[2024] IEHC 624

THE HIGH COURT

JUDICIAL REVIEW

[2024/1296 JR]

BETWEEN:

AER LINGUS LIMITED

APPLICANT

AND

THE IRISH AVIATION AUTHORITY

RESPONDENT

AND

DAA PLC AND AIRPORT COORDINATION LIMITED

NOTICE PARTIES

[2024/1299 JR]

BETWEEN:

RYANAIR DESIGNATED ACTIVITY COMPANY

APPLICANT

AND

THE IRISH AVIATION AUTHORITY

RESPONDENT

AND

DAA PLC AND AIRPORT COORDINATION LIMITED

NOTICE PARTIES

[2024/1297 JR]

BETWEEN:

AIR TRANSPORT ASSOCIATION OF AMERICA, INC. (TRADING AS AIRLINES FOR AMERICA),

DELTA AIR LINES, INC.,

JETBLUE AIRWAYS CORPORATION AND

UNITED AIRLINES, INC.

APPLICANTS

AND

THE IRISH AVIATION AUTHORITY

RESPONDENT

AND

AIRPORT COORDINATION LIMITED,

RYANAIR DESIGNATED ACTIVITY COMPANY,

AER LINGUS LIMITED AND

EMERALD AIRLINES IRELAND LIMITED

NOTICE PARTIES

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 4th day of November, 2024

INTRODUCTION

1. This is a ruling on applications for stays that have been brought by the respective applicants in three sets of judicial review proceedings. In each case, the applicant is seeking orders placing a stay on the implementation or operation of what is described as the Passenger Air Traffic Movement (*PATM*) seat cap determined by the Irish Aviation Authority (*IAA*) in its "*Final Decision on Summer 2025 Coordination Parameters at Dublin Airport"* (*the S25 Decision*). The PATM seat cap operates for the period 30 March 2025 to 25 October 2025, and during that period it caps the number of passengers at Terminals 1 and 2 at Dublin Airport at 25.2 million. In turn, the decision to impose the PATM seat cap took account of certain planning conditions relating to Terminals 1 and 2 at Dublin Airport in two permissions granted to the notice party, daa plc, by An Bord Pleanála, and which require that the combined capacity of the two terminals shall not exceed 32 million passengers per annum unless otherwise authorised by a further grant of planning permission. This is described as the "*32mppa Conditions*".

2. The underlying proceedings do not involve a challenge to the conditions imposed by An Bord Pleanála. Rather, a central (but not the only) argument made by the applicants is that under the legislation that provides for IAA's relevant functions, the IAA is not entitled to have regard to those conditions in making the impugned decisions.

3. The precise wordings of the stays sought differ as between the parties. However, there was no dispute that the stay sought was not in respect of the entire S25 Decision. Instead, the

parties seek a stay on one element – albeit a very important element – within the S25 Decision, the PATM seat cap.

4. It is important to note at the outset that in this ruling the court is dealing with an urgent application for a stay where the substantive proceedings are heavily contested and have not been heard or determined. The court is focused on identifying whether specific elements within the S25 decision should be suspended pending the determination of the proceedings. I have endeavoured to avoid engaging with the substantive matters in dispute. However, to make this ruling clear and comprehensible to the parties and others, it has been necessary to describe some of the legal issues that arise in the proceedings. In no sense does this amount to any finding on or determination of the substantive issues that will fall to be addressed following a full hearing by the High Court.

5. This position – which is not in the slightest bit novel – bears particular emphasis in this application because two of the parties that will be contesting the substantive judicial review proceedings have adopted a pragmatic decision not to contest certain aspects of the stay application. That was an entirely reasonable decision in the circumstances and was directed to ensuring that the application could be addressed in a way that allowed the arguments to be focussed on the important and heavily contested balance of justice issues that must be considered. The reasonable position adopted by those parties does not affect in any way their entitlement to make any of the arguments that they consider appropriate and necessary at the trial of the action.

6. For the reasons set out below the court has concluded that the application for a stay on the PATM seat cap element in the S25 Decision should be stayed pending the determination of the proceedings or further order by the court.

BACKGROUND

7. As explained in more detail below, the challenged decision was published by the IAA on the 10 October 2024 following a process mandated by the relevant regulations, Council Regulation (EEC) 95/93, as amended (*the Slot Regulation*). Pursuant to s. 8(1) of the Aviation Regulation Act 2001, as amended, the IAA is the competent authority In Ireland for the purposes of the Slot Regulation.

8. On the 21 October 2024, the various applicants were granted leave to apply for judicial review seeking to challenge elements in the S25 decision. Related proceedings already had been initiated in relation to an earlier decision addressing the Winter 2024 coordination parameters (*the W24 proceedings*), however this application only concerns the Summer 2025 decision. No stay has been sought in relation to the W24 Decision. The substantive proceedings have been subject to an accelerated timetable to complete the pleadings and the cases are scheduled to be heard in the first week of December 2024.

9. The substantive basis for the litigation is set out in the various statements of grounds and associated affidavits that have been filed and in respect of which the High Court has granted the applicants leave to apply for judicial review. As can be expected the various applications are framed in slightly different ways and with slightly different emphases, but the core issues are essentially similar. The application by the Air Transport Association of America, Inc. (*A4A*),

also addresses arguments specific to those applicants grounded in the asserted interaction between the impugned measures and obligations set out in the US – EU Air Traffic Agreement and the Canada-EU Air Traffic Agreement (*the Open Skies agreements*).

10. It would be fair to observe that even if the proceedings are fully heard as scheduled, the issues are complex, and it is likely that some time will be required for a judgment to be ready. In addition, the applicants are requesting that the court refer certain questions to the CJEU pursuant to Article 267 of the Treaty. If that request is granted, it will have the inevitable effect of meaning that any judgment cannot be finalised until the reference is heard and determined.

11. The urgency attaching to the application arises from the fact that under the relevant regulatory procedures, a certain set of timetabled steps are required to be taken after the making of a final decision on coordination parameters. Airlines plan their schedules and make decisions on fleet management and other matters in advance of each season, and these matters are difficult (and in some cases impossible) to revisit properly as the process advances. The 7 November 2024 is what is known as the *Slot Allocation Deadline*. This is when the notice party, Airport Coordination Limited (*ACL*), will be required to complete the airport coordination and publish a list of confirmed slots by way of a Slot Allocation List (*SAL*). As explained in the various affidavits grounding this application, once the SAL is confirmed and published it will be very difficult to alter.

12. The basis for the stay rests on the contentions made by all the applicants that if a stay is not granted the PATM seat cap will cause them permanent, irreparable harm. While not a matter that can be decided at this point, there appears to be consensus that there is a strong argument that the underlying legislative schemes exclude claims for compensation as against

IAA in cases such as these. Hence, if the applicants succeed in their substantive claims and there is a finding that the PATM seat cap was not lawfully imposed, the substantial financial harm suffered by the applicants cannot be remedied.

13. The applicants also highlight that, over and above the direct financial loss that flows from the imposition of a seat cap for the Summer 2025 season, there will be an infringement of their property rights. While there is a serious issue around the question of how the rights invoked by the applicants properly fall to be characterised as a matter of law, it does not appear to be disputed that pursuant to the Slot Regulation air carriers have a direct statutory entitlement to what are known as *historic slots*. These are described in more detail below, but at a very basic level historic slots amount to an entitlement on the part of airlines to access certain slots that were used in the previous equivalent season. Again, there is a measure of consensus – although this remains to be determined conclusively – that if a stay is not granted it will result in the loss of historic slots for most of the applicant airlines, and that there is no legal mechanism to restore those slots if the airlines succeed in the substantive actions. It is in that broad context that the argument is made that the harm likely to be suffered by the applicants will be permanent, irreversible and not liable to be compensated.

14. The respondent, IAA, the competent national authority for Ireland and the body responsible for the decision under challenge, adopted a neutral position in relation to the application for a stay. The unequivocal position of the IAA was that it intended to defend the substantive proceedings fully, and hence its neutrality on the stay question was not to be taken as any form of concession in relation to the main proceedings. The IAA also, very helpfully, delivered affidavits explaining the regulatory process and identifying from its perspective as regulator the effects of granting and not granting a stay. Significantly the IAA was clear that if

the PATM seat cap element to the S25 decision was stayed, it would still be possible to implement and operate the remaining elements within the overall decision. Likewise, the notice party ACL adopted a neutral stance and helpfully explained in its affidavits that, subject to there being minimal disruption to the timescale within which it was required to operate, it would be able to accommodate a stay on the PATM seat cap in discharging its functions.

15. Accordingly, the main opposition to the stay application did not come from the regulator who made the decision, or from the party that practically implements the allocation of slots, but instead from the notice party, daa plc (*daa*). daa is the owner, operator, and manager of Dublin Airport, and it is the developer who sought and received the grants of planning permission that contained the 32mppa conditions. Its opposition to the stay largely was grounded in a contention that the stay sought by the applicants would lead to a situation in which the planning permission conditions would be breached, that there would be nothing that could be done to avoid or mitigate that outcome by daa, and that in effect the stay would operate as a mandatory order requiring daa to operate Dublin Airport in breach of the 32mppa condition. As such, daa placed very substantial emphasis on the public interest in giving effect to valid requirements of planning law in the State. Helpfully and solely for the purposes of the stay application, daa did not contest the first limb of any injunction test. This position was adopted to facilitate the expeditious hearing of the applications and did not reflect or translate into any concession about the strength of the applicants' substantive cases.

16. These applications were heard by the court on Friday, 1 November 2024. The underlying proceedings have generated extensive materials in relation in each case, and very detailed explanations and evidence are set out in the pleadings. Due to the urgency of the matter, and the need for a prompt ruling, I have endeavoured to summarise the background and core

arguments that have been made as succinctly as possible. I have considered the pleadings to date in the substantive judicial review proceedings, the affidavits filed in the stay applications, together with specific exhibited evidence that was drawn to my attention, as well as the authorities that were identified by the parties. The court's task was assisted considerably by the very thorough, clear and helpful written and oral submissions presented by all parties. A feature of these cases is that the underlying EU legislation has not been the subject of analysis by the CJEU, and the parties did not direct the court to cases where the legislation has been the subject of consideration by national courts in the Member States of the EU.

STATUTORY CONTEXT

17. The legal backdrop to the litigation is that the IAA is the national competent authority which has the function of setting "*coordination parameters*" for Dublin Airport pursuant to the provisions of the Slot Regulation. The Slot Regulation has been amended from time to time since 1993. For the purposes of these applications, the Slot Regulation is concerned with establishing common rules for the allocation of slots at Community airports which have been deemed to be coordinated. Coordinated airports are airports within the EU where, essentially, the demand for facilities outstrips supply and as a result there is a need to regulate their use by air carriers to ensure fairness of access and operational clarity.

18. In broad terms, the Slot Regulation is directed towards ensuring that where capacity is constrained in a Community airport, the available landing and take-off slots are distributed efficiently and fairly. Capacity is constrained at Dublin Airport, and it is designated as a "*level 3*" coordinated airport. The parties did not take issue with the description given by the IAA in its grounding affidavit of the main objectives of the system established by the Slot Regulation:

a. Avoiding excessive airport or airspace congestion or delay by ensuring that the volume of scheduled activity does not exceed the capacity of the various processors (e.g. airspace, runways, terminals, stands).

b. Optimising the use of available capacity by coordinating demand away from oversubscribed time periods into the nearest available periods.

c. Ensuring that access to the airport is made available to air carriers on a fair and non-discriminatory basis, based on a common set of prioritisation rules, thereby facilitating fair competition.

d. Balancing the promotion of airline competition with the requirement for stability and predictability of access to airport infrastructure, allowing airlines to plan operations and to sell tickets to passengers, and so on.

19. In order to land at or take off from Dublin Airport an aircraft operator must have an allocated slot. In Article 2 of the Regulation, a "*slot*" is defined as meaning:

> "*(a)… the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation"*

20. In addition, "*series of slots*" means:

> "*(k)… at least five slots having been requested for the same time on the same day of the week regularly in same scheduling period and allocated in that way or, if that is not possible, allocated at approximately the same time*"

21. One of the IAA's important functions arises under Article 6 of the Slot Regulation: the IAA is required to determine the capacity available for slot allocations – *the coordination parameters* – at Dublin Airport by reference to the "*scheduling period*" which means either the summer or winter seasons as used in the schedules of air carriers (Article 2(d)). "*Coordination parameters*" are defined by Article 2 of the Slots Regulation as:

> "*(m)… the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period, reflecting all technical operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems*."

22. The impugned decision in these cases arises from the exercise of the function provided for in Article 6:

> "*1. At a coordinated airport the Member State responsible shall ensure the determination of the parameters for slot allocation twice yearly, while taking account of all relevant technical, operational and environmental constraints as well as any changes thereto.*
>
> *This exercise shall be based on an objective analysis of the possibilities of accommodating the air traffic, taking into account the different types of traffic at the airport, the airspace congestion likely to occur during the coordination period and the capacity situation.*
>
> *The parameters shall be communicated to the airport coordinator in good time before the initial slot allocation takes place for the purpose of scheduling conferences.*

2. For the purpose of the exercise referred to in paragraph 1, where the Member State does not do so, the coordinator shall define relevant coordination time intervals after consultation of the coordination committee and in conformity with the established capacity.

3. The determination of the parameters and the methodology used as well as any changes thereto shall be discussed in detail within the coordination committee with a view to increasing the capacity and number of slots available for allocation, before a final decision on the parameters for slot allocation is taken. All relevant documents shall be made available on request to interested parties."
[emphasis added]

23. Article 8 addresses the process of slot of allocation, as follows:

"*1. Series of slots are allocated from the slot pool to applicant carriers as permissions to use the airport infrastructure for the purpose of landing or take-off for the scheduling period for which they are requested, at the expiry of which they have to be returned to the slot pool as set up according to the provisions of Article 10*."

24. Significantly, and a matter that the applicants argue give rise to substantive enforceable property rights, Article 8(2) provides for an entitlement on the part of air carriers to the same series of slots if certain conditions are met:

"*2. Without prejudice to Articles 7, 8a and 9, Article 10(1) and Article 14, paragraph 1 of this Article shall not apply when the following conditions are satisfied:*

- *a series of slots has been used by an air carrier for the operation of scheduled and programmed non-scheduled air services, and*
- *that air carriers can demonstrate to the satisfaction of the coordinator that the series of slots in question has been operated, as cleared by the coordinator, by that air carrier for at least 80 % of the time during the scheduling period for which it has been allocated.*

In such case that series of slots shall entitle the air carrier concerned to the same series of slots in the next equivalent scheduling period, if requested by that air carrier within the time-limit referred to in Article 7(1)."

25. It can also be noted that, under Article 10(4), there is what appears to be an exhaustive categorisation of the situations where, when the 80% usage of a series of slots cannot be demonstrated, the slots will not be placed in the slot pool, described as "*Justified Non-Use of Slots*" or *JNUS*. For this application, there appeared to be consensus that if historic slots were lost due to the application of the PATM seat cap, this would not be a situation in which JNUS is applicable and therefore the unused slots would have to return to the slot pool: some of the historic slots to which most of the applicants are entitled under Article 8 will be lost, and there is no mechanism in the Regulation to bring about their return.

26. The Slot Regulation also provides for mandatory processes supporting the core decision making functions. In that regard, Article 3 requires that, before an airport is designated, Member States must carry out a capacity analysis. The analysis is directed to determining any

shortfall in capacity "*taking into account environmental constraints at the airport in question*". The analysis is required to consider various identified options to overcome the shortfall in capacity. Thereafter there is a requirement for consultation with identified stakeholders, including the air carriers that use the airport regularly.

27. The Member State is required by Article 4 to appoint a *schedules facilitator* and / or *airport coordinator*. In this case, the notice party, ACL, is the airport coordinator for Dublin Airport. Once the coordination parameters have been determined by the IAA, ACL is the sole person responsible for the allocation of slots. The airport coordinator is required to act in a neutral, non-discriminatory and transparent way.

28. Finally in this regard, Article 5 requires that each coordinated airport has a "*coordination committee*". Membership of the committee is open to identified bodies including the managing body of the airport concerned and the air carriers using the airport regularly. The tasks of the committee include making proposals concerning or advising the coordinator on the possibilities for increasing the capacity of the airport or for improving its usage, the Article 6 coordination parameters, and "*all questions relating to the capacity of the airport*".

29. Of significance to the matters to be determined in these applications, the Slot Regulation appears to exclude compensation claims in relation to certain specified matters. This exclusion is articulated as follows in Article 8b:

> "*The entitlement to series of slots referred to in Article 8(2) shall not give rise to any claims for compensation in respect of any limitation, restriction or elimination thereof imposed under Community law, in particular in application of the rules of the Treaty relating to air transport. This Regulation shall not*

affect the powers of public authorities to require the transfer of slots between air carriers and to direct how these are allocated pursuant to national competition law or to Articles 81 or 82 of the Treaty or Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings. These transfers can only take place without monetary compensation."

30. In addition, Article 11 provides for complaints and rights of appeal as follows:

"*1. Without prejudice to rights of appeal under national law, complaints regarding the application of Article 7(2), Articles 8, 8a and 10, Article 10a(7), article 14(1) to (4) and Article 14(6) shall be submitted to the coordination committee. The committee shall within a period of 1 month following submission of the complaint, consider the matter and if possible make proposals to the coordinator in an attempt to resolve the problem. If the complaint cannot be settled, the Member State responsible may, within a further 2-month period, provide for mediation by an air carriers' or airports' representative organisation or other third party.*

2. Member States shall take appropriate measures, in accordance with national law, to protect coordinators with regard to claims for damages relating to their functions under this Regulation, save in cases of gross negligence or wilful misconduct".

31. Under the relevant national legislation there is a strong argument that the IAA cannot be the subject of a damages claim arising from its functions under the Slot Regulation.

32. Accordingly, leaving aside the general domestic jurisprudence that restricts the granting of damages against public bodies for ultra vires decisions, the combination of Articles 8b and Article 11 strongly suggests that claims for damages are not available in respect of the discharge of functions under the Slot Regulations.

THE APPLICANTS

33. Aer Lingus is an Irish based airline incorporated in 1936. It operates long haul and short haul flights from Dublin Airport. It is part of the IAG group of airlines. In addition to direct flights, Aer Lingus uses Dublin Airport as a connection hub between Europe and the UK and North America.

34. Aer Lingus contends that it has vested rights in relation to historic slots under Article 8(2) of the Slot Regulation, and it estimates that it holds approximately 35-40% of all historic slots at Dublin Airport. The estimated loss of revenue flowing from the two decisions is €84 million, with that figure increasing for every season thereafter if the PATM seat cap remains in place.

35. Ryanair is an Irish licensed airline that was incorporated in 1984. It describes itself as providing frequent point to point routes, mainly within Europe. It contends that in the summer 2024 season it operated 122 routes from Dublin Airport, where it bases approximately 1,700 employees. Ryanair utilises historic and pool slots; it estimates that it holds approximately 52 - 53% of all available historic slots at Dublin Airport. In total, it states that under Article 8(2) of the Slot Regulation it is entitled to 1,816 weekly slots during the summer season and 1,544

weekly slots during the winter season. It asserts that access to these slots is critical to Ryanair's business at Dublin Airport and the routes that use Dublin Airport.

36. The applicants in the Air Transport Association of America Inc proceedings describe themselves as "*A4A*". This is an association of airlines based in the USA with an associate member, Air Canada, that is based in Canada. From that association, the airlines Delta, JetBlue, United Airlines, American Airlines and Air Canada operate flights between the USA or Canada and Ireland. In their grounding affidavits, A4A asserts that the Dublin-North America route is important in itself, but also as part of a wider network of routes. In that regard an attractive feature of Dublin Airport as a departure point is the availability of pre-clearance facilities, which are not available in other European capitals. A4A members are members of the Dublin Airport coordination committee, although the association itself is not a member.

THE DECISION

37. As noted above, the decision under challenge was made on the 10 October 2024 and is entitled "*Final Decision on Summer 2025 Coordination Parameters at Dublin Airport*". The decision was adopted under the powers in the Slot Regulation and under the Aviation Regulation Act 2001, as amended. As noted, the Summer 25 Decision imposed a PATM seat cap of 25.2 million for the summer 2025 season, which commences on the 30 March 2025.

38. The 32mppa conditions are a function of two separate planning permissions applied for by daa in 2006 in respect of proposed developments at Terminal 2 and an extension to Terminal 1. The permissions were granted by Fingal County Council on the 25 October 2006 (Terminal 2) and the 19 April 2007 (Terminal 1). Following an appeal process, by decisions dated the 29

August 2007 (Terminal 2) and the 10 January 2008 (Terminal 1), An Bord Pleanála granted permission for the proposed developments. Each of the permissions contained conditions that were framed in identical terms:

> "*The combined capacity of Terminal 2 as permitted together with Terminal 1 shall not exceed 32 million passengers per annum unless otherwise authorised by a further grant of planning permission."*

39. The reason given was:

> "*Having regard to the policies and objectives of the Dublin Airport Local Area Plan and the capacity constraints (transportation) at the eastern campus*".

40. Subsequently, in 2018 there were attempts to amend the conditions, and, in 2019 a section 5 referral of questions to An Bord Pleanála in relation to the Terminal 2 permission. These did not produce any change to the conditions. While there was discussion about intended applications to seek permission and discussion about the way in which the planning landscape has evolved since 2007/2008, particularly having regard to updates to the Dublin Airport Local Area Plan, the position remains that the planning conditions remain extant and valid.

41. It appears to be common case that in 2018 the IAA first raised the question with daa of whether the 32mppa conditions might be a relevant constraint for the purpose of coordination parameters.

42. In February 2024, there was an EGM of the Coordination Committee at Dublin Airport to discuss the 32mppa conditions, following which a sub-committee was established to explore solutions. The sub-committee did not reach any definitive conclusion. The Coordination

Committee met on the 28 March 2024 to discuss the parameters for the Winter 2024 – 2025 season. On the 11 April 2024, the IAA published its draft decision on the winter 2024 coordination parameters. This was the first occasion that the IAA formally proposed the PATM seat cap approach. Following submissions, the IAA published the *Final Decision on Winter 2024 Coordination Parameters* at Dublin Airport. The Winter 2024 Decision was the first time that IAA relied on the 32mppa as a "*relevant constraint*" under the Slot Regulation, and it imposed a PATM seat cap of 14.4mppa for the Winter 2024. That decision is the subject of separate challenges brought by various airlines and daa.

43. The Summer 2025 Decision was preceded by meetings of the Coordination Committee and various submissions. The Summer 2025 meeting of the Coordination Committee was held on the 27 August 2024, followed by correspondence from various parties strongly disputing the lawfulness of the proposed PATM seat cap. The IAA published its draft Summer 2025 decision on the 12 September 2024, in which there was a proposal to impose a PATM seat cap of 25.2million passengers. Following further correspondence and submissions, the IAA issued a press release on the 7 October 2024 announcing that the seat cap would be imposed. The Summer 2025 Final Decision was published on the 10 October 2024.

44. As described above, after the coordination parameters are finalised, the airport coordinator will complete a Slot Allocation List. This is followed by a Slot Conference process where airlines can seek to adjust slots to match each end of route, seek improvements and alter schedules.

45. At this point it can be noted that the airline parties highlighted that setting coordination parameters at Dublin Airport has effects on airline operations at other airports. Aircraft taking

off from or landing at Dublin Airport will land or take off at other airports. Where those other airports are within the EU and have coordinated status, there is an obvious need for an airline to engage in complex advance planning to ensure the proper functioning of their operations.

46. In addition, because of the availability of historic slots air carriers can engage in advance planning about changes to fleet and also to seek to sell seats on flights in advance. The processes associated with the slot allocation process therefore need to be thorough and predictable and must operate to a reasonably tight timescale. As matters stand, the 31 January 2025 has been identified as the Historic Baseline Date. The series of slots held by an airline on this date is used as the basis for determining eligibility for historic precedence.

SUMMARY OF ISSUES IN THE SUBSTANTIVE PROCEEDINGS

47. The grounds in respect of which the applicants were granted leave to apply for judicial review vary in the way they are framed and sequenced. As there is no dispute – for the purposes of this application - that the applicants have identified fair issues to be tried, only a short summary of the common core grounds is required at this point. Again, it is important to note that these are the claims made in the proceedings. The claims are contested, and the court is merely noting the claims for the purpose of context.

48. First, the various applicants present a primary argument that the 32mppa conditions do not constitute "*relevant technical, operational and environmental constraints*" for the purposes of Article 6(1) of the Slot Regulations. As such the claim is that the IAA acted unlawfully and contrary to the Regulations.

49. Second, the applicants contend that by virtue of Article 8b of the Slot Regulation their statutory entitlement to historic slots can be characterised as property rights, and that the PATM seat cap amounts to an unlawful interference with those rights.

50. Without prejudice to those central contentions, there are further arguments:

a. That the 32mppa conditions amount to an irrelevant consideration taken into account by the IAA.

b. The Slot Regulation was not intended to bring about compliance with national planning rules. In fact, so the argument goes, the concern of the Slot Regulation was to increase capacity and the number of slots available, to promote competition, and to facilitate new entrants to the market.

c. Even if planning conditions can be taken into account in determining coordination parameters:

   i. the 32mppa conditions are ambiguous;

   ii. the conditions have been misinterpreted by the IAA with regard to their applicability to transfer and /or transit passengers and the appropriate period over which to count relevant passengers;

   iii. the IAA has relied on the 32mppa conditions but refused to rely on other conditions as a constraining factor, which is asserted to be irrational.

d. The A4A applicants make a distinct argument that the PATM seat cap breaches articles of the US-EU Air Traffic Agreement and the Canada-EU Air Traffic Agreement by unilaterally placing limits on the volume of traffic, frequency and regularity of service provided by airlines flying between the US or Canada and Dublin Airport.

e. Finally, the applicants have argued that there is a need for an Article 267 referral to the CJEU regarding (a) the proper interpretation of Article 6(1) of the Slot Regulation and the factors that may be considered, and (b) the question of whether historic slots may be withdrawn from an airline, where these are contended to be vested rights.

THE PRINCIPLES APPLIED BY THE COURT IN THIS APPLICATION

51. As noted above, strictly for the purposes of the stay application, the IAA took a neutral stance, and daa adopted the position that they were not contesting that the applicants met the first limb of the test for an injunction or stay – whether that was the test identified in the line of authority extending from *Okunade v. Minister for Justice Equality and Law Reform* [2012] 3 IR 152 (*Okunade*) or that extending from the decision of the Court of Justice in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Suderdithmarschen AG v. Hauptzollamt Itzehoe* [1991] ECR I-415 EU:C:1991:65 (*Zuckerfabrik*), or some combination of the two. This was a helpful and pragmatic decision intended to ensure that the scarce time available to deal with the application was focussed on the issues that were most strongly contested.

52. However, there was a difference between the applicants and daa in relation to the test to be applied by the court in addressing the stay application. The applicants argued that the application fell to be considered by reference to the criteria identified in the *Okunade* line of authority, perhaps with some "*gloss*" as suggested by the Supreme Court in *Dowling v Minister for Finance* [2013] 4 IR 576. daa argued that this application should be addressed by reference to the *Zuckerfabrik* line of authority, particularly in the light of the observations made by the

Court of Appeal in *Three Ireland (Hutchinson) Ltd v. Commission for Communications Regulation* [2022] IECA 300.

53. The court has concluded that an application of this type is not governed by the *Zuckerfabrik* line of authority, although the court is satisfied that even if that line of authority was adopted as applicable it would not alter the outcome here.

54. It appears reasonably clear in the light of the observations made by the CJEU in Case C-432/05 *Unibet (London) Ltd v. Justitiekanslern* EU:C:2007:163, that the test in *Zuckerfabrik* applies in cases where there is an underlying challenge to the legality of Community instruments. Where there is such a challenge and in that context a party seeks to suspend the enforcement of a national administrative measure based on the contested instrument, the national court can grant interim measures. The challenge to the Community measure is the critical feature that triggers the need for uniformity in the application by national courts of the principles applied by the CJEU in an application for interim measures. Where what is being challenged is a national measure – even where the measure is taken pursuant to EU law – then, absent a challenge to the EU law that subtends the national measure, applications for interim measures are governed by national law. That position is confirmed by the Supreme Court in *Dowling*.

55. I do not understand the decision of the Court of Appeal in *Three* as finding that the position has altered:

a. First, the application for interim measures in that case was made under the provisions of regulation 7 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 in the

context of a statutory appeal provided for by regulation 4 of those Regulations. The test for a stay in that situation required consideration of the equivalent provisions in the underlying EU Directive that was transposed by the Regulations. Hence, the stay was not one sought by reference to Order 84 of the RSC or under the inherent jurisdiction of the Court, but instead was sought under and by reference to the particular provisions of the legislation giving effect to the EU Directive.

b. Second, the *Three* case involved a situation in which Three sought to argue on appeal that *Okunade* applied where it had conceded in the High Court that *Zuckerfabrik* applied. In those premises it was not permitted to resile from its earlier position.

56. At paragraph 80 in *Dowling,* the Supreme Court found that, in principle, it is for national law to determine the procedural rules governing actions for safeguarding an individual's rights under EU law, but those rules must be no less favourable than those governing similar domestic actions (the principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by community law (the principle of effectiveness). The *Okunade* test applies to public law challenges in which an interlocutory injunction (or a stay) is sought. *Zuckerfabrik* was not however irrelevant. As noted by Clarke J. in Dowling, the test in *Zuckerfabrik* described the provision of an effective remedy. Hence, when applying the national law test, the national court can have regard to *Zuckerfabrik* to consider whether an effective remedy at an interlocutory stage is available.

57. The objective of the *Zuckerfabrik* gloss is that it provides an independent measure to assess whether the application of national law in an interlocutory injunction application - where

the action concerns rights derived from EU law - operates in a fair manner by ensuring access to an effective remedy. In this application, the applicants were clear that the national law rules derived from *Okunade* were capable of providing them with an effective remedy.

58. Recently, in *MD v Board of Management of a Secondary School* [2024] IESC 11, the Supreme Court (Collins J.) summarised the *Okunade* approach as follows:

> *"2. An applicant for judicial review is not entitled to a stay or injunction as a matter of right. Insofar as, in practice, there may previously have been an understanding or presumption that once a public law measure was challenged its implementation should be suspended, any such (mis)understanding was – or ought to have been – dispelled by this Court's decision in Okunade v Minister for Justice [2012] IESC 49, [2012] 3 IR 152. As Okunade explains, the entitlement of those conferred with statutory or other power or authority to make legally binding decisions is an important part of the structure of any legal order based on the rule of law and it follows that significant weight must be given to permitting measures that are prima facie valid to be 'carried out in a regular and orderly way' (per Clarke J (as he then was), Denham CJ, Hardiman, Fennelly and O'Donnell JJ agreeing) at para 92. All due weight needs to be accorded to 'allowing the systems and processes by which lawful power is to be exercised to operate in an orderly fashion' (ibid). As the Court also made clear, there may be (and in many cases will be) compelling considerations going the other way. Okunade certainly does not exclude the making of a stay or injunction that suspends or otherwise affects the implementation of a prima facie valid administrative measure. But Okunade counsels that such orders must not be made reflexively or as a matter of routine.*

3. That fundamental point is reinforced by this Court's decision in Merck Sharp & Dohme v Clonmel Healthcare [2019] IESC 65, [2020] 2 IR 1, *per O'Donnell J (Clarke CJ, McKechnie, Dunne and O'Malley agreeing) at para 62.*

4. Of course, public law measures differ widely in their scope and effect. Some are of general or near-general application: paradigm examples are enactments of the Oireachtas, regulations made under such enactments and public law decisions that affect a broad category of persons or a significant section of society or the economy (such as decisions made by regulators such as ComReg). At the other end of the spectrum, there are measures that affect – at least directly – only a specific individual or a limited number of individuals, such as the deportation orders at issue in Okunade. But in every such case the potential suspension of a presumptively valid public law measure engages considerations of the public interest that – at least generally – do not arise in private law injunction proceedings.

5. It follows that, where a court is asked to make an order having the effect of suspending or otherwise significantly affecting the due implementation of a presumptively valid public law measure – whether in the form of a stay or an injunction – it should do so only after carefully identifying and weighing all of the rights and interests engaged."

59. In the light of the above, and having regard to the fact that the court is not required to address whether the applicants have established an arguable case, the test to be applied is as follows:

a. Does the greatest risk of injustice arise if the stay is or is not granted.

b. In addressing the risk of injustice, the court is required to consider and attach appropriate weight to the following factors:

i. The harm that would be suffered by the applicants if the stay is not granted.

ii. Whether that harm be remedied adequately by an award of damages at the conclusion of the proceedings.

iii. The effect of a stay on the orderly implementation of measures which are *prima facie* valid and in the orderly implementation of the process that is under challenge.

iv. Any other compelling public interest considerations, including particularly the public interest asserted by daa in connection with the proper observance of planning law.

THE IMPACT OF THE DECISION – EVIDENCE

60. All of the airline applicants filed affidavits that described in detail the harm they say will flow from the PATM seat cap. Fairly, the various deponents highlighted that many of the concerns expressed were based on reasoned estimates, themselves based on some assumptions, of the likely effects of the seat cap. Part of the difficulty in this regard stems from the fact that the PATM seat caps have yet to be translated into actual specific slot allocations to the individual airlines.

61. Aer Lingus contends that the PATM seat cap will have financial, operational and reputational impacts and will also impact the economy and impact consumer prices. The estimated financial impact for the Summer and Winter 2025 seasons is €84 million, which will increase if the PATM is carried forward into subsequent seasons. Aer Lingus estimates the effect of the IAA decision as leading to a reduction of approximately 671,000 seats or 8.5% for the summer 2025 season as compared to its original planned capacity, and a reduction of 362,000 seats (4.8%) compared to summer 2024 numbers. In addition, there are practical difficulties with fleet management plans, which have to be formulated many years in advance. Aer Lingus highlights that the effect of Article 8b of the Slot Regulation and the Aviation Regulation Act 2001 is that there cannot be compensation for the withdrawal of historic slots. As such, the argument is that permanent irreparable harm will be suffered.

62. Ryanair argues that if the Summer 2025 Decision is not stayed it will have significant financial, operational and reputational impacts. Ryanair anticipates that the Decision will affect both their access to their historic slots and their access to pool slots. The reduction in access to pool slots affects Ryanair's ability to operate ad hoc flights for instance for sporting events outside the country. It notes that aircraft based at any airport are "anchored" to the airport in that they operate first thing in the morning at the airport and return there at night. Because many of their aircraft are anchored at Dublin Airport Ryanair will be significantly impacted by any seat cap because it will not be able to deploy those aircraft on other routes.

63. Ryanair estimates that it will lose approximately 3,000 slots or over 550,000 seats in Summer 2025. This equates to two full weeks of its business over the summer season at Dublin Airport. This could result in an estimated loss of in the region of €50 million, with knock on

effects in terms of management time and disruption to engineering and fleet management functions. There is an estimated loss of 90 jobs. Ryanair is concerned at the prospect of losing historic slots in the periods after summer 2025 with corresponding difficulties if capacity was ever increased due to priority that it claims will be given to new entrants.

64. Finally, Ryanair has adduced evidence explaining the impact of the PATM seat cap on its plans for future seasons. This includes the potential impact on very substantial plans to modernise and expand its Dublin based fleet. It highlights that the decision will result in increased costs to the travelling public and will have an economic impact that transcends Ryanair's own interests. In common with the other parties, Ryanair is concerned that, if it succeeds at trial, in the absence of a stay they will not be able to recover compensation for its losses.

65. The individual airlines that form part of the A4A applicants argue that they also will suffer permanent irreparable harm.

66. For Delta Airlines, it was asserted that the Summer 2025 Decision will lead to an overall loss of 62 slots or 15,562 seats, a reduction of approximately 4% of the slots available in the summer 2024 season. The reduction is estimated to translate to a loss of revenue of approximately USD$22.4 million between April 2025 to October 2025, which will increase over coming years if the seat cap remains in place. In addition, Delta will have to modify its flying schedule and this may mean that routes and aircraft will have to be changed. This will result in operational difficulties in reallocating personnel. Delta also contends that changing the deployment of aircraft will have a ripple effect on support activities. Delta says that they

will suffer a loss of market share, as home carriers in Dublin Airport will have their strong competitive position at the airport enhanced.

67. Similarly to Aer Lingus, Delta suggests that there will be an adverse impact on consumers because of a need to increase fares. There will also be reputational damage from having to cancel certain services.

68. JetBlue is in a somewhat different position to the other applicant airlines as it is a relatively new entrant to the Dublin Airport market. The evidence on behalf of JetBlue also acknowledges the uncertainty about the impact of the Summer 2025 Decision. The deponent for JetBlue averred that the airline will not be able to expand its operations at Dublin Airport compared with the equivalent summer 2024 season. The witness noted that pursuant to the Winter 2024 Decision it was refused certain slots at the airport, and he expresses a concern that similar refusals are anticipated. He notes that at present JetBlue operates one daily flight from each of Boston and New York to Dublin. Any cut below one flight daily would make it difficult to appeal to passengers. In this regard, it was notable to JetBlue faced the particular challenge of being a new entrant to the market and has invested significantly in building its presence in the market. Hence, the effect of the Summer 2025 Decision was particularly acute and would also potentially affect its entitlement to historic slots. Moreover, JetBlue highlighted that there was no process or plan addressing how reduced capacity could be returned to its original holder. JetBlue also emphasised the impact of the decision on its customers, employees and the difficulty and complexity of reversing the effect of the Summer 2025 Decision if, ultimately, the applicants succeeded in the proceedings.

69. The evidence from United Airlines also asserts that it will suffer irreparable harm if a stay is not granted. United Airlines has operated in Ireland since 1998. It offers year-round daily services from Dublin to New York and Washington D.C., together with seasonal flights to Chicago. United Airlines has historic slots and accesses pool slots where additional flights are warranted. United Airlines notes that the Airport Coordination Committee has indicated that it might allocate historic slots but some of those will be with less or no capacity in order to meet the parameters. This is said to be of little use as it would equate to operating empty flights. United Airlines contend that the Summer 2025 Decision will particularly impact non-Dublin based carriers, by causing a reduction in operations and increased passenger costs, with knock on reputational damage. It was suggested that Irish based carriers may be able to respond to the PATM seat cap by reducing intra-European flights and increasing transatlantic flights, thereby gaining a disproportionate advantage.

70. The position of the IAA is very important given its status at the competent regulator under the legislation and its statutory requirement to operate independently, transparently and fairly. Those characteristics were evident from the affidavit evidence that it adduced for the purposes of the hearing. As there were applications in three sets of proceedings, IAA filed three affidavits, all sworn by Adrian Corcoran who is the Director of Economic Regulation, Licensing and Consumer Affairs at the IAA. Mr Corcoran provided an overview of the background to the decisions, the roles and functions of the IAA, and the work of the IAA under the Slot Regulation. In a very helpful section of his grounding affidavits, Mr Corcoran set out the IAA view on how the process would work either if the PATM seat cap was stayed or if it continued as proposed.

71. In the first instance, having regard to the schedule for the decisions that have to be made on foot of the S25 Decision, Mr Corcoran was satisfied that if this application was determined by the 5 November 2024 there would be some minor delays, but this would be manageable and not generate any non-compliance with the Slot Regulation.

72. Mr Corcoran explained that if the stay was refused, there would likely be a required reduction of approximately 5% of scheduled seats associated with historic slots. The realistic effect of that reduction would be a reduction in scheduled flights at Dublin Airport. That reduction would likely mean that some historic slots would be lost, and the JNUS option likely would not be available under Article 10(4) of the Slot Regulation. Mr Corcoran expressed a tentative view that if the airlines succeeded in this litigation there did not appear to be any available process for the instatement of the lost historic slots, and therefore the loss may be permanent even if the airlines are correct in their substantive arguments. Mr Corcoran noted that a further likely effect of the operation of the PATM seat cap (which also was highlighted by the airlines) was that historic slots are also connected to other coordinated airports. Hence if there is a reduction in historic slots in Dublin Airport this has the likely effect of reducing the availability of equivalent slots in airports at the other end of the particular route.

73. In that regard, while Mr Corcoran reasonably did not engage with the airlines' evidence regarding the actual estimated losses that would flow from the PATM seat cap, he substantially agreed with the premises used by the airlines as the basis for estimating their likely losses.

74. Mr Corcoran then addressed the issue of how the system would operate if a stay was granted. Effectively the removal of the PATM seat cap would have no immediate effect on the operation of the system. He stated that the remainder of the coordination parameters in the S25

decision would permit the full reallocation of all historic slot series and associated seats and the facilitation of demand for new routes and operations. Ad hoc slots could be allocated during S25. This would mean as stated by Mr Corcoran "*that Dublin Airport could again be used scalably*". In that regard, under the Slot Regulation, slot allocation operates on a prioritised basis: historic slots rank ahead of new slots series and the new slot series rank ahead of ad hoc slots. Ad hoc slots make use of remaining available capacity, and are used for instance when a demand arises for additional flights at reasonably short notice, such as for sporting events.

75. Mr Corcoran observes that if the PATM seat cap was stayed "*there is a likelihood that the 32mppa Conditions could be breached by daa*".

76. Mr Corcoran also notes that if the applicants ultimately were not successful and /or if the stay was later lifted significant practical difficulties would arise. This is because there does not appear to be a legal mechanism for withdrawing slots that already have been allocated. If a withdrawal was capable of being achieved this would result in major passenger disruption and inconvenience in the form of a very high number of seat cancellations.

77. Significantly Mr Corcoran explains the IAA view on the interaction between the coordination parameters and the 32mppa Conditions. The IAA was clear that compliance with the planning conditions was a matter for daa. As he observed, "*the fact that the IAA took account of the 32mppa Conditions in declaring coordination parameters for S25 in no way reflects a conclusion on the part of the IAA that those conditions are meritorious or that there is any good reason requiring them to be enforced, which are not matters within the IAA's jurisdiction to determine or express a view on. ... the IAA is not itself a planning authority having any power to amend or revoke the 32mppa Conditions, and the IAA does not have*

jurisdiction unilaterally to ignore them in the context of declaration (sic) coordination parameters under Article 6 of the Slot Regulation where, as matters stand, the 32mppa Conditions are expected to restrict the capability of Terminals 1 and 2 to process passengers during S25."

78. As an aside, it can be noted that Fingal County Council is the relevant planning authority for Dublin Airport. It was not a party to the application and insofar as its position can be understood there was some evidence that it had investigated potential breaches at Dublin Airport. There also was evidence that it had declined to participate in or comment on the processes around the setting of coordination parameters at Dublin Airport on the basis that it should not involve itself in the considerations of another regulatory body operating processes under a separate regulatory code.

79. The daa position was that it did not adduce evidence that sought to contradict the evidence that the airlines would suffer permanent irreparable harm, and I did not understand it to argue that there would be no harm. Instead, their argument was that the harm that flowed from the PATM seat cap was a function of the 32mppa conditions. Essentially the argument was that, even if there was no seat cap, the airlines could not have expected to continue to operate their services at a level that involved a breach of the 32mppa conditions. Accordingly, the anticipated losses were losses to which the airlines were in any event exposed and arose through the operation of a presumptively valid legal measure which was not being challenged.

80. The daa position was firmly rooted in its argument that the 32mppa conditions remained valid and enforceable. This, of course, is correct. The 32mppa conditions imposed by An Bord Pleanála have not been challenged. While some parties suggested that the conditions were

incapable of being enforced and were ambiguous or suffered from other legal frailties, this court must proceed on the basis that they are part of two valid planning permissions imposed following the ordinary process in planning law.

81. The argument made by daa was that all parties operating in Dublin Airport do so in the context where this is a highly regulated environment and there are restrictions on what can and cannot be done, regardless of the commercial effect of that regulation. Considerable emphasis was placed on multiple cases involving applications pursuant to section 160 of the Planning and Development Act 2000. Insofar as the airline parties suggested that daa has been aware of the potential difficulties presented by the 32mppa conditions and where daa itself appears to have acknowledged that the capacity at the terminals exceeds 32mppa, daa responded that this did not affect the basic principle that the 32mppa conditions were extant and binding. In addition, daa provided an explanation of the complexity of dealing with planning issues in an evolving legal landscape and having regard to the very time-consuming nature of any effort to achieve planning permissions relating to Dublin Airport.

82. Fundamentally, daa asserted that the airlines were under a requirement to observe the planning conditions and that the unequivocal thrust of the case law relating to s. 160 cases was that there was a very strong public interest in ensuring that planning law was observed. Moreover, daa asserted that non-compliance with planning law could not be justified or excused by the potential adverse financial effects of compliance.

83. In response, the applicants argued that daa was the developer, owner and operator of Dublin Airport and as such it was the body responsible for applying for and complying with planning permissions. The airlines argued that they were in an entirely different position to daa

or to any other developer who might be subject to a planning enforcement action. The airlines highlighted that there was no question of the stay that they sought being equated to an order suspending the effect of planning conditions. The question of enforcing planning law was a matter for the relevant local authority, and any order made by this court could not bind the hands of the local authority. The airlines emphasised that in the preponderance of the cases where an application had been made to stay an order under s. 160 of the 2000 Act, this involved a developer who was breaking the law seeking to avoid the effects of being held responsible for that breach. Finally, the airlines highlighted that even in cases where a s. 160 order had been found to be warranted the court retained a discretion, relying on the findings of McKechnie J in *Leen v Aer Rianta cpt* [2003] 4 IR 394. In that case the High Court determined that an order should not be granted against Aer Rianta, but not for reasons connected to Aer Rianta (which was found to have breached conditions relating to the treatment of effluents) but for reasons to do with the impact of a closure of Shannon Airport on others, including the public, airlines and employees, together with the implications for tourism and the wider community.

84. Hence the application in reality reduces itself to a stark dispute where it appears that there is a risk of injustice associated with whatever decision is reached.

DISCUSSION

85. The court is extremely grateful to the parties and their legal representatives for their very helpful work in preparing and presenting a complex application with such clarity at very short notice.

86. In this application there is no question that the parties have raised serious issues to be tried. Likewise, there is no real dispute but that the applicants will suffer serious irreparable and permanent harm if the PATM seat cap in the S25 Decision proceeds. For the purposes of this stage of the proceedings, the court is satisfied that there is a very strong argument that the harm likely to be suffered by the applicants will *not* be compensated by an award of damages. The harm contemplated involves very significant financial loss but also an interference with what, at least, can be described as statutory rights to historic series of slots. Those rights are asserted to be in the nature of protected property rights and, again for the purposes of this application, there is a very strong argument that those rights could not be restored if the applicants succeeded at trial. In that regard, the question arises as to whether the applicants will be left without an effective remedy to vindicate their EU law rights if the stay is not granted but they succeed at trial.

87. Against that there is the public interest in the enforcement and proper operation of presumptively valid legal measures adopted pursuant to legislation. However, it is important to note that what the court has been asked to address is the potential effects or impacts on two separate regulatory regimes.

88. These proceedings directly address the processes under the Slot Regulation. The relevant competent national regulatory authority, the IAA, has adopted measures in the S25 Decision. Those measures are presumptively valid, and this is a matter to which the court ordinarily should attach significant weight. However, in the particular circumstances of this application, the regulator has made clear that it does not oppose the granting of a stay on the implementation and operation of the PATM seat cap element in the S25 Decision. Moreover, very fairly and of considerable significance, the IAA has made clear that the grant of a stay will

not adversely affect the overall implementation of the S25 Decision on coordination parameters. This is something to which significant weight must be given.

89. This is not an exercise to be conducted algorithmically or mechanically, but it is important to bear in mind that if one temporarily leaves aside the concerns of daa, the balance of justice overwhelmingly supports the putting in place of a stay.

90. A stay pending the determination of the proceedings or until further order of this court will avoid the risk of permanent irreparable harm being suffered by the applicants, including interference with valuable statutory entitlements acquired through the operation of a Community legal instrument. That will occur in a scenario where even if they succeed in the substantive trial there does not appear to be any legal mechanism whereby the applicants will be able to be compensated for their loss or reverse the interference with their EU law entitlements. That would suggest that, absent a stay, the applicants will be deprived of an effective remedy. A stay will prevent the implementation of one important element in the overall decision, however it will not interfere with the implementation of the overall measure, and the regulator is not opposing that limited stay. So, therefore, what weight needs to be given to the concerns expressed by daa, and does that weight shift the balance against the grant of a stay?

91. The court does not disagree at all with the general proposition that very significant weight should be attached to ensuring proper compliance with planning law. That is a self-evidently correct proposition and supported by voluminous case law. However, what is sought here by daa is the co-option of an ostensibly separate and self-contained regulatory regime rooted in EU law and responding to Community concerns to regulate capacity at coordinated

Community airports under which an independent regulator makes decisions affecting, not only but mainly, air carriers. That co-option is sought in order to assist in bringing about daa's compliance with a separate self-contained national regulatory regime directed to lawful planning and development of land.

92. Aside from that conflation, the court does not accept that *primary* responsibility for complying with the 32mppa conditions rests with any party other than daa. Here, there is no live application pursuant to section 160 of the 2000 Act. I do not accept that this application for a stay is properly analogous to the situation of a developer who, having carried out unauthorised development, seeks to stay the effect of an order under section 160 of the 2000 Act to protect its economic interests. Any order made by this court in this application only applies to decisions made under the Slot Regulation. Any order made by this court does not (and cannot) suspend the effect of any planning conditions. It does not and cannot affect the entitlement of the planning authorities to take whatever steps they deem necessary or appropriate under their governing legislation to address any concerns they may have about compliance with planning conditions. Likewise, the court is not binding the hand of daa in relation to the steps that it might be able to take in responding to any planning concerns that might be raised by the planning authority.

93. The potential consequences of a potential breach of the planning conditions does not outweigh the highly probable and very serious adverse consequences of failing to grant a stay in these proceedings. Those consequences extend beyond the immediate serious effects on the applicants, but include serious disruption for the public and potential harmful effects for the broader economy.

94. In those premises the court is not satisfied that the asserted public interest in compliance with planning conditions properly operates to outweigh the established risk of very serious injustice that attaches to not granting a stay.

CONCLUSION

95. For the reasons set out above, the Court in each of the judicial proceedings listed above will grant a stay on the operation and implementation of only that element within the S25 Decision published by the IAA on the 10 October 2024 that provides for a PATM seat cap of 25.5 million passengers. The stay will apply pending the determination of the proceedings and each of them, or until further order of this Court. I propose to hear from the parties regarding the final form of the order, and in particular would invite the parties to come to an agreement on a form of wordings that best serves the situation.

96. Where the full hearing of the cases is scheduled to be heard later this term, I do not consider that holding a costs hearing would be an efficient use of resources, including court time. In those premises I propose to reserve the costs and to provide that any issue relating to the costs associated with these applications should be addressed as a self-contained issue when it comes to addressing the overall costs of the proceedings.