

**HEATHROW AIRPORT LIMITED**

**Appellant**

and

**CIVIL AVIATION AUTHORITY**

**Respondent**

**BRITISH AIRWAYS PLC  
DELTA AIR LINES, INC.**

**Applicants to Intervene**

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**DECISION ON PERMISSIONS TO INTERVENE**

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1. On 11 May 2023, the CMA granted permission to each of British Airways plc (**BA**), Delta Air Lines, Inc. (**Delta**), Heathrow Airport Limited (**HAL**) and Virgin Atlantic Airways Limited to appeal against the Civil Aviation Authority's (**CAA**) H7 Final Decision of 8 March 2023 (the **Decision**). Permission to appeal was granted subject to the conditions that certain common grounds of appeal are considered together across appellants.
2. On the same date, the CMA granted leave for submission of applications for permission to intervene in those appeals by no later than 5pm on 22 May 2023.
3. On 22 May 2023, BA and Delta each separately applied for permission to intervene in the appeal brought by HAL (**HAL's Appeal**) on the following grounds:
  - (a) regulatory asset base (RAB) adjustment (ground 1 of HAL's Appeal);
  - (b) Cost of Equity (Asset beta) and Cost of debt (Embedded debt) (grounds 2 and 3 of HAL's Appeal);
  - (c) AK Factor (ground 4 of the HAL's appeal); and

(d) Capex Incentives (ground 5 of the HAL's appeal).

4. These grounds of appeal relate to Joined Ground A and Joined Ground B, as well as Ground D and Ground E as further detailed in the CMA's decisions on permission to appeal of 11 May 2023. BA and Delta both propose to intervene in HAL's Appeal in relation to these grounds of appeal in support of the CAA (ie opposing HAL in relation to the specified grounds).

### ***Statutory requirements***

5. Under paragraph 4(1) of Schedule 2 to the Civil Aviation Act 2012 (the **Act**), where an application is made under paragraph 1 of that schedule for permission to appeal against a decision, an application for permission to intervene in the appeal may be made to the CMA by another person who would be entitled to appeal against the decision.
6. Under paragraph 4(2) of that schedule, an application for permission to intervene may be made before the end of the period of one week beginning with the day of publication of the CMA's decision to grant permission to appeal against the decision. Under paragraph 4(3) of that schedule an application for permission to intervene may be made after the end of that period only with the leave of an authorised member of the CMA.
7. Under paragraph 5(1) of the schedule referenced above, the decision of the CMA on an application for permission to intervene is to be taken by an authorised member of the CMA. Under paragraph 5(2) of that schedule, permission to intervene may be granted only if the authorised member is satisfied that allowing the applicant to intervene is necessary or desirable for the proper resolution of the appeal.
8. Under sections 30(2) and 30(3)(b) of the Act, the CMA must have regard to the matters in respect of which duties are imposed on the CAA by section 1 of the Act when deciding an application for permission to intervene in an appeal.

### ***Decision on permission***

9. The requirements of paragraph 4(1) of the schedule referenced above are met as each of BA and Delta has already been granted permission to appeal the Decision. As such, the CMA has already decided that each of BA and Delta is entitled to appeal against the Decision.
10. The requirements of paragraphs 4(2) and 4(3) of the same schedule have been met as each of BA and Delta submitted its application for permission to intervene by 5pm on 22 May 2023 (pursuant to the extension of the deadline

for applications for permission to intervene I set as the authorised member of the CMA on 11 May 2023).

11. I note that BA's and Delta's applications for permission to intervene included detailed submissions and supporting evidence that is responsive to (and opposes) HAL's Appeal. I note also that on 31 May 2023 the CAA made representations in response to HAL's Appeal under paragraph 19 of Schedule 2 to the Act. I have taken account of the contents of each.
12. Having considered (i) the requirements of paragraph 5(2) of the schedule; (ii) the contents of the applications for permission to intervene; and (iii) the CAA's representations on HAL's Appeal, and having regard to the matters in respect of which duties are imposed on the CAA by section 1 of the Act, I am satisfied that – subject to the conditions in paragraph 13 below – allowing BA and Delta to intervene in HAL's Appeal is necessary or desirable for its proper resolution. BA's and Delta's interests are materially affected by the Decision and the outcome of HAL's Appeal. Through their interventions, BA and Delta are able to address matters raised by HAL in its appeal that they would otherwise not have the opportunity to do. The interventions will assist the CMA in the proper resolution of the appeal in that their contents – to the extent permitted – advance submissions and evidence that would not otherwise be before the CMA in that appeal. I am also satisfied that allowing both interventions in HAL's Appeal would assist the CMA to further the overriding objective of the CMA's appeal rules (Rule 4.1 of CMA172).
13. As such, I hereby grant each of BA and Delta permission to intervene in HAL's Appeal for the purpose of opposing HAL's Appeal on the above specified grounds subject to the following conditions (as provided for in paragraph 5(3) of the schedule referenced above):
  - (a) BA's and Delta's interventions in HAL's Appeal are limited to the submissions each made to the CMA respectively in its Notice of Intervention and supporting documents dated 22 May 2023;
  - (b) BA's and Delta's interventions are permitted to the extent that they do not duplicate any submissions made by the CAA in its representations in response to HAL's Appeal;
  - (c) BA's and Delta's interventions are permitted to the extent that they do not raise any additional grounds and/or matters for consideration that have not already been brought before the CMA in HAL's Appeal;
  - (d) BA's and Delta's interventions are permitted to the extent that they do not relate to any matter to which the CMA must not have regard in its determination of HAL's Appeal; and

(e) any additional submissions in relation to BA's and Delta's interventions in HAL's Appeal - if requested by the CMA - are made jointly by BA and Delta.

14. Notwithstanding the above, the CMA may in due course issue any additional written directions as required regarding the further involvement of BA and Delta as interveners in HAL's Appeal.

Kirstin Baker  
*Authorised member of the CMA*

5 June 2023