

**By email only to: [licenceappealsproject@cma.gov.uk](mailto:licenceappealsproject@cma.gov.uk)**

17 August 2022

Dear Ms Khairul Anuar,

We write further to the CMA's consultation on Airport Appeals rules and guidance and thank you for the opportunity to provide feedback.

Given the untested nature of the appeals regime under the Civil Aviation Act 2012 our comments are limited at this stage, in our view there is likely to be merit in re-considering the rules and guidance subsequent to the first full appeal under the regime.

#### Role of Interveners

We note that it is likely that any appeal involving Heathrow would likely also involve a number of airlines as interveners/appellants. It seems probable that there will be considerable overlap between some airlines' cases and we would therefore welcome any steps taken to ensure these are efficiently dealt with during an appeal.

#### Costs position

We note the CMA's position of using *BT v Ofcom* as the starting point for inter partes costs. We would also highlight the position of the Court of Appeal, and CAT, in *Flynn Pharma*<sup>1</sup> in our view it is important to ensure that the balance is correctly maintained regarding costs and that, in the majority of cases, it is appropriate for costs to follow the event.

We also note that the CMA states it would not normally allow for costs incurred prior to publication of the licence modification decision. Given the very tight timeframes involved in preparing for any appeal it will inevitably be the case that significant cost is incurred prior to the Final Decision. We submit that costs incurred prior to licence modification may, correctly, be recoverable where they reflect substantive issues which were raised in response to consultations and become a matter under appeal.

If you have any questions regarding the content of this letter, please contact ☒ or ☒.

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Yours sincerely,

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<sup>1</sup> [2020] EWCA Civ 617