

**BRITISH AIRWAYS PLC
DELTA AIR LINES, INC.
VIRGIN ATLANTIC AIRWAYS LIMITED**

Appellants

and

CIVIL AVIATION AUTHORITY

Respondent

HEATHROW AIRPORT LIMITED

Applicant to Intervene

DECISION ON PERMISSIONS TO INTERVENE

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 (**VAA**) 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, HAL applied for permission to intervene in the above-referenced appeals brought by each of British Airways, Delta and VAA (the **Airline Appeals**) in relation to the following grounds:
 - (a) the passenger forecast/ forecasting grounds (ground 1 of each of the above-referenced appeals);
 - (b) the regulatory asset base (RAB) adjustment grounds (ground 2 of the BA appeal, ground 3 of the Delta appeal and ground 3 of the VAA appeal);

- (c) the weighted average cost of capital grounds (ground 3 of the BA appeal, ground 3 of the Delta appeal and Ground 2 of the VAA appeal).
4. These grounds of appeal relate to Joined Ground C, Joined Ground A and Joined Ground B and as further detailed in the CMA's decisions on permission to appeal of 11 May 2023. HAL requested permission to intervene in the Airline Appeals in relation to these grounds of appeal in support of the CAA (ie opposing the above-named appellants 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 HAL has already been granted permission to appeal the Decision. As such, the CMA has already decided that HAL 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 HAL 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 HAL's application for permission to intervene included detailed submissions and supporting evidence that is responsive to (and opposes) the Airline Appeals. I note also that on 31 May 2023 the CAA made representations in response to the Airline Appeals 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 application for permission to intervene; and (iii) the CAA's representations on the Airline Appeals, 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 14 below – allowing HAL to intervene in the Airline Appeals is necessary or desirable for their proper resolution. HAL's interests are materially affected by the Decision and the outcome of the Airline Appeals. Through its intervention, HAL is able to address matters raised by the airlines in their appeals that it would otherwise not have the opportunity to do. The intervention will assist the CMA in the proper resolution of those appeals in that its contents – to the extent permitted – advance submissions and evidence that would not otherwise be before the CMA in those appeals. I also consider that, as the licence holder, it is necessary or desirable for the proper resolution of the Airline Appeals that the CMA hear from HAL as to the impact of any potential remedies on HAL's operations. I am satisfied that allowing the intervention application 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 HAL permission to intervene in the Airline Appeals. In accordance with paragraph 5(3) of the schedule referenced above, I grant permission to intervene for the purpose of opposing the appeals in relation to the grounds of appeal specified above.
14. The permission to intervene in the Airline Appeals granted at paragraph 13 above is subject expressly to the following conditions:
 - (a) HAL's intervention is limited to the submissions made to the CMA in its Notice of Intervention and supporting documents dated 22 May 2023;

- (b) HAL's intervention is permitted to the extent that it does not duplicate any submissions made by the CAA in its representations in response to the Airline Appeals;
 - (c) HAL's intervention is permitted to the extent that it does not raise any additional grounds and/or matters for consideration that have not already been brought before the CMA in the Airline Appeals; and
 - (d) HAL's intervention is permitted to the extent that it does not relate to any matter to which the CMA must not have regard in its determination of the Airline Appeals.
15. Notwithstanding paragraph 14 above, the CMA may in due course issue any additional written directions as required regarding the further involvement of HAL in the Airline Appeals.

Kirstin Baker
Authorised member of the CMA

5 June 2023