sup>893</sup> Vendor Written Response, pages 74 and 75.



*any increase (or decrease) in car parking revenues due to increased [DAA] car parking charges are not taken into account until the next period (2027 onwards) for which the price cap is set.”<sup>894</sup>*

5.351 Therefore, there would be a delay between the generation of increased revenues (and competitive harm felt by consumers) and any redistribution. This delay may be up to 5-years.

Higher than expected revenues are only taken into account in the next regulatory period when they are forecast to endure.

5.352 The Commission considers it overly simplistic to consider that car parking revenues in excess of the IAA forecast will result in a “euro for euro decrease”<sup>895</sup> in airport charges. It is only where higher revenues are forecast to endure that they will be taken into account in the next regulatory period. Where they are not forecast to endure, they will not be captured by the price cap.

5.353 Given the information asymmetry between a regulator and the regulated entity, it is reasonable for the Commission to consider that forecasts of future revenue will be imperfect. This will affect the extent to which higher car parking revenues (including those which may be considered as economic profits generated by DAA) are captured by the IAA in its price cap and redistributed through reductions in airport charges. Whilst there is a risk that the IAA could over-forecast car park revenues, the Commission’s view is that the information asymmetry means that the risks are also asymmetric - which means that DAA may be able to affect the forecast in its favour (i.e. that it could under-forecast).

5.354 To the extent that the IAA does not precisely capture all economic profits in its forecast of car park revenues when making its price cap determination, DAA would benefit from the higher-than-expected revenues within this period.

Airport charges are paid by airlines, not directly by passengers

5.355 Airport charges are paid by airlines who may or may not pass these on to airline passengers. The Vendor Economic Report acknowledges that:

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<sup>894</sup> Vendor Written Response, page 82.

<sup>895</sup> Vendor Economic Report, page 9.

*“There is, of course, the prior question of the degree to which reduced airport charges are passed on to passengers. It is the airlines on whom the [DAA] imposes the airport charges, not the passenger directly.”<sup>896</sup>*

5.356 The Vendor Oral Response argued that passthrough of airport charges to passengers by airlines is “closer to 100%” and claims that the Commission is incorrect to consider that there is zero passthrough.<sup>897</sup> Furthermore, in the Vendor Oral Response, two models were used to demonstrate the monetary value of consumer gain that would arise as a result of the Target Site being reopened in 2023. The first of these models calculated the monetary value of consumer gain under the assumption that there was 100% passthrough. The second of these models calculated the monetary value of consumer gain under the assumption that there was 90% pass through.<sup>898</sup>

5.357 As an initial matter, although the Parties claim differently, the Commission has never expressed a view that there is zero passthrough. In paragraph 8.17 of the Assessment, the Commission *“question[ed] the Parties’ implicit assumption that the IAA is effective in ensuring that any economic profit from commercial activities feeds directly through into lower regulated charges that DAA charges to airlines, and that the alleged lower regulated charges will be passed through by all airlines to their passengers.”*

5.358 In this regard, the Commission noted DAA’s own scepticism about the relationship between airport charges and consumer benefits. In a Press Release titled *“Airport Charges Decision A Disaster For Passengers And For The Irish Economy”* DAA stated that:

*“Contrary to the Regulator’s [IAA’s] claim, airlines saving money does not benefit the Irish economy. Any reductions in airport charges have been going to the shareholders of privately-owned airlines, the majority of which are located overseas. There is no evidence that reductions in charges are passed onto consumers in the form of lower ticket prices.”<sup>899</sup>*

5.359 Reporting on DAA’s response to the CAR’s 2022 Interim Review, the Irish Independent quoted DAA as follows:

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<sup>896</sup> Vendor Economic Report, page 23.

<sup>897</sup> Oral Submission Transcript, page 4, lines 11-15.

<sup>898</sup> Oral Submission Transcript, page lines 22-32.

<sup>899</sup> daa.ie (2019) *Airport Charges Decision A Disaster For Passengers And For The Irish Economy*. Available at: <https://www.daa.ie/airport-charges-decision-a-disaster-for-passengers-and-for-the-irish-economy/>.

*“DAA said changes in passenger charges had “virtually no discernable [sic] impact on the price an airline charges for a flight” but said it “has a material effect on the standard of customer service and the level of capacity that Dublin Airport is able to provide as we have repeatedly warned over a number of years”.*<sup>900</sup>

5.360 In respect of the above Press Release, the Vendor Written Response states the following:

*“The [DAA’s] 19 October 2019 press release was in reaction to the CAR’s decision to set a price cap of €7.87 for 2020-2024, rather than the [DAA’s] preferred price cap of €9.65. Much of the press release is spent decrying the CAR’s decision. The CEO of [DAA] refers to the “absurdity of the Regulator’s decision,” continuing in the same vein that this is “what happens when economic theory trumps the real world.”*

*Under these circumstances/in this context the press release’s comments on the pass through of airport charges by the airlines might have been taken with a pinch of salt. As noted above in relation to the statements of the non-compliant bidders that participated in the 2022 Bidding Process and the statements of QuickPark, while these statements should not be disregarded they nevertheless should, to the extent possible, be verified.”*<sup>901</sup>

5.361 During the Vendor Oral Response, the context of the Press Release was explained as being that the IAA had set a price cap for the period from 2020 to 2024 that was significantly lower than DAA’s proposed maximum airport charge. As a result, DAA *“weren’t happy with that, in fact they were hugely disappointed, and they weren’t happy with the regulator either who they said this shows the absurdity of the regulation’s decision, this happens when economic theory trumps the real world. So, given that context, it might be reasonable I would have thought for the [Commission] to probe and verify the DAA’s view on pass through. I’m not saying the DAA are wrong, they might well be right. But I wouldn’t rely on a press release, wouldn’t seem to be entirely appropriate to be the sole source.”*<sup>902</sup>

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<sup>900</sup> Mulligan, J. (2022) ‘DAA hits out as decision on new Dublin Airport passenger charges issued on “busiest day of the Christmas season”, *Irish Independent*, 23 December 2022. Available at: <https://www.independent.ie/business/daa-hits-out-as-decision-on-new-dublin-airport-passenger-charges-issued-on-busiest-day-of-the-christmas-season/42241522.html>.

<sup>901</sup> Vendor Written Response, pages 84-85.

<sup>902</sup> Oral Submission Transcript, page 14, lines 13-23.

- 5.362 In the DAA Oral Response, DAA stated that the Press Release was an “*immediate urgent press release [...] That press release was an immediate reaction on the day, it said this was going to be a national disaster. Now it was hyperbole, it wasn't a detailed assessment*”.<sup>903</sup>
- 5.363 However, the Commission considers it reasonable and relevant to take into account DAA’s contemporaneous view in respect of the extent to which reductions in airport charges are passed on to passengers, particularly at a time before it was arguing that the Proposed Transaction should be permitted. In the Commission’s view, this is relevant evidence in assessing the credibility of the Parties’ claims.
- 5.364 In the Oral Submission, the Commission asked the Parties to provide further information on the extent to which passthrough of reductions in airport charges to consumers would occur. In response, the Parties provided a wide range of figures – from 25% to “*more than 100%*”.<sup>904</sup> The Commission also recalls, as stated at paragraph 5.254 above, that the Parties appear to differ on the extent to which higher car parking prices should result in lower airfares for consumers. The Vendor seems to consider that this relationship is exact and “*euro for euro*”,<sup>905</sup> whereas DAA seems to suggest that “*at least some*” benefits would be felt by passengers.<sup>906</sup>
- 5.365 For the reasons set out above, in particular the Parties’ lack of certainty and the lack of any verifiable evidence, the Commission considers that it cannot accept the Parties’ proposition that airlines will pass through all, or even a significant proportion of, any reduction in airport charges to their customers.

#### Conclusion

- 5.366 In the Commission’s view, it has not been established that there is a direct relationship between car park prices, airport charges, and potential benefits to passengers in the form of reduced air fares. In particular, there is no reason to believe that economic profits would be fully redistributed to airline passengers in the form of lower airfares, which would be required for the Parties’ suggested welfare calculus to yield a neutral result.
- 5.367 The Parties’ submissions do not reflect the complexity of the relationship between car park prices and regulated airport charges and certainly do not take account of any imperfections or

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<sup>903</sup> Oral Submission Transcript, page 72, lines 16-19.

<sup>904</sup> Oral Submission Transcript, page 63, lines 13-17.

<sup>905</sup> Vendor Economic Report, page 24.

<sup>906</sup> DAA Economic Report, page 4.

frictions in the process through which economic profits from parking translate into reduced aeronautical charges that then result in lower airfares. The claims made are not substantiated but merely based on the assumption that the IAA will be perfectly capable of extracting economic profits for the benefit of lower airport charges and that airlines will then pass on all their savings on aeronautical charges to their passengers in the form of lower airfares.

- 5.368 For all of these reasons, the Commission does not agree with the Parties that it is correct to equate the complete dissipation of economic profits in one market through lower prices in a (possibly very loosely)<sup>907</sup> related market with the absence of an SLC. Consequently, the Commission does not accept that any reductions in airport charges resulting from increased car parking revenues improve consumer welfare such that the Proposed Transaction does not result in an SLC.

**The Commission's findings on whether economic regulation of DAA's airport charges and DAA's statutory obligations negate an SLC**

- 5.369 In light of the above, the Commission finds that economic regulation of DAA's airport charges and DAA's statutory obligations do not act as countervailing factors that would prevent DAA exercising market power such as to prevent the Proposed Transaction resulting in an SLC.

**The Commission's overall conclusion on Theory of Harm**

- 5.370 Based on all the evidence, analysis and factors set out above, the Commission's overall conclusions reached on its Theory of Harm are set out below.

- 5.371 Regarding the structure and concentration of the Relevant Market, the Commission has found that the Relevant Market is highly concentrated in the absence of the Proposed Transaction. Following the implementation of the Proposed Transaction, the number of significant providers in the Relevant Market will be reduced from two (DAA and a provider at the Target Site) to one (DAA) removing the only significant competitive constraint on DAA. DAA would control nearly the entirety of car parking in the vicinity of Dublin Airport, holding a share in excess of 90%. The effect of the Proposed Transaction will be to substantially increase concentration in the Relevant Market.

- 5.372 The Target Site (irrespective of who, other than DAA, operates it) provides an important competitive constraint in the Relevant Market and represents a significant competitive threat

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<sup>907</sup> The Commission notes that while there is some overlap between those who use car parks at Dublin Airport and all airport passengers, this overlap is not perfect. There are many more airline passengers than car park users, meaning that competitive harms felt by car park users would be acute whereas benefits would be diffused amongst all airline passengers.

to DAA's car parking business. The Proposed Transaction would have the effect of eliminating this constraint and result in DAA having the ability and incentive to increase prices (or degrade service quality) following the implementation of the Proposed Transaction.

5.373 The Commission has found that there would be no significant countervailing factors to prevent an SLC arising as a result of the Proposed Transaction. In particular, other firms are not likely to constrain DAA from exercising market power following the implementation of the Proposed Transaction; nor would the economic regulation of DAA's airport charges or its statutory obligations act as a constraint on DAA in terms of its ability and incentive to exercise its market power in the Relevant Market.

5.374 Taking all this into account, the Commission concludes that its Theory of Harm that the Proposed Transaction will result in the removal of the most significant competitive threat to DAA in the Relevant Market resulting in higher prices and reduced quality of service demonstrates that the Proposed Transaction will result in an SLC in the Relevant Market.

### **Overall conclusion on horizontal unilateral effects**

5.375 In light of the evidence and analysis set out in this section, the Commission has concluded that the result of the Proposed Transaction will, more likely than not, be to substantially lessen competition in the market for the provision of car parking spaces to the public in the vicinity of Dublin Airport.

## 6. COMPETITIVE ASSESSMENT COORDINATED EFFECTS

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- 6.1 Coordinated effects can occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Thus, the key question<sup>908</sup> is whether a proposed transaction would materially increase the likelihood that firms active in the relevant market(s) could coordinate their behaviour or could strengthen existing coordination between firms in the relevant market(s).
- 6.2 On the basis of the information available to the Commission, no plausible coordinated effects theory of harm was identified. Therefore, no further discussion of coordinated effects is carried out in this Determination.

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<sup>908</sup> The Commission's Merger Guidelines, paragraph 4.25.

## 7. VERTICAL RELATIONSHIP

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- 7.1 As set out in paragraphs 3.14 and 3.15 above, the Parties have stated in the Merger Notification Form that the Proposed Transaction does not give rise to any vertical relationship and the Commission has not identified any vertical relationship between the Parties. On this basis, the Commission has concluded that the Proposed Transaction does not raise any vertical competition concerns in the State.



## 8. EFFICIENCIES

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### Introduction

8.1 Paragraphs 8.1 and 8.2 of the Commission's Merger Guidelines state that:

*"A merger may generate various efficiencies for the merged entity. The Commission's analysis of efficiencies goes beyond the impact of efficiencies on the merged entity and focuses on whether verifiable efficiencies mitigate adverse competitive effects and prevent an SLC".*

*"The onus rests on the parties to show that claimed efficiencies are (i) merger-specific, (ii) verifiable and (iii) benefit consumers sufficiently to prevent an SLC".*

8.2 Paragraph 8.13 of the Commission's Merger Guidelines states that:

*"Efficiency claims are necessarily prospective and hence subject to some degree of uncertainty, particularly with respect to dynamic efficiencies claims. It is also likely that most of the information supporting efficiency claims will be in the possession of the merging parties. It is therefore incumbent on the merging parties to provide the Commission with reliable information concerning the likelihood and quantified magnitude of efficiency claims. Vague and speculative claims will not be credited."*

8.3 The Commission notes the EC Horizontal Merger Guidelines, which state:

*"It is highly unlikely that a merger that leads to a market-dominant position approaching a monopoly or a similar level of market power could be considered compatible with the interests of the common market with the argument that it may produce adequate efficiency advantages to counterbalance the possible anticompetitive effects."<sup>909</sup>*

8.4 The Commission also notes the extensive merger control case law of the European Commission, which sets a very high evidentiary bar on parties that claim that efficiencies resulting from a merger will offset any SLC.<sup>910</sup>

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<sup>909</sup> See EC Horizontal Merger Guidelines, Recital 84.

<sup>910</sup> For example, see M1313 *Danish Crown/Vestjyske Slagterier*, (2000); M.9730 *FCA/PSA* (2020) and Case M.9660 *Google / Fitbit* (2020).

- 8.5 In the Merger Notification Form, the Parties submitted that there would be “*significant efficiencies associated with the Proposed Transaction*”.<sup>911</sup> DAA discussed these purported efficiencies on page 5 of the DAA Economic Report, between pages 8 and 10 in section 3 of the DAA Economic Response, and at various parts of the DAA Written Response (i.e., in paragraphs 53, 448 and 477). For the reasons set out below, the Commission’s view is that the Parties have not provided the Commission with “*reliable information concerning the likelihood and quantified magnitude of efficiency claims*” or any submission which meets any of the criteria set out in paragraph 8.2 or 8.11 of the Commission’s Merger Guidelines.

### **Purported Efficiency: Economies of scale and economies of scope associated with the Proposed Transaction**

- 8.6 The DAA Economic Report sets out DAA’s views regarding purported efficiencies resulting from economies of scale and economies of scope which may be generated by the Proposed Transaction. The DAA Economic Report states:

*“There are a significant number of physically separate and distinct public car parks at Dublin Airport owned and operated by [DAA]. It seems clear that economies of scale and economies of scope provide economic justification for this reality. In particular, the total costs associated with one entity owning and operating, say, 20,000 public car parking places in the vicinity of Dublin Airport are surely significantly lower than the total costs associated with, say, two entities each owning and operating 10,000 public car parking spaces in the vicinity of Dublin Airport.*

*In addition, it seems clear that one entity owning and operating multiple public car parks in the vicinity of Dublin Airport can avail of not only economies of scale but also economies of scope, via for example, creating one bussing service linking all the car parks to the two terminals as well as providing security and other services related to public car parking (e.g. breakdown assist).”<sup>912</sup>*

- 8.7 The DAA Economic Report provides an example of one such claimed efficiency:

*“while the owner or the operator of the Quick Park Car Park had some time ago successfully applied for planning permission with respect to constructing various facilities at the [Target Site], [DAA] has indicated that it would not have the need for*

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<sup>911</sup> Merger Notification Form, paragraphs 18 and 101.

<sup>912</sup> DAA Economic Report, page 5.

*such facilities ... this provides an excellent practical example of both economies of scale and scope.”*

8.8 The DAA Economic Report concludes:

*“While the Proposed Acquisition would allow [DAA] to absorb the [Target Site] into its existing portfolio of public car parks, a new entity would need to duplicate some existing (significant) facilities. Of course, [DAA’s] costs would go up as a result of the extra ‘throughput’ (both in terms of scale and scope), but the total costs associated with operating all the car parks would surely go up by significantly less than they would if the [Target Site] was purchased by an entity (other than [DAA]).”<sup>913</sup>*

8.9 In the DAA Written Response and DAA Economic Response, DAA again referred to these purported efficiencies.

8.10 The DAA Economic Response states that the efficiencies associated with the Proposed Transaction are economies of scope and scale. In particular, the DAA Economic Response contends that, following the ‘absorption’ of the car park at the Target Site into its existing operational model, *“the car parking management team (of ■ employees) would not need to expand, the mobile security patrol team would not need to expand, the new booking system (Aeroparker) would be capable of handling [sic] the 6k+ extra car parking spaces.”<sup>914</sup>* Furthermore, according to the DAA Economic Response, a third-party car park provider at the Target Site would incur substantial costs in establishing the operation and these costs *“would have to be reflected in the pricing of public car parking.”<sup>915</sup>*

8.11 The Commission’s view is that the alleged efficiencies claimed by the Parties are broad and vague, and the information provided by the Parties falls far short of the detail required to assess such claims. In particular, DAA’s assertions in respect of efficiencies have not been substantiated with reliable information concerning their merger specificity, timeliness, likelihood and quantifiable magnitude, as is required by the Commission’s Merger Guidelines.<sup>916</sup> Moreover, DAA has not provided any evidence to demonstrate that the alleged efficiencies would definitely be passed on to consumers and, even if that were the case, that

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<sup>913</sup> DAA Economic Report, page 5.

<sup>914</sup> DAA Economic Response, page 9.

<sup>915</sup> Ibid.

<sup>916</sup> See Section 8 of the Commission’s Merger Guidelines.

such efficiencies would benefit consumers sufficiently to prevent an SLC in the Relevant Market.

### **Commission's conclusion on efficiencies**

8.12 Therefore, the Commission concludes that it has not received any submission from the Parties on efficiencies which substantiates their claims with verifiable evidence and which meets the criteria set out in paragraph 8.2 of the Commission's Merger Guidelines.

## 9. REMEDIES TO ADDRESS SLC CONCERNS

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### Introduction

- 9.1 On completion of its Phase 2 Investigation, the Commission has concluded that the result of the Proposed Transaction will be to substantially lessen competition in the Relevant Market. As set out below, the Act provides that the Parties may submit proposals which constitute measures which would ameliorate the effects of the Proposed Transaction on competition in the Relevant Market.
- 9.2 The Commission has structured its analysis in this section as follows:
- (a) The Commission's approach to evaluating proposals;
  - (b) Submission of potential measures;
  - (c) First Draft Proposals;
  - (d) Revised Draft Proposals; and
  - (e) Conclusion.

### The Commission's approach to evaluating proposals

- 9.3 As noted above, parties to a Notified Transaction may enter into discussions with the Commission pursuant to section 20(1)(b) of the Act with a view to identifying measures which would ameliorate the effects of the Notified Transaction on competition in any relevant market(s). Section 20(3) of the Act provides that:

*"In the course of the [Commission's] activities under subsection (1)(b), any of the undertakings involved in the merger or acquisition concerned may submit to the [Commission] proposals of the kind mentioned in subsection (4) with a view to the proposals becoming binding on it or them if the [Commission] takes the proposals into account and states in writing that the proposals form the basis or part of the basis of its determination under section 21 or 22 in relation to the merger or acquisition."*

- 9.4 Section 20(4) of the Act further provides that:

*“The proposals referred to in subsection (3) are proposals with regard to the manner in which the merger or acquisition may be put into effect or to the taking, in relation to the merger or acquisition, of any other measures referred to in subsection (1)(b).”*

- 9.5 In relation to when parties may enter into discussions with, and make proposals to, the Commission during the course of a Phase 1 investigation, the Mergers and Acquisitions Procedures state the following:

*“Before the expiry of 30 working days after the appropriate date (as defined in section 19(6) of the Act), the Commission may enter into discussions with the undertakings involved and the undertakings involved may make proposals to the Commission with regard to the manner in which the merger may be put into effect or to the taking, in relation to the merger, of any other measures which would ameliorate any effects of the merger on competition.”<sup>917</sup>*

- 9.6 In relation to when parties may enter into discussions with, and make proposals to, the Commission during the course of a Phase 2 investigation, the Mergers and Acquisitions Procedures state the following:

*“At any stage during the merger review process, but no later than 15 working days after the furnishing of the Assessment, the Commission may enter into discussions with the undertakings involved and the undertakings involved may make proposals to the Commission with regard to the manner in which the merger may be put into effect or to the taking, in relation to the merger, of any other measures which would ameliorate any effects of the merger on competition.*

*The time limit above is required in order to allow the Commission sufficient time to assess whether any proposals ameliorate the competition concerns, including carrying out market testing (where applicable). **It is only in exceptional circumstances that the Commission may enter into discussions regarding proposals made by the undertakings involved after the expiry of the time limit for their submission set out above.** Such consideration of late proposals shall be at the sole discretion of the Commission”<sup>918</sup> (emphasis added).*

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<sup>917</sup> Mergers and Acquisitions Procedures, paragraph 2.17.

<sup>918</sup> Mergers and Acquisitions Procedures, paragraph 3.22 and 3.23.

- 9.7 In assessing proposals submitted to the Commission pursuant to section 20(3) of the Act, the Commission has regard to the Act and its Mergers and Acquisitions Procedures. The Commission’s approach reflects the analytical framework set out in the European Commission’s Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (“EC Remedies Notice”).<sup>919</sup> The EC Remedies Notice sets out the following as a basic condition for acceptable commitments/proposals:

*“Under the Merger Regulation, the [European] Commission only has power to accept commitments that are deemed capable of rendering the concentration compatible with the common market so that they will prevent a significant impediment of effective competition. The commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view. Furthermore, commitments must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.”*

- 9.8 In assessing whether the proposed commitments/proposals will likely eliminate the competition concerns identified, the EC Remedies Notice continues:

*“the [European] Commission will consider all relevant factors relating to the proposed remedy itself, including, inter alia, the type, scale and scope of the remedy proposed, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the parties and other players on the market.”*

## Submission of potential measures

- 9.9 On 16 February 2024, DAA wrote to the Commission outlining a package of potential measures (“Potential Measures”) which it was willing to consider offering to address the competition concerns identified by the Commission (“DAA 16 February 2024 Letter”). DAA expressed its view that the submissions of DAA and the Vendor had demonstrated that no remedies are required because there is no SLC and that the Potential Measures were without prejudice to that view. The DAA 16 February 2024 Letter stated that this submission “*does not constitute the submission of remedies or proposals*” pursuant to the Act. As a result, the statutory

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<sup>919</sup> Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008) OJ C267/1.

deadline for the Commission to make a determination in relation to the Proposed Transaction under section 22(3) of the Act remained unchanged.

9.10 Notwithstanding, the Commission considered the Potential Measures in detail, as DAA indicated that it wished to meet with the Commission to discuss the details of a package of remedies before making a formal offer of proposals under section 20(3) of the Act.

9.11 The Potential Measures consisted of the following potential commitments by DAA:

- (a) **Measure 1:** [REDACTED]  
[REDACTED]
- (b) **Measure 2:** [REDACTED]  
[REDACTED]
- (c) **Measure 3:** [REDACTED];
- (d) **Measure 4:** [REDACTED]  
[REDACTED]
- (e) **Measure 5:** [REDACTED]  
[REDACTED]

9.12 The Commission provided feedback on the Potential Measures in its response of 21 February 2024 (“Commission’s 21 February 2024 Letter”). In its letter, the Commission noted that, given the late stage in the merger review process (well beyond the latest date for entering into discussions regarding remedies provided for in the CCPC’s Mergers and Acquisitions Procedures, which was 11 January 2024), any proposals submitted by the Parties would have to address fully the CCPC’s competition concerns.

9.13 The Commission informed DAA that it was of the view that the Potential Measures fell far short of remedies that would be necessary to address the serious competition concerns identified in the Assessment. Having noted that it is generally accepted that structural competition concerns usually require structural remedies, the Commission explained that [REDACTED] [REDACTED] not capable of replacing the competitive constraint that would be eliminated through DAA’s acquisition of the Target Site.<sup>920</sup> [REDACTED]

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<sup>920</sup> Indeed, specifically with respect to Potential Measure 3, DAA 16 February 2024 Letter stated that: [REDACTED]  
[REDACTED]



██████████". However, the Commission considered that the very limited scope, duration and scale of ██████████ would render it ineffective. Finally, the Commission noted that there were a number of serious implementation risks associated ██████████.

- 9.14 The Commission also explained that in cases such as the Proposed Transaction where serious competition concerns have been identified, the Commission may approve the transaction only if it is satisfied that measures offered by the parties would constitute a comprehensive and effective remedy in respect of those competition concerns. To assist DAA in formulating appropriate remedies, the Commission's 21 February 2024 Letter provided the following guidance:

*"[i]n light of the serious structural competition concerns identified in the Assessment and the extremely limited time remaining in this process, the CCPC case team considers that, for it to be able to recommend proposals to the Commission for its consideration, such proposals would have to be purely structural and straightforward in nature. In particular, the CCPC case team believes that such proposals would need to involve, (i) the outright disposal by DAA of a car park in the vicinity of Dublin Airport that is quantitatively and qualitatively comparable to the Target Site; (ii) to an identified acquirer acceptable to the CCPC, who has at least entered into heads of terms with the DAA in advance of the Commission's determination; and (iii) that such a disposal would be implemented within 8 months of the determination."*<sup>921</sup>

- 9.15 The Commission's 21 February 2024 Letter concluded that any proposals short of the guidance set out above would require economic and market testing, for which there was not enough time remaining in the process. The Commission's 21 February 2024 Letter also stated that, if DAA wished to offer proposals which took account of the views set out in that letter, DAA must make a submission pursuant to section 20(3) of the Act no later than 12 noon on Friday 23 February 2024.

## First Draft Proposals

### Content of First Draft Proposals

- 9.16 On 23 February 2024, DAA submitted First Draft Proposals to the Commission pursuant to section 20(3) of the Act (see para 1.46 above). In accordance with section 22(4B) of the Act, this had the effect of extending by 15 working days the statutory deadline for the Commission

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<sup>921</sup> Commission's 21 February 2024 Letter.

to make a determination in relation to the Proposed Transaction under section 22(3) of the Act, i.e., to 29 March 2024.

9.17 The First Draft Proposals were submitted 45 working days after the Commission issued the Assessment. In summary, the First Draft Proposals and the accompanying letter (“DAA 23 February 2024 Letter”) consisted of the following:

- (a) [REDACTED] (“Proposal A”);
- (b) [REDACTED]  
 (“Proposal B”);
- (c) [REDACTED]  
 [REDACTED] (“Proposal C”); and
- (d) [REDACTED]  
 [REDACTED] (“Proposals D”).

9.18 [REDACTED] in the DAA 16 February 2024 Letter. The DAA 23 February 2024 Letter provided further detail on [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].”

9.19 The First Draft Proposals defined the scale of Proposal D as [REDACTED]  
[REDACTED]

9.20 The First Draft Proposals also included some measures to address implementation, such as provisions for the appointment of a Monitoring Trustee and the treatment of competitively sensitive information.

9.21 In submitting the First Draft Proposals, DAA stated in the DAA 23 February 2024 Letter that:

*“For the avoidance of doubt, [DAA] re-iterates its position and rejects the notion that there would be any prospect of an SLC because of the Proposed Transaction...”*

[REDACTED]

### The Commission’s Evaluation of the First Draft Proposals

9.22 As noted above, in evaluating proposals submitted to the Commission pursuant to section 20(3) of the Act, the Commission’s analytical framework is founded on the Act, the Commission’s Mergers and Acquisitions Procedures and, in particular, the EC Remedies Notice.<sup>922</sup> Having regard to that analytical framework, the Commission considers three key criteria when assessing proposals:

- (a) Are the proposals comprehensive and effective?
- (b) Are the proposals capable of being implemented effectively within a short period of time?
- (c) Do the proposals eliminate the competition concerns entirely?

9.23 On 29 February 2024, the Commission wrote to inform DAA (“Commission’s 29 February 2024 Letter”) that it had considered the First Draft Proposals and was of the view that they were substantially equivalent to the Potential Measures outlined in the DAA 16 February 2024 Letter. As noted above, the Commission had previously informed DAA that the Potential Measures fell far short of what would be required to address the serious competition concerns raised by the Proposed Transaction, which were set out in detail in the Assessment. The Commission noted that it continued to be of the view the Proposed Transaction would result in a substantial lessening of competition.

9.24 The Commission provided specific feedback to DAA on the First Draft Proposals as follows:

- [REDACTED] By reference to its reasoning in the Commission’s 21 February 2024 Letter, the Commission reiterated its view that behavioural remedies of the type

<sup>922</sup> See paragraph 9.7 above.

proposed [REDACTED] would not be capable of addressing the serious competition concerns identified in the Assessment.

- **Proposal D:** The Commission noted that Proposal D did not take account of the Commission's serious structural competition concerns [REDACTED]. In particular, and in light of the significant time constraints as a result of the First Draft Proposals being submitted at such a late stage in the merger review process, the Commission informed DAA that only a purely structural and straight-forward remedy which addressed the identified serious competition concerns could form a basis on which the Commission could enter into discussions in respect of remedies.

9.25 In the Commission's view, [REDACTED] was far from purely structural and straight-forward and was not capable of addressing the identified serious competition concerns. In particular:

- (a) DAA was aware of the Commission's view that an appropriate remedy would very likely have to involve a divestment by DAA of car parking spaces in the vicinity of Dublin Airport that was quantitatively and qualitatively comparable to the car parking spaces being acquired as a result of the Proposed Transaction.<sup>923</sup> [REDACTED] did not, in the Commission's view, constitute a divestment that would be quantitatively and qualitatively comparable to the car parking spaces being acquired as a result of the Proposed Transaction.<sup>924</sup>
- (b) The scope of [REDACTED] Leaving aside whether the scope of [REDACTED] could be a viable commercial proposition for potential remedy-takers, the Commission considered that the scale of [REDACTED] was wholly insufficient to replace the competitive constraint that would be eliminated through DAA's acquisition of the Target Site. DAA provided no evidence to show otherwise. As such, [REDACTED] did not

<sup>923</sup> This view was communicated to DAA in the Commission's 21 February 2024 Letter.

<sup>924</sup> The DAA 23 February 2024 Letter referred to European Commission and CCPC cases in which [REDACTED]. The Commission notes that where remedies are accepted to address competition concerns raised by a merger or acquisition, they are necessarily specific to that case. The cases referred to in the DAA 23 February 2024 Letter were not relevant in the present case. Specifically, [REDACTED]

involve a remedy that was quantitatively comparable to the competitive constraint on DAA attributable to the Target Site.

- (c) Equally, [REDACTED] did not involve a remedy that was qualitatively comparable to the competitive constraint on DAA exercised by the Target Site. In particular, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

9.26 In summary, [REDACTED] would not have created an effective competitor in the Relevant Market. Such a competitor [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

9.27 Finally, the Commission noted that the First Draft Proposals involved clear implementation and operational risks. These risks were not acknowledged or addressed by DAA.

9.28 The Commission therefore found that the First Draft Proposals would not ameliorate the Commission’s SLC concerns in the Relevant Market.

## Revised Draft Proposals

### Content of Revised Draft Proposals

9.29 On 14 March 2024, DAA sent a letter to the Commission (“DAA 14 March 2024 Letter”) containing an update to the First Draft Proposals. The DAA 14 March 2024 Letter contained two options:

**“Option A:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

[REDACTED]

[REDACTED]

**Option B:** [REDACTED]

[REDACTED]

The DAA 14 March 2024 Letter stated that these revised/updated proposals were subject to DAA Board approval. On 15 March 2024, DAA sent draft legal form proposals along with a resubmission of the DAA 14 March 2024 Letter (together the “Revised Draft Proposals”).

### The Commission’s Evaluation of the Revised Draft Proposals

9.30 On 20 March 2024, the Commission wrote to inform DAA that it had considered the Revised Draft Proposals and was of the view that they continued to fall far short of remedies that would address the serious competition concerns set out in the Assessment (“Commission’s 20 March 2024 Letter”).

9.31 In comparing the Revised Draft Proposals with the First Draft Proposals, the Commission noted that the Revised Draft Proposals did not include [REDACTED] described above in paragraph 9.17. Consequently, the Commission considered that these Proposals had been withdrawn. The Commission considered that the Revised Draft Proposals broadly amounted to a revision of Proposal D, and proposed two options in respect of [REDACTED] in the Target Site.

- 9.32 The Commission’s 21 February 2024 Letter noted that any proposals submitted by the Parties would have to address fully the CCPC’s competition concerns, and this point was reiterated in the Commission’s 29 February 2024 Letter. As noted above,<sup>925</sup> the Commission provided guidance that, at this very late stage in the merger review process, any proposals would need to involve: (i) the outright disposal by DAA of a car park in the vicinity of Dublin Airport that is quantitatively and qualitatively comparable to the Target Site; (ii) to an identified acquirer acceptable to the CCPC, who has at least entered into heads of terms with DAA in advance of the Commission’s determination; and (iii) implementation of such a disposal within 8 months of the determination.
- 9.33 The Revised Draft proposals did not address the Commission’s guidance, nor the detailed feedback on the Potential Measures and First Draft Proposals.
- 9.34 In the case of Option A, the Commission’s 20 March 2024 Letter noted that it was substantially the same as Proposal D. The feedback and concerns expressed in the Commission’s 21 February 2024 Letter and reiterated in the Commission’s 29 February 2024 Letter therefore applied equally. Although DAA increased the scale of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].
- 9.35 In particular, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].
- 9.36 For these reasons, including the reasons previously communicated to DAA in respect of Proposal D, the Commission considered that Option A would not have created an effective competitor in the Relevant Market.

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<sup>925</sup> See paragraph 9.15 above.

- 9.37 Option B proposed the “ [REDACTED] . The Commission’s 20 March 2024 Letter set out the Commission’s view that, even on the most expansive reading [REDACTED] [REDACTED] was wholly insufficient to replace the competitive constraint that would be eliminated as a result of DAA’s acquisition of the Target Site. In this regard, the Commission [REDACTED] [REDACTED] [REDACTED] [REDACTED] As a result, the Commission considered that Option B, [REDACTED] [REDACTED] [REDACTED] did not involve a remedy that was quantitatively or qualitatively comparable to the competitive constraint on DAA attributable to the Target Site.
- 9.38 Therefore, neither Option A nor Option B addressed the Commission’s first requirement that any proposal should involve the outright disposal by DAA of a car park in the vicinity of Dublin Airport that is quantitatively and qualitatively comparable to the Target Site. Option A and Option B could not be considered comprehensive, and did not effectively address the Commission’s competition concerns as set out in the Assessment.
- 9.39 With respect to the second requirement that any proposal should identify an acquirer acceptable to the Commission which has at least entered into heads of terms with DAA in advance of the Commission’s determination, neither Option A nor Option B [REDACTED] [REDACTED]
- 9.40 Finally, the Revised Draft Proposals contained serious implementation and operational risks that were neither acknowledged nor addressed by DAA. In summary:
- (a) the Revised Draft Proposals consisted of [REDACTED] [REDACTED] [REDACTED] [REDACTED]
  - (b) while the Commission had been clear that DAA would need to identify an acceptable acquirer who has at least entered into heads of terms with DAA in advance of the Commission’s determination, the Revised Draft Proposals [REDACTED]

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<sup>926</sup> Although the long-term lease of an asset may, in certain circumstances, be considered tantamount to a sale, DAA did not explain why that would be the case here.



- \_\_\_\_\_
- \_\_\_\_\_”;
- (c) the Revised Draft Proposals did not acknowledge the possibility of a \_\_\_\_\_ and did not address what would happen in these circumstances;
  - (d) as a State-owned public limited company, DAA is subject to strict rules regarding tendering and sales processes, which would likely increase significantly the complexities, uncertainties and delays inherent in any sales or bidding process under the Revised Draft Proposals;
  - (e) as the Revised Draft Proposals did not amount to \_\_\_\_\_, considerable economic and market testing would have been required to ascertain the necessary scope and scale to adequately address the Commission’s serious competition concerns; and
  - (f) the Revised Draft Proposals did not contain the detailed provisions regarding monitoring, compliance and DAA’s \_\_\_\_\_ which would be necessary in any proposals of this kind.

9.41 These concerns gave rise to an unacceptable level of uncertainty with regard to the implementation of the Revised Draft Proposals.

## Conclusion

9.42 The Commission evaluated the Revised Draft Proposals according to its analytical framework, which is founded on the Act, the Commission’s Mergers and Acquisitions Procedures and, in particular, the EC Remedies Notice, and found that:

- (a) The Revised Draft Proposals were not comprehensive and effective;
- (b) The Revised Draft Proposals were not capable of being implemented effectively within a short period of time; and
- (c) The Revised Draft Proposals did not eliminate the competition concerns entirely.

9.43 The Commission’s 20 March 2024 Letter informed DAA that, having considered the Revised Draft Proposals, the Commission found that the Revised Draft Proposals would not ameliorate

the Commission's SLC concerns in the Relevant Market. The Commission informed DAA that, given the potential external engagements and internal processes involved for the Commission to reach a determination by the statutory deadline of 29 March 2024, it would be unable to engage any further with the Parties in respect of potential remedies.

## 10. CONCLUSION

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- 10.1 In light of its analysis of all the information and evidence, as set out in this Determination, the Commission has formed the view that the Proposed Transaction will result in a substantial lessening of competition in relation to the market for the provision of car parking spaces to the public in the vicinity of Dublin Airport.

## 11. DETERMINATION

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Having considered the notification made to it under section 18(3) of the Competition Act 2002 as amended (the “Act”) on 23 March 2023 of a proposed transaction whereby daa plc would acquire the freehold interest in, and therefore sole control of, the site at Swords Road/Old Airport Road, County Dublin being the entire of the lands comprised in Folios DN9035 and DN172061F of the Register of Freeholders, County Dublin from Mr Gerard Gannon (the “Proposed Transaction”); and

Having completed a full investigation in relation to the Proposed Transaction under section 22 of the Act:

the Competition and Consumer Protection Commission (the “Commission”), in accordance with section 22(3)(b) of the Act, has determined that the Proposed Transaction may not be put into effect on the ground that the result of the Proposed Transaction will be to substantially lessen competition in the market for the provision of car parking spaces to the public in the vicinity of Dublin Airport.

Before making its determination, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

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**Brian McHugh**

**Chairperson**  
**Competition and Consumer Protection Commission**



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

