

8

S. 37

File With \_\_\_\_\_

**SECTION 131 FORM**

Appeal NO: ABP 314455

TO: SEO

Defer Re O/H ☐

Having considered the contents of the submission dated/ received 18/12/24  
from

Ryanair I recommend that section 131 of the Planning and Development Act, 2000  
be/not be invoked at this stage for the following reason(s): no issue

E.O.: [Signature]

Date: 20/12/24

To EO: \_\_\_\_\_

Section 131 not to be invoked at this stage. ☐

Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: \_\_\_\_\_

Date: \_\_\_\_\_

S.A.O.: \_\_\_\_\_

Date: \_\_\_\_\_

M \_\_\_\_\_

Please prepare BP \_\_\_\_\_ - Section 131 notice enclosing a copy of the attached  
submission

to: \_\_\_\_\_

Allow 2/3/4 weeks – BP \_\_\_\_\_

EO: \_\_\_\_\_

Date: \_\_\_\_\_

AA: \_\_\_\_\_

Date: \_\_\_\_\_

File With \_\_\_\_\_

**CORRESPONDENCE FORM**

Appeal No: ABP \_\_\_\_\_

M \_\_\_\_\_

Please treat correspondence received on \_\_\_\_\_ as follows:

- |  |  |
|--|--|
| 1. Update database with new agent for Applicant/Appellant _____<br>2. Acknowledge with BP _____<br>3. Keep copy of Board's Letter <input type="checkbox"/> | 1. RETURN TO SENDER with BP _____<br>2. Keep Envelope: <input type="checkbox"/><br>3. Keep Copy of Board's letter <input type="checkbox"/> |
|--|--|

Amendments/Comments

## 4. Attach to file

(a) R/S ☐(d) Screening ☐(b) GIS Processing ☐(e) Inspectorate ☐(c) Processing ☐RETURN TO EO ☐

|       |   |
|-------|---|
|       | Plans Date Stamped <input type="checkbox"/>     |
|       | Date Stamped Filled in <input type="checkbox"/> |
| EO:   | AA: <del>FK</del> FK                            |
| Date: | Date: 29/12/17                                  |

# Validation Checklist

Lodgement Number : **LDG-076900-24**  
Case Number: **ABP-314485-22**  
Customer: **Ryanair**  
Lodgement Date: **19/12/2024 15:12:00**  
Validation Officer: **James Sweeney**  
PA Name: **Fingal County Council**  
PA Reg Ref: **F20A/0668**  
Case Type: **Normal Planning Appeal PDA2000**  
Lodgement Type: **Observation / Submission**



An  
Bord  
Pleanála

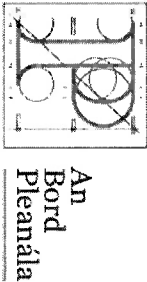
| Validation Checklist                          | Value               |
|---|---------------------|
| Confirm Classification                        | Confirmed - Correct |
| Confirm ABP Case Link                         | Confirmed-Correct   |
| Fee/Payment                                   | Valid – Correct     |
| Name and Address available                    | Yes                 |
| Agent Name and Address available (if engaged) | Not Applicable      |
| Subject Matter available                      | Yes                 |
| Grounds                                       | Yes                 |
| Sufficient Fee Received                       | Yes                 |
| Received On time                              | Yes                 |
| Eligible to make lodgement                    | Yes                 |
| Completeness Check of Documentation           | Yes                 |

BP4 OVER, 24/12

Run at: 23/12/2024 09:16

Run by: James Sweeney

Lodgement Cover Sheet - LDG-076900-24



Details

|                                  |            |
|----------------------------------|------------|
| Lodgement Date                   | 19/12/2024 |
| Customer                         | Eoin Kealy |
| Lodgement Channel                | Courier    |
| Lodgement by Agent               | No         |
| Agent Name                       |            |
| Correspondence Primarily Sent to |            |
| Registered Post Reference        |            |

|                                 |               |
|---------------------------------|---------------|
| Lodgement ID                    | LDG-076900-24 |
| Map ID                          |               |
| Created By                      | Anthony Kelly |
| Physical Items included         | No            |
| Generate Acknowledgement Letter |               |
| Customer Ref. No.               |               |
| PA Reg Ref                      |               |

Categorisation

|                |                          |
|----------------|--------------------------|
| Lodgement Type | Observation / Submission |
| Section        | Processing               |

|                                |                       |
|--------------------------------|-----------------------|
| PA Name                        | Fingal County Council |
| Case Type (3rd Level Category) |                       |

Fee and Payments

|                        |        |
|------------------------|--------|
| Specified Body         | No     |
| Oral Hearing           | No     |
| Fee Calculation Method | System |
| Currency               | Euro   |
| Fee Paid               | 50.00  |
| Refund Amount          |        |

|                                |               |
|--------------------------------|---------------|
| Observation/Objection Allowed? |               |
| Payment                        | PMT-059989-24 |
| Related Payment Details Record | PD-059846-24  |

BP240

Observation

|                     |  |
|---------------------|--|
| PA Case Number      |  |
| PA Decision Date    |  |
| County              |  |
| Development Type    |  |
| Development Address |  |
| Appellant           |  |
| Supporting Argument |  |

|                             |  |
|-----------------------------|--|
| Development Description     |  |
| Applicant                   |  |
| Additional Supporting Items |  |



# RYANAIR

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19 December 2024

**The Secretary**  
**An Bord Pleanála**  
**64 Marlborough Street**  
**D01 V902**  
**Email: [appeals@pleanala.ie](mailto:appeals@pleanala.ie)**

|                         |                 |
|-------------------------|-----------------|
| <b>AN BORD PLEANÁLA</b> |                 |
| LDG- <u>076900-24</u>   |                 |
| ABP- _____              |                 |
| <b>19 DEC 2024</b>      |                 |
| Fee: € <u>50.00</u>     | Type: <u>CA</u> |
| Time: <u>15.07</u>      | By: <u>HAMD</u> |

*By courier and email*

**Re: Relevant Action ABP-314485-22**

Dear Sir/Madam,

We refer to the draft decision in the above matter dated 18 September 2024 (the “**Draft Decision**”).

## **Introduction**

The adoption of the Draft Decision will deeply harm Dublin Airport, all airlines using the airport, and therefore the wider Irish economy. The airport's capacity and connectivity would be fatally damaged, thus restricting growth and weakening the competitiveness of Ireland. The proposal jeopardises the viability of an Irish-based operation serving UK and European networks, as it severely disrupts first and last wave operations, which are crucial for ensuring efficient aircraft utilisation, early morning departures and aircraft return before the onset of the night period. The impacts of the Draft Decision on airlines will mean a significant reduction in the ability of airlines to operate flights to/from Dublin Airport, which will mean fewer routes being offered and fewer frequencies on the remaining routes. Consequently, the proposal will negatively affect consumers by reducing choice and increasing fares. In broader terms, it would also significantly damage the Irish economy through decreased GDP and lower employment levels. This initiative goes against all the sector's investment and efforts in operating newer and quieter aircraft to improve noise performance at EU airports.

## **Summary of Appeal Grounds**

Ryanair's position is that the Draft Decision is fundamentally flawed for the reasons summarised below and detailed throughout this submission. Accordingly, Ryanair requests the Board to uphold the noise quota system (“**NQS**”) as granted by Fingal County Council without imposing a cap on night movements as proposed under Condition 4 of the Board's Draft Decision dated 11 September 2024.

- (a) **The proposed movement cap is not necessary to achieve the noise abatement objective**

The Draft Decision seeks to impose a cap on air traffic movements (“**ATM**”) in order to achieve the relevant noise abatement objective (“**NAO**”). However, the imposition of such a cap is irrational in circumstances where we consider that the information before the Board showed that the purpose and intent of the NAO is achieved without a cap.

(b) **The proposed movement cap is contrary to the Aircraft Noise Regulation**

The Board has failed to comply with the requirements of Regulation 598/2014 (the “Aircraft Noise Regulation”). In particular:

- (i) The cap was proposed without identifying or assessing the effectiveness of other available mitigation measures, or less restrictive operating restrictions. Article 5 of the Aircraft Noise Regulation obliges the Board to (1) consider the range of available measures to determine what is the most cost-effective option, (2) only adopt operating restrictions (such as an ATM cap) where other measures are not sufficient, and (3) ensure that the measures adopted are not more restrictive than is necessary to achieve the NAO. The Draft Decision fails to do this properly or at all. This is set out in further detail in **section 2.3 below**.
- (ii) The Board is proposing a movement limit that will materially reduce the number of night flights at Dublin airport. Restricting the capacity of the airport to such an extent requires an assessment of the cost effectiveness of the measure by reference to a number of specific factors, including effects on the European aviation network. This would require analysis of the effect on existing airline slots (as outlined in the Introduction section above) and, in particular, whether the inevitable removal of such slots is lawful, justified or proportionate to the identified noise problem. This is an obligation on the Board under Article 6 of the Aircraft Noise Regulation which the Board has failed to comply with. This is set out in further detail in **section 2.10 below**.
- (iii) The Board has also failed to consider the implications of a movement limit in terms of the overall operations at Dublin Airport. For example, it is not clear whether the Board has assessed whether any night slots within a movement limit would not be made available for nighttime operations due to being held back to accommodate flights scheduled for daytime operations but delayed into night hours? It is also unclear whether the Board has assessed the position of movements (in terms of being counted in a nighttime movement limit) which hold a daytime slot but end up operating during the night period due to reasons outside of the airlines’ control.

(c) **The ATM cap fails to achieve its stated purpose**

The cap was proposed to minimise a perceived risk of the noise impact assumed in setting the NQS being breached as a consequence of an increase in movements by aircraft in a lower quota count (“QC”) band that are only marginally quieter than those in a higher band. This approach is irrational as imposing a movement limit actually *disincentivises* the adoption of quieter aircraft (in a lower QC band) as the ability to increase movements is a powerful incentive to the use of quieter aircraft overall at an airport. Adopting a strict movement cap takes away any incentive to modernise the fleet more than assumed in setting the QC budget and movement limit. This should be a material consideration before any movement limit is imposed to supplement a QC budget. If this remains a concern of the Board, the only rational approach is to specifically target the level of noise rating permitted for each individual aircrafts at issue. This is set out in further detail in **section 3** below.

(d) **The ATM cap calculations are manifestly incorrect**

Without prejudice to all of the above, the Board’s calculations for the ATM cap are manifestly incorrect. The Board’s proposal reduces the consented volume of night flying by around 30% compared to what was permitted under the original conditions

imposed on the Northern Runway which the NQS is intended to replace. The reduction compared to the already scheduled number of movements at night is significantly greater. It is self-evident that this renders the NQS meaningless. If, notwithstanding the above analysis, the Board insists that a cap is required, the absolute minimum limit that could be imposed is 31,882 per annum consistent with the basis of calculation of the NQS. The correct calculations underpinning this minimum limit are set out in **section 3** below.

**(e) The ATM cap is entirely disproportionate**

The ATM cap will adversely impact millions of consumers. The proposed cap will lead to significantly less connectivity for consumers through fewer routes and reduced frequency on existing routes. Ryanair estimates that reduced frequencies would be required on 88 of our summer routes and 73 of our winter routes. The total loss of revenue for Ryanair as a direct result of this would be **in excess of €300,000,000.**

**1. The ATM is not necessary to achieve the NAO**

- 1.1 The Board's analysis (and the external noise consultant report which underpins it) fails to take into account that the effect of a small increase in the number of people exposed to aircraft noise above 55 dB L<sub>night</sub> when consented developments are included, under one of the desired NAO outcomes, is mitigated by noise insulation provided as a consequence of mandatory conditions attached to the relevant permissions and/or in accordance with the Residential Sound Insulation Grant Scheme (RSIGS).
- 1.2 In these circumstances and given that the evidence is that the number of people highly sleep disturbed or highly annoyed will reduce, ANCA correctly took mitigation into account when considering whether the NAO was achieved overall and considered it was. It is clear there is no scenario in which ATM was required and there was no lawful basis for the Board to have imposed it.
- 1.3 The Board therefore acted ultra vires in attaching such operational restrictions in circumstances where the NAO had been achieved.

**2. The ATM cap is contrary to the Aircraft Noise Regulation**

- 2.1 The Board has failed to comply with the requirements of the Aircraft Noise Regulation.
- 2.2 This instrument is transposed in Ireland by the Aircraft Noise (Dublin Airport) Regulation Act 2019 (the "**2019 Act**"). However, as with all EU regulations, the Aircraft Noise Regulation is directly effective without transposition.

***Failure to consider other available measures***

- 2.3 Firstly, the proposed ATM cap is more restrictive than is necessary to achieve the NAO. For the reasons set out above, there is no basis or need for the ATM cap in order to achieve the NAO. However, in circumstances where the Board considered that further measures *were* required, it was obliged to consider other measures first and to only apply an operational restriction (i.e. the ATM cap) where other available measures were



found to not be sufficient. The Board's failure to do so is a breach of Article 5 of the Aircraft Noise Regulation.<sup>1</sup>

- 2.4 The Aircraft Noise Regulation requires that, when noise-related action<sup>2</sup> is taken, the following combination of available measures must be considered, with a view to determining the most cost-effective measure or combination of measures:
- (a) the foreseeable effect of a reduction of aircraft noise at source;
  - (b) land-use planning and management;
  - (c) noise abatement operational procedures; and
  - (d) "not applying operating restrictions as a first resort, but only after consideration of the other measures of the Balanced Approach."<sup>3</sup>
- 2.5 Moreover, the measure or combination of measures adopted "shall not be more restrictive than is necessary in order to achieve the environmental noise abatement objectives set for that airport."<sup>4</sup>
- 2.6 The Inspector recommended an ATM cap without identifying or assessing the effectiveness of other available mitigation measures, or less restrictive operating restrictions, to address the purported impact on sleep disturbance (e.g. para. 12.2.58 – 12.2.60). Nor did the Inspector consider the wider effects on the European air transport network as required by the Aircraft Noise Regulation.
- 2.7 By comparison, ANCA's Regulatory Decision Report appropriately considered the range of available measures consistent with the Balanced Approach (section 5.4 and 5.5) and included a detailed assessment of all relevant mitigation measures and operational restrictions (section 7.6). An ATM cap was assessed in this context as follows:

*"A movement cap is a simple and transparent way of restricting aircraft operations for noise reasons. It is also a more straightforward measure to manage with respect to compliance. However, a movement limit does not take into account the noise being generated by the aircraft themselves. This means that a G0 aircraft is treated in the same manner as a G1 aircraft. There are therefore no incentives for airlines to introduce quieter aircraft."*

*"The NAO set by ANCA seeks to reduce aircraft noise in the context of the sustainable development of Dublin Airport. As such, a movements cap does not necessarily provide for long-term operational flexibility. With sustainability in mind, ANCA's view is that operating restrictions which are set for Dublin Airport should take the form of noise-related limits, rather than blanket restrictions on the aircraft themselves such is the case with a movement limit. A noise quota scheme will have the effect of limiting aircraft movements"*

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<sup>1</sup> As transposed by section 9 the 2019 Act. See also recital 10 of the Aircraft Noise Regulation, which states "Noise-related operating restrictions should be introduced only when other Balanced Approach measures are not sufficient to attain the specific noise abatement objectives."

<sup>2</sup> Meaning "any measure that affects the noise climate around airports, for which the principles of the Balanced Approach apply, including other non-operational actions that can affect the number of people exposed to aircraft noise" (per Article 2(5) of the Aircraft Noise Regulation).

<sup>3</sup> Article 5(3) of the Aircraft Noise Regulation, transposed by section 9(3) of the 2019 Act.

<sup>4</sup> Article 5(6) of the Aircraft Noise Regulation, transposed by section 9(7)(a) of the 2019 Act.

*but within the scope of scheduling aircraft within an overall 'noise budget'. This is considered a more preferable form of restriction and one which aligns better with the wider sustainability aspects of the NAO. For these reasons, a movement limit which seeks to replace an existing movements limit has not been considered.” (Section 7.6.6.)*

2.8 ANCA’s Regulation 598 Assessment similarly states:

*“Whilst a cap on nighttime aircraft movements is a straightforward and transparent way of restricting aircraft operations, it does not consider the noise and associated effects of aircraft operation. Furthermore, the noise assessment determined that a simple cap on aircraft movements does not align with wider sustainability aspects of the NAO (i.e., allowing the airport flexibility to grow whilst managing the impact of noise). For this reason, the noise quota does not include a movement limit.*

*“If a movement cap is included as an operating restriction in addition to a noise quota count, there may not be an incentive for the use of quieter aircraft as the movement cap might be achieved before the noise quota count has been used. Conversely, if the noise quota count is reached before the movement cap is achieved, there is no benefit gained, from a noise reduction perspective, of having a movement cap”.*

2.9 ANCA’s assessments note that an operational restriction is a final resort. It (correctly) disregarded any need for an ATM cap on the basis that such a measure:

- (a) is not well aligned with the wider sustainability aspects of the NAO, and
- (b) does not incentivise the use of quieter aircraft.

Neither the Inspector, nor the Vanguardia Report, engaged with this analysis or provided any adequate reasons for departing from it.

#### ***Failure to undertake a cost effectiveness assessment***

2.10 The proposed ATM cap would limit or reduce the operational capacity of Dublin airport and is therefore an “operating restriction” as defined by the Aircraft Noise Regulation:

*“‘operating restriction’ means a noise-related action that **limits access to or reduces the operational capacity of an airport**, including operating restrictions aimed at the withdrawal from operations of marginally compliant aircraft at specific airports as well as operating restrictions of a partial nature, which for example apply for an identified period of time during the day or only for certain runways at the airport” (per Article 2(6)).*

2.11 Where a new operating restriction may be required, the Board is obliged:

- (a) to apply the method, indicators and information in Annex I of the Aircraft Noise Regulation “*in such a way as to take due account of the contribution of **each** type of measure under the Balanced Approach, **before operating restrictions are introduced**”.*<sup>5</sup> As set out above, the Board has failed to do this; and

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<sup>5</sup> Article 6(2)(a) of the Aircraft Noise Regulation.

- (b) to assess the cost-effectiveness of any new operating restriction in accordance with Annex II.<sup>6</sup>
- 2.12 Per Annex II of the Aircraft Noise Regulation, the required cost effectiveness assessment involves the following:
- (a) Due account **must** be taken of the following elements, to the extent possible, in quantifiable terms:
    - (i) the anticipated noise benefit of the envisaged measures, now and in the future;
    - (ii) the safety of aviation operations, including third-party risks;
    - (iii) the capacity of the airport; and
    - (iv) any effects on the European aviation network.
  - (b) In addition, competent authorities **may** take due account of the following factors:
    - (i) the health and safety of local residents living in the vicinity of the airport;
    - (ii) environmental sustainability, including interdependencies between noise and emissions; and
    - (iii) any direct, indirect or catalytic employment and economic effects.
- 2.13 ANCA's decision did not have the effect of limiting capacity below the current capacity and, as such, the requirement to undertake a cost effectiveness assessment by reference to Annex II of the Aircraft Noise Regulation was not engaged.
- 2.14 However, in circumstances where the Board is now proposing an aircraft movement limit that will materially reduce the number of night flights, any assessment of the cost effectiveness of such a measure would require overt assessment of the above factors. It is highly relevant that these require consideration of not just noise benefits and the safety of airport operations but also "*the capacity of the airport*" and "*any effects on the European aviation network*". This would therefore require analysis of the effect on existing airline slots and, in particular, whether the inevitable removal of such slots is lawful, justified or proportionate to the identified noise problem. No such assessment was carried out. Such an assessment would also potentially require consideration of the same issues as have recently been referred to the CJEU by the High Court in the well-publicised passenger cap litigation which has resulted in an EU Court of Justice reference on 11 December 2024 (see below paras 6 and 7).
- 2.15 The Board's failure to failure to carry out this assessment properly or at all is a breach of Article 6 of the Aircraft Noise Regulation.

***Failure to consider operational impacts of a movement limit***

- 2.16 The Board has also failed to consider the implications of a movement limit in terms of the overall operations at Dublin Airport. For example, it is not clear whether the Board has assessed whether any night slots within a movement limit would not be made

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<sup>6</sup> Article 6(2)(c) of the Aircraft Noise Regulation.

available for nighttime operations due to being held back to accommodate flights scheduled for daytime operations but delayed into night hours? It is also unclear whether the Board has assessed the position of movements (in terms of being counted in a nighttime movement limit) which hold a daytime slot but end up operating during the night period due to reasons outside of the airlines' control.

- 2.17 The Board's failure to consider the operational implications of a movement limit is irrational and in breach of its duties under the Aircraft Noise Regulation to not apply operational restrictions as a first resort in the absence of the application of the Balanced Approach.

### 3. **The ATM cap fails to achieve its stated purpose**

- 3.1 A particular concern of the Board's Inspector appears to have been with the banding of the QC counts and the potential for more, rather than less, aircraft to be towards the top end of each dB band, as highlighted in the Vanguardia Report.
- 3.2 It is notable, however, that despite the focus on awakenings and the noise level of individual aircraft, the Inspector ultimately did not address these concerns by proposing additional supplementary conditions on the noise of individual aircraft. Rather the Inspector recommended a movement limit to be operated in tandem with the QC budget with a view managing the risk in terms of the frequency of additional awakenings.
- 3.3 This approach is irrational in circumstances where a movement limit does not itself address the risk of aircraft being at the noisier end of each QC band.
- 3.4 On the contrary, applying a movement limit in tandem with a QC budget potentially has perverse effects. If the Inspector's intention was to ensure that noisier aircraft than assumed in the noise modelling could not operate at night and give rise to additional sleep disturbance, imposing a movement limit actually *disincentivises* the adoption of quieter aircraft (in a lower QC band) which are less likely to lead to additional sleep disturbance. This should be a material consideration before any movement limit is imposed to supplement a QC budget.
- 3.5 A QC budget on its own provides incentives for airlines to introduce quieter aircraft in order to allow more movements within the budget. Hence, the application of a movement cap prevents these further noise improvements from being made.
- 3.6 To the extent that the Inspector was seeking to prevent noise from individual aircraft being worse than modelled, the imposition of a movement cap may have the opposite effect at least in terms of the number of movements by relatively noisier aircraft as the incentive properties of a QC budget are weakened.
- 3.7 If the Board's intention was to ensure that noisier aircraft could not operate at night and give rise to additional sleep disturbance, the only rational approach is to specifically target the aircrafts at issue.

### 4. **The calculations are manifestly incorrect**

- 4.1 For the reasons set out above, it is clear that an ATM cap is not necessary to achieve the NAO and its imposition by the Board is contrary to the Aircraft Noise Regulation. In addition, the reasons for imposing the ATM cap are irrational in circumstances

where the cap cannot achieve the purpose for which it was set (i.e. limiting noisier aircraft operating at night) and so, even if further measures are required, an ATM cap is not appropriate.

4.2 Without prejudice to all of the above, the Board's calculations for the ATM cap are manifestly incorrect. There is considerable confusion in the Inspector's Report on this issue and the imposition of the cap as proposed would mean a material reduction in summer flights, contrary to the explicit intention of the Inspector to "*allow c. 100 aircraft movements per night during the 92-day summer busy period*" (para. 12.4.52).

4.3 There are two fundamental flaws in the Inspector's calculation:

- (a) The Inspector considered that the 92-day noise assessment period constituted the entirety of the summer season. However, the summer scheduling period is in fact 30 weeks<sup>7</sup> (as correctly referenced by the Inspector at para. 12.4.48). The proposed 13,000 limit would equal c. 35 movements a night on average over the year. On the basis that 70% of nighttime activity happens in the 7-month summer scheduling season (210 days), this would reflect 43 movements a night in summer (and less in winter). When compared to the current 65 per night condition, the Board's proposal reduces the consented volume of night flying by more than 30%.
- (b) The QC budget of 16,260 would accommodate 31,882 aircraft movements annually within the 8-hour night period, which is an annual average of approximately 87 flights per night over the year (87.58) (para. 12.4.29). The Inspector considered that this figure should be applied for the 92-day summer season. However, because there are fewer movements in winter than in summer, the *annual* average (87) will necessarily be lower than the average number of movements over the summer season (106), which in turn will necessarily be lower than the average number of movements over the 92-day noise assessment period (114), and which in turn will be lower than the number of night movements on a busy summer day that represents one of the top 30 busiest days in the year (133).

As is evident from paras. 12.4.30 and 12.4.48, these different figures caused considerable confusion in the Inspector's report. Whereas the Inspector interpreted the numbers as being inconsistent, they represent different metrics for the same assumptions as to night movements consistent with a QC budget of 16,260.

4.4 The calculation made by the Inspector is set out below alongside a corrected calculation, which highlights the logical inconsistency in the Inspector's approach.

|   | Inspector's calculation | Correct calculation |
|---|-------------------------|---------------------|
| QC Budget                                 | 16,260                  | 16,260              |
| Annual Movements 8-hour night             | 31,882                  | 31,882              |
| Annual Average Movements per night        | 87                      | 87.6                |
| Summer Season Average Movements per night | 87                      | 106                 |
| 92 day Average Movements per night        | 87                      | 114                 |
| Busy Day Movements per night              | 87                      | 133                 |

<sup>7</sup> In some years, there are 31 weeks in the summer scheduling season.

|   |         |          |
|---|---------|----------|
| Length of summer season                         | 92 days | 210 days |
| Total summer season movements                   | 8,004   | 22,318   |
| Proportion of annual movements in summer season | 70%     | 70%      |
| Required Limit                                  | 11,434  | 31,882   |

- 4.5 Having erroneously made an estimate of 11,434 annual aircraft movements as being relevant for the 8-hour night period, the Inspector then adopted an estimate of 13,000 annual movements at night (para. 12.4.52), stating that this is equivalent to “*the proposed aircraft movements in the applicant’s EIAR which is 13,000 per year*”. However, it is clear from Table 13-1 of the Supplementary EIAR that this represents the increase in total (day and night combined) annual aircraft movements overall if the current conditions are replaced by the NQS. The Inspector goes on to further misinterpret this figure:

- (a) at para. 12.4.48 assuming it is the increase in the number of movements at night only under the NQS; or
- (b) at para. 12.4.52 assuming this is the total number of movements at night assessed in the EIAR.

These are fundamental mistakes and simply wrong.

- 4.6 The Inspector’s confusion about QC budgets and movement limits is also evident in para. 12.4.49 where the Inspector seeks to relate the low estimate of the number of annual night movements at Dublin to the annual night movement limit at Gatwick of 14,450. The Inspector seeks to take comfort from the similarity, but the Gatwick quota relates to a 6.5 hour night period (23.30 to 06.00) and so is necessarily significantly lower than an equivalent budget that would be required for an 8 hour period, particularly because 06.00 to 07.00 is one of the busiest periods at Gatwick. Hence, the two figures are not comparable and any movement limit relating to an 8-hour period, as proposed for Dublin, must necessarily be significantly higher than that for 6.5 hours only.
- 4.7 The Inspector goes on to note that, while the movement limits would be similar on her calculations, the quota count budgets are very different (16,260 for Dublin compared to 6,935 for Gatwick associated with an aircraft movement limit of 14,450). On the Inspector’s calculation, the average QC per night movement at Dublin in future would be 1.42, whereas at para 12.4.28 it is clearly stated to be assumed to be 0.51, which is very similar to the implied figure of 0.48 QC points per night movement at Gatwick based on the relationship between the QC budget and the annual movement limit. Properly considered, this should have provided the Inspector with comfort that the relationship between an 8-hour NQS of 16,260 and a movement limit of 31,882 movements at night (which we understand should accommodate historic slot rights) was robust and appropriate.
- 4.8 As outlined above, the Board’s proposed 13,000 limit would equal c. 35 movements a night on average over the year with 43 movements a night in summer and less in winter. This is a **reduction in the consented volume of night flying by more than 30% and an even greater reduction compared to the number of such movements currently operated and holding historic slot rights.**
- 4.9 Constraining nighttime operations to no more than 43 a night on average over the 3 busiest summer months (92 days) would result in the inevitable removal of based aircraft from the airport as it would be impossible to utilise them efficiently and in line

with passenger demand. The proposed reduction in night operations would necessarily have a devastating impact on based airlines as the operation of whole lines of flying would be rendered non-viable if aircraft could not return to base in the night period and/or depart first thing in the morning between 06.00 and 07.00. Operations by c. 30 overnighthing/based aircraft could be lost and could result in the overall passenger throughput of Dublin being reduced to c. 23 million passengers per annum, with the consequent loss of jobs and economic value. Such a reduction in throughput would inevitably result in a substantial loss of connectivity to and from Ireland in contravention of national policy.

- 4.10 Such a constraint on nighttime operations would also inevitably bring the rights accrued by airlines in accordance with Article 8(2) of the Slot Regulation into play, as outlined above in the Introduction. For the reasons set out above, our position is that it would be unlawful, disproportionate, irrational and inappropriate to finalise the Draft Decision on the basis of a 13,000 annual movement cap at nighttime. If the Board were to take such steps, Ryanair will take the appropriate legal action.
- 4.11 These estimates are indicative of the type of analysis that the Inspector should have undertaken in considering the cost-effectiveness of a measure aimed at reducing sleep disturbance for a small number of individuals compared to the adverse impact on millions of consumers. The proposed cap will lead to significantly less connectivity for consumers through fewer routes and reduced frequency on existing routes. Ryanair estimates that reduced frequencies would be required on 88 of our summer routes and 73 of our winter routes. The total loss of revenue for Ryanair as a direct result of the proposed cap – because of decreased aircraft utilisation and the consequent increased unit cost / decreased economic activity over which to spread our fixed costs – would be **in excess of €300,000,000.**
5. Finally, it is not clear the extent to which the Board has considered the impact of the Draft Decision on the rights of airlines accrued under Council Regulation (EEC) No. 95/93 of 18 January 1993 on common rules for allocation of slots at Community Airports, as amended (the **“Slot Regulation”**). The implementation of the Draft Decision as it stands, and the implicit reductions in operations that may be entailed, would bring the rights accrued by airlines in accordance with Article 8(2) of the Slot Regulation into play. On 11 December 2024, the High Court decided<sup>8</sup> to refer questions to the Court of Justice of the European Union (CJEU) related to the ability of a Member State to determine airport capacity resulting in the non-allocation of airport slots to which airlines have historic rights under Article 8(2) of the Slot Regulation. The CJEU reference followed a stay granted by the High Court on 4 November 2024 of the seat cap contained in the IAA’s IATA Summer 2025 determination on coordination parameters at Dublin airport, which would have resulted in airline’s historic slot rights being interfered with.
6. The impact of the Draft Decision may bring about a similar factual and legal situation to the aforementioned passenger cap issue at Dublin Airport, which has resulted in multiple judicial review proceedings on novel areas of EU law that have been referred to the CJEU. It is therefore Ryanair’s position that it would be unlawful, disproportionate, irrational, and inappropriate for the Board to implement the Draft Decision as it stands, given the impacts on airport and airline operations and historic slot rights accrued under Article 8(2) of the Slot Regulation, and pending CJEU reference under Article 267 TFEU.

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<sup>8</sup> In the context of the well-publicised judicial review proceedings relating to the Irish Aviation Authority’s consideration of the Board’s 2007 planning permission for Terminal 2 which set the annual capacity of the airport at 32 million passengers per annum.

In the circumstances, we urge the Board not to impose an ATM cap as set out in the Draft Decision. For the reasons detailed above, doing so would be irrational, unnecessary and would cause unjustified irreparable harm to Ryanair.

Our letter is accompanied by a cheque for €50 for the submission fee.

Yours sincerely,



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Eoin Kealy  
***Director of Regulatory & Competition***