



***Regulatory Body for Railway  
Transport and Brussels Airport  
Operations***

**Decision D-2022-04-LA on the tariff system and formula for tariff control for the regulated period from 1 April 2023 to 31 March 2028, as per the final proposal of Brussels Airport Company**

**FREE TRANSLATION OF THE NON-CONFIDENTIAL VERSION OF THE DUTCH DECISION**

**CONFIDENTIAL PASSAGES ARE INDICATED WITH [...]**

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## 1. Object

1. Between January and May 2022, the licensee Brussels Airport Company (hereinafter "BAC") held consultations with the users of Brussels Airport on the formula for tariff control and the tariff system for the regulated period from 1 April 2023 to 31 March 2028 (hereinafter also referred to as "QQ4").
2. The final tariff proposal published afterwards by the licensee was rejected in a petition by various users. These petitions were submitted to the Regulatory Body for Railway Transport and Brussels Airport Operations (hereinafter "the Regulatory Body").
3. In its capacity as an economic regulatory authority, in this decision the Regulatory Body shall rule on the petitions filed in accordance with the following regulations:
  - The Royal Decree of 27 May 2004 on the conversion of Brussels International Airport Company (BIAC) into a public limited company governed by private law and concerning airport facilities (hereinafter the "Transformation Decree");
  - The Royal Decree of 21 June 2004 on the granting of an operating licence for Brussels Airport (hereinafter the "License Decree").

## 2. Facts and background

4. The multi-year consultation for QQ4 began on 17 January 2022, and ended on 11 May 2022. Interim technical meetings took place on 1, 2, 3 and 4 February 2022, and 7 and 8 March 2022. Two sessions were held on 17 February 2022, and 11 April 2022, where feedback could be given by users.
5. On 13 May 2022, BAC notified users of its final proposal for the tariff system and formula for tariff control for the QQ4 period.
6. On 13 June 2022, the Regulatory Body received by registered mail a petition from Ryanair rejecting the final proposal for the tariff system and formula for tariff control.
7. On 13 June 2022, the Regulatory Body also received by registered mail a petition from IATA (International Air Transport Association) rejecting the final proposal for the tariff

system and formula for tariff control. IATA filed this petition on behalf of a number of airlines<sup>1</sup> that mandated it to do so.

8. On 16 June 2022, the licensee was notified of the two petitions by registered mail with acknowledgement of receipt and by e-mail. A calendar with a view to the exchange of comments was attached to this letter.
9. On 16 June 2022, the Regulatory Body sent an acknowledgement of receipt of the submitted petition to Ryanair by registered mail and e-mail, and communicated the calendar with a view to the exchange of comments.
10. On 16 June 2022, the Regulatory Body sent an acknowledgement of receipt of the submitted petition to IATA by registered mail and e-mail, and communicated the calendar with a view to the exchange of comments.
11. On 17 June 2022, the Regulatory Body received an email from BAC requesting it to adjust the calendar for its closing remarks, to correspond with the holiday period. On the same day, the Regulatory Body assented to this request. Ryanair and IATA were notified of the updated calendar via registered mail and e-mail on 4 July 2022.
12. On 4 July 2022, the Regulatory Body issued a preliminary decision regarding the entry into force of airport charges for the period in question.<sup>2</sup> This decision was notified the same day via registered mail and e-mail to all parties involved.
13. On 16 July 2022, the Regulatory Body received BAC's initial conclusions. It transferred these to IATA and Ryanair on 17 July 2022.
14. On 27 July 2022, the Regulatory Body notified all parties of changes to the conclusion calendar. Indeed, due to staff leave, there had been renewed requests from Ryanair and the airport operator to adjust the calendar.
15. On 28 July 2022, the Regulatory Body submitted a range of investigation questions to BAC, via e-mail and registered mail.

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<sup>1</sup> These were Israel Airlines Limited (El Al), Royal Dutch Airlines (KLM), British Airways Plc, Aer Lingus Limited, Iberia Líneas Aéreas de España and Vueling Airlines S.A.

<sup>2</sup> Decision D-2022-02-L regarding the entry into force of the change in airport charges at Brussels Airport for the regulated period from 1 April 2023 to 31 March 2028.

16. On 5 August 2022, the Regulatory Body received the final remarks from IATA via e-mail. On 9 August 2022, the Regulatory Body received these by registered mail.
17. On 9 August 2022, the Regulatory Body received the final remarks from Ryanair via e-mail. On 16 August 2022, the Regulatory Body received these by registered mail.
18. On 22 August 2022, the Regulatory Body sent the final remarks of IATA and Ryanair to BAC, via e-mail.
19. On 13 September 2022, the Regulatory Body received the final remarks from BAC. It transferred these to the complainants by e-mail on 14 September 2022.
20. On 19 September 2022, the Regulatory Body issued decision D-2022-03-L<sup>3</sup> extending the deadline for making the final decision on the petitions by two months. This decision was notified the same day via e-mail and registered mail to all parties involved.
21. On 20 September 2022, the Regulatory Body received the responses to the investigation questions previously put to the operator.
22. On 5 October 2022, the Regulatory Body held an online meeting with the licensee, at which the latter provided information on its "Beontra" IT programme.
23. On 12 October 2022, the Regulatory Body requested a second series of investigation questions by e-mail and registered mail. The licensee replied by e-mail and registered mail dated 28 October 2022. Additional detailed questions and the responses thereto were further exchanged by e-mail on 10, 16 and 17 November 2022.

### **3. Consultation of the parties involved in the complaint procedure**

24. Article 55, §3, 2nd paragraph of the License Decree provides that the licensee has thirty days from the notification of the petition to submit in writing its comments on this petition by registered mail with acknowledgement of receipt.
25. Article 55, §3, 3rd paragraph of the License Decree also states the following (freely translated):

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<sup>3</sup> Decision D-2022-03-L regarding the extension of the Regulatory Body's decision period in the context of the petitions for the rejection of the tariff proposal for the regulated period from 1 April 2023 to 31 March 2028.

*"The economic regulatory authority is obliged to consult the interested parties before making a decision. In particular, it shall allow each party to take cognizance of the arguments of the other parties."*

Although the procedure that led to this decision is an administrative and not a judicial procedure, this text aims to ensure the adversarial nature of the procedure.

26. Given these two provisions, the Regulatory Body drew up a calendar with a view to the exchange of comments. The comments of each party were exchanged with the opposing party, allowing all involved to take cognizance of each other's arguments. BAC was the last to submit its closing remarks.

#### **4. Legal basis**

27. Article 55 of the License Decree states the following (freely translated):

*"§1. There is an agreement on the formula for tariff control and the tariff system and the annual evolution thereof when the economic regulatory authority has not received notification, within the period specified in § 3, of a reasoned disagreement on the part of at least one airport user, regardless of whether this user has participated in the consultation referred to in Article 52, § 1.*

*§2. The situations that may form the basis of a disagreement are as follows:*  
*a) the licensee did not conduct the consultations in good faith, particularly in terms of providing information;*

*b) The provisions of the decree of the Royal Decree of 27 May 2004 on the conversion of Brussels International Airport Company (BIAC) into a public limited company governed by private law and concerning airport facilities were not observed.*

*§3. If a user of Brussels National Airport rejects the final formula for tariff control or the tariff system proposed by the licensee, such user shall, within the thirty days following the notification of the final formula for tariff control or the tariff system by the licensee to the users, send a reasoned petition to the economic regulatory authority, by registered mail with acknowledgement of receipt. This petition shall contain, under penalty of nullity, the subject and the exhaustive summary of the invoked arguments that the user relies on to substantiate their rejection.*

*The economic regulatory authority must give notice of the petition within seven days to the licensee of an operating licence who may, within thirty days, assert their comments on the petition by registered mail with acknowledgement of receipt.*

*The economic regulatory authority is obliged to consult the interested parties before making a decision. In particular, it shall allow each party to take cognizance of the arguments of the other parties.*

*The economic regulatory authority shall make a final decision on the arguments relied upon by the user as soon as possible and, in any case, within four months of receiving the petition. This period may be extended by two months in exceptional and duly justified cases. The economic regulatory authority shall, within four weeks of receipt of the petition, issue a provisional decision regarding the entry into force of the change in airport charges, unless a final decision can be issued within the same period.*

*§4. Where the economic regulatory authority identifies a disagreement, it may either:*  
*a) require a new consultation period with a view to obtaining the agreement of users on the formula for tariff control and the tariff system, if necessary after modifications;*

*b) require adjustments to the formula for tariff control or the tariff system, in compliance with the principles of the Royal Decree of 27 May 2004 on the conversion of BIAC into a limited liability company (NV) under private law and on airport facilities and in this decree, specifically in Section II of this chapter;*

*c) impose on the licensee a the formula for tariff control and a tariff system, in compliance with the principles of the Royal Decree of 27 May 2004 on the conversion of BIAC into a limited liability company (NV) under private law and on airport facilities and in this decree, and specifically in Section II of this chapter;*

*d) confirm the result of the consultation.*

*When the economic regulatory authority examines the justification for modifying the tariff system or the formula for tariff control, in the case provided for in Article 55 § 2, it shall have access to the information of the parties concerned exchanged in accordance with Article 53 or 53ter and shall consult the parties concerned before making a decision.*

*In the cases described in b) and c) of the first paragraph, the economic regulatory authority may use an ABC model different from that referred to in this Decree. In such cases, it shall use the identical set of input data as in the ABC cost model used for the cost calculation as provided in Article 42, 1°. The licensee only needs to provide the initial set of input data to the economic regulatory authority. The output of the ABC cost model used by the economic regulatory authority cannot be used to change the licensee's proposed profitability of the regulated activities (ROCE) through adjustments to the formula for the tariff control or the tariff system."*

28. Article 34, §3 of the Transformation Decree states the following (freely translated):

*"There is an agreement on the formula for tariff control referred to in article 30, 7°, and any modification of this formula when there is no disagreement concerning it between the licensee and the users of Brussels Airport, as referred to in article 55 of the Royal Decree of 21 June 2004 on the granting of the operating licence for Brussels Airport.*



*If there is no agreement from the users of Brussels Airport, the economic regulatory authority may require adjustments or modifications to the formula referred to in Article 30, 7°, in order to limit the evolution of the income that the licensee may earn per unit of traffic for the regulated activities, if the formula:*

*1° constitutes a violation of the provisions of this Decree or the operating licence including the procedures provided for in this operating licence in accordance with §2;*

*2° constitutes an infringement of the mandatory provisions emanating from international conventions or international acts adopted pursuant to such conventions and relating to the operation of airport facilities;*

*3° is of such a nature to make it impossible for the licensee to achieve the quality levels defined by the economic regulatory authority with reference to the practices observed at the reference airports;*

*4° makes it impossible to ensure the long-term operational viability of the airport facilities."*

29. Article 35, §2 of the Transformation Decree states that (freely translated):

*"The tariff system and any modification of the tariff system shall be subject to an investigation by the economic regulatory authority, unless there is an agreement between the licensee and the users of Brussels Airport on the tariff system proposed by the licensee or on any modification of this system.*

*There is an agreement on the tariff system proposed by the licensee or any proposed change of the tariff system when there is no disagreement concerning it between the licensee and the users of Brussels Airport, as referred to in article 55 of the Royal Decree of 21 June 2004 on the granting of the operating licence for Brussels Airport.*

*If there is no agreement from the users of Brussels Airport, the economic regulatory authority may require adjustments or changes to the tariff system, if the economic regulatory authority identifies that the tariff system:*

*1° does not respect the formula established in accordance with article 30, 7°, or article 34, §3;*

*2° is discriminatory and non-transparent;*

*3° is not sufficiently divided up, in particular according to the conditions and modalities of use of the airport facilities and services provided;*

*4° does not provide for the collection of a minimum percentage of airport charges based on a growth formula according to the weight in tons and noise categories of the aircraft and a differentiation coefficient between day and night;*

*5° constitutes a breach of the provisions of this Decree or of the operating licence."*

30. Article 2bis of the Royal Decree of 25 October 2004 establishing the Regulatory Body for Railway Transport, determining its composition and the charter applicable to its

members, as inserted by the Royal Decree of 1 February 2006, stipulates that the Regulatory Body is the economic regulatory authority referred to in Articles 34 and 35 of the Transformation Decree and Article 55 of the License Decree.

## 5. The Regulatory Body's analysis regarding the complaint procedure

### 5.1. Admissibility of the petitions submitted

#### 5.1.1. Admissibility requirements

31. Article 55, §3, 1<sup>st</sup> paragraph of the License Decree defines the conditions for submitting a petition for rejection as follows (freely translated):

*"If a user of Brussels National Airport rejects the final formula for tariff control or the tariff system proposed by the licensee, such user shall, within the thirty days following the notification of the final formula for tariff control or the tariff system by the licensee to the users, send a reasoned petition to the economic regulatory authority, by registered mail with acknowledgement of receipt. This petition shall contain, under penalty of nullity, the subject and the exhaustive summary of the invoked arguments that the user relies on to substantiate their rejection".*

32. Article 1, 28° of the License Decree defines "users" as "the airlines operating from Brussels Airport."

#### 5.1.2. Petition submitted by Ryanair

33. The Regulatory Body confirms that Ryanair, in its capacity as a user, filed a German-language petition to reject the final proposal for tariff control and tariff system.
34. BAC disputes in its first conclusion that Ryanair's petition was submitted on time. It appears to believe that the regulator should have received the petition within 30 days of the publication of the tariff proposal.<sup>4</sup>
35. Article 55, §3, 1<sup>st</sup> paragraph of the License Decree states that users must "send" their petition to the regulator within 30 days. The tariff proposal was notified by BAC to users on 13 May 2022. The deadline to send the petition therefore fell on 12 June 2022.

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<sup>4</sup> Initial remarks BAC/Ryanair, p. 3.

36. Through the postmark on the envelope on the registered letter, the Regulatory Body could see that Ryanair's petition was sent on 10 June 2022. This falls within the deadline of 12 June 2022.

37. Based on this information, the Regulatory Body concluded that Ryanair's petition was sent on time, i.e. within 30 days of the licensee's notification of the final tariff control formula and tariff system. The operator's argument cannot therefore be entertained in this case.

38. The petition sent by registered mail with acknowledgement of receipt also meets the formal requirements of Article 55, §3, 1<sup>st</sup> paragraph of the License Decree. In particular, it explicitly states the subject, specifically:

*“Rechtsbehelf von Ryanair gegen die vorgeschlagene Entgeltordnung Flughafen Brüssel 2023-2027”.*<sup>5</sup>

The petition also contains an exhaustive list of nine arguments relied upon to substantiate the rejection. These arguments are:

*(1) Die Passagiersprognose von BAC ist zu niedrig*<sup>6</sup>;

*(2) Kapitalkosten bzw, den WACC, der von BAC berechnet wird, ist übermäßig hoch und wird dazu führen, das BACC eine übermäßige Gewinnspanne erhält*<sup>7</sup>;

*(3) Investitionsausgaben – BAC hat die Flughafennutzer vor der Fertigstellung der Investitionspläne nicht konsultiert*<sup>8</sup>;

*(4) Investitionsausgaben – BAC versucht, die Kostenüberschreitungen der QQ3 - Investitionsausgaben von den Flughafennutzern wiederzubekommen*<sup>9</sup>;

*(5) ABC-Prinzipien wurden bei der Berechnung des regulierten Anteils der Investitionsausgaben nicht eingehalten*<sup>10</sup>;

*(6) BAC hat sich mit ihren Transparenzpflichten nicht zu einer Konsultation über Investitionsausgaben verpflichtet*<sup>11</sup>;

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<sup>5</sup> Freely translated: “Ryanair appeal against Brussels Airport proposed 2023-2027 airport charges”.

<sup>6</sup> Freely translated: “BAC's traffic forecast is too low”.

<sup>7</sup> Freely translated: “BAC's proposed WACC is excessively high and will lead to BAC receiving an excessive profit margin”.

<sup>8</sup> Freely translated: “CAPEX – BAC did not consult with airport users before finalising investment plans”.

<sup>9</sup> Freely translated: “CAPEX - BAC is attempting to recover QQ3 CAPEX losses from airport users”.

<sup>10</sup> Freely translated: “ABC Principles were not adhered to when calculating the regulated proportion of CAPEX costs”.

<sup>11</sup> Freely translated: “BAC has not obliged with their transparency obligations required for a Consultation on capital investments”.

- (7) BAC gab irreführende Information zu seinen Verpflichtungen in der RLD und Infrastrukturvorhaben<sup>12</sup>;
- (8) Die schrittweise Neuausrichtung der Tarifstruktur verstößt gegen der Grundsatz des Kostenbezugs<sup>13</sup>;
- (9) Die Tarifstruktur stimmt nicht mit der von Referenzflughafen überein<sup>14</sup>.

39. The Regulatory Body is of the opinion that the petition submitted hereby meets the requirements, under penalty of nullity, stipulated in Article 55, §3, 1<sup>st</sup> paragraph of the License Decree.

**40. In view of the foregoing, the petition filed by Ryanair is admissible.**

#### 5.1.3. Petition submitted by IATA

41. The Regulatory Body confirms that IATA filed a petition on behalf of several airlines against the final proposal for tariff control and tariff system and that these airlines gave it a signed mandate to do so. These mandates are sufficient to show that it is the users in question who reject the final tariff proposal.

42. BAC disputes in its first conclusion that IATA's petition was submitted on time. It appears to believe that the regulator should have received the petition within 30 days of the publication of the tariff proposal.<sup>15</sup>

43. Article 55, §3, 1<sup>st</sup> paragraph of the License Decree states that users must "send" their petition to the regulator within 30 days. The tariff proposal was notified by BAC to users on 13 May 2022. The deadline to send the petition therefore fell on 12 June 2022.

44. Through the postmark on the envelope on the registered letter, the Regulatory Body could see that IATA's petition was sent on 10 June 2022.<sup>16</sup> This falls within the deadline of 12 June 2022.

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<sup>12</sup> Freely translated: "BAC provided misleading information regarding its licence obligations and capital projects".

<sup>13</sup> Freely translated: "Gradual rebalancing of tariff structure breaks cost-relatedness principle".

<sup>14</sup> Freely translated: "Tariff Structure is out of line with reference airports".

<sup>15</sup> Initial remarks BAC/IATA, p. 3.

<sup>16</sup> In its concluding remarks, IATA itself also submitted proof of sending on 10 June 2022 (Annex 2 to concluding remarks of IATA, "proof of sending on time").

45. Based on this information, the Regulatory Body concluded that IATA's petition was sent on time, i.e., within 30 days of the licensee's notification of the final tariff control formula and tariff system.
46. The petition sent by registered mail with acknowledgement of receipt also meets the formal requirements of Article 55, §3, 1<sup>st</sup> paragraph of the License Decree. In particular, it explicitly states the subject, specifically:  
*"Petition against the proposed final formula for Brussels Airport Company's tariff system for the QQ4 period, published 13 May 2022".*

The petition also contains an exhaustive list of seven arguments relied upon to substantiate the rejection. These arguments are:

- (1) The provision of information;*
  - (2) Traffic forecasts;*
  - (3) Fair margin ("WACC");*
  - (4) Investments;*
  - (5) Operating expenses (OPEX);*
  - (6) Asset Allocation;*
  - (7) Benchmark study.*
47. The Regulatory Body is of the opinion that the petition submitted hereby meets the requirements, under penalty of nullity, stipulated in Article 55, §3, 1<sup>st</sup> paragraph of the License Decree.
- 48. In view of the foregoing, IATA's petition submitted on behalf of the mandated airlines is admissible.**

## **5.2. The rejected tariff proposal**

49. Below is BAC's proposed tariff control formula and tariff system for the QQ4 period, which is disputed within the meaning of Article 55, § 1 of the License Decree. These proposals were communicated to the users on 13 May 2022 and published on BAC's website as follows:

## Regulated aeronautical charges from April 1, 2023 to March 31, 2028

The articles 1, 3, 4 and 5 present the reference unit fees for the regulated aeronautical activities as consulted for the period April 1 2023 – March 31 2028. These unit fees are defined and are still subject to the yearly application of the formula for tariff control as defined in article 9. The formula for tariff control is to be applied as of April 1 2023, along with the progressive rebalancing from passenger charges to pax LTO charges as described below.

### Art. 1

§ 1. For every take-off and landing (LTO: Landing and Take Off) Brussels Airport Company levies a charge based on the formula  $U \times W \times E \times D + U_n \times N$  in which:

- U is the unit rate
- W is the weight of the aircraft, expressed in tons
- E is the environmental factor
- D is the day/night factor
- $U_n$  is the Unit rate for NOx contribution per movement
- N is the NOx emission per standard LTO cycle of the aircraft


**The unit rate (U)** is split between passenger aircrafts and full-freighter aircrafts. Given the introduction of NOx related charges element and the evolution of the E and D parameters as presented below, the reference unit fee for the start of the QQ4 period for passenger aircrafts is **2.58 Euro** and for full-freighter aircraft is **1.86 Euro**.

The above-mentioned unit rates are subject to the formula for tariff control (art. 9), as from April 1<sup>st</sup>, 2023.

The passenger aircraft LTO unit rate increases yearly with a fixed amount of **0.52 Euro** over the QQ4 period, after the application of the formula for tariff control, as of the 1<sup>st</sup> of April 2023.

**The weight factor (W)** is equal to the Maximum Take-off Weight ("MTOW"), expressed in tons (Art. 8). This weight factor is limited to a minimum of **40** tons and to a maximum of 175 tons.

**The environmental factor (E)** is determined for the following years according to the table below:



E-factor	
category name	Value
R1	10
R2	6
R3	2
R4	1.2
R5	1
R6	0.8
R7	0.6
R8	0.5

The aircraft are classified into eight noise categories. The methods to determine these categories are explained in annex 1 to these terms and conditions of use. Each aircraft, for which the operator has provided Brussels Airport Company with the documents necessary for the classification, will be assigned to a noise category. The initial classification into a noise category or a change of noise category of an aircraft is effective on the first day of the month following receipt of the required documents. Any aircraft for which Brussels Airport Company has not received the documents required for the classification will automatically be assigned to category R1 with the exception of propeller aircraft of maximum 9 tons, which will be assigned to category R2.

This means that the use of environmentally friendlier aircraft is incentivised through the use of less noisy aircraft.

**The day/night factor (D)** is determined according to the table below, and depends on the actual landing or take-off time and on the quota count (QC) of an aircraft:

<b>Local time</b>	<b>QC</b>	<b>Movement</b>	<b>[D]</b>
06:00-06:59	QC ≤ 12	Dep & Arr	1
	QC > 12	Dep & Arr	20
07:00-20:59	any QC	Dep & Arr	1
21:00-22:59	QC ≤ 12	Dep & Arr	1
	24* <sup>1</sup> ≥ QC > 12	Dep	3
	QC > 12	Arr	20
	QC > 24* <sup>1</sup>	Dep	20
23:00-05:59	QC ≤ 8	Arr	3
	QC ≤ 8* <sup>2</sup>	Dep	4
	QC > 8* <sup>2</sup>	Dep & Arr	20

The method applied to calculate the QC is explained in annex 2 to this document.

The time of landing to be taken into account is the actual time at which the aircraft touches down. The take-off time is the actual time at which the aircraft lifts off.

**The unit rate for NOx contribution (U<sub>n</sub>).** The reference unit rate per movement (landing or take-off) for the start of the QQ4 period is **3.67 Euro**.

The above-mentioned unit rate is subject to the formula for tariff control (art. 9), as from April 1<sup>st</sup>, 2023.

**The NOx emission value per LTO cycle (N)**

The NO<sub>x</sub> emission value for each aircraft (N = NO<sub>x,aircraft</sub>) is based on the total mass of oxides of nitrogen emitted per engine (NO<sub>x,engine</sub>) during the LTO-cycle pursuant to ICAO Annex 16 volume II, the Hydrocarbon characteristic Dp/FOO value per engine and the number of engines as follows:



- 1)  $NO_{x,aircraft} [kg] = \text{Number of engines} \times NO_{x,engine} [kg]$
- 2) If  $HC_{engine} > 19,6 \text{ g/KN}$  the  $NO_{x,aircraft} [kg]$  is multiplied with a factor  $a = HC_{engine} / 19.6 \text{ g/KN}$ , with a maximum of 4.

The specific emission value of each aircraft is taken into account up to the third decimal place.

The initial  $NO_{x,aircraft}$  and  $HC_{engine}$  value or any change of this value for all aircrafts operating at BRU are to be communicated proactively by the airlines to Brussels Airport Company, in line with the procedure described in Appendix 3 of this document.

Any aircraft for which Brussels Airport Company has not received the documents required for the calculation of the  $NO_{x,aircraft}$  value, this value will be calculated as follows<sup>3</sup>:

$$NO_{x,aircraft} [kg] = MTOW [ton] * 0.3 \text{ kg NOx/ton}$$

§ 2. Contrary to the previous paragraph, the applicable unit rate for the period 1/4/2022 – 31/3/2023 for each landing and take-off of a helicopter is **17.99 Euro**.

This is the reference unit fee for the QQ4 period and the unit fee is subject to formula for tariff control (art. 9), as from April 1<sup>st</sup>, 2023.

This paragraph only applies on the condition that the helicopter does not use the approach or departure route of a runway, lands or takes off between 6.00 a.m. and 10.59 p.m. (local time) and follows the "best practice" proposed by the airport authorities with regard to noise.

## **Art. 2.**

For aircraft carrying out flights imposed by the Minister for the purpose of training crew and for aircraft carrying out test flights prior to the issue, renewal or restitution of the certificate of airworthiness, the charges referred to in article 1 are reduced by 80%. This reduction is not granted from Monday to Friday between 8.00 and 11.00 a.m. and between 5.00 and 8.00 p.m. (local time).

## **Art. 3.**

§ 1. The fee for parking a passenger aircraft is set at **0.80 Euro** per MTOW expressed in tons (see Art.8) and per hour for the period 1/4/2022 – 31/3/2023. This is the reference unit fee for the QQ4 period and the unit fee is subject to formula for tariff control (art. 9), as from April 1<sup>st</sup>, 2023. This fee is only levied from the third hour onwards for aircraft with a weight of less than 100 tons and from the fifth hour onwards for aircraft with a weight of 100 tons or more. However, this fee is not due for the period between 11.00 p.m. and 6.00 a.m. (local time).

§ 2. The fee for parking a full-freighter aircraft is set at **0.23 Euro** per MTOW expressed in tons (see Art. 8) and per hour for the period 1/4/2022 – 31/3/2023. This is the reference unit fee for the QQ4 period and the unit fee is subject to formula for tariff control (art. 9), as from April 1<sup>st</sup>, 2023. This fee is only levied if the full-freighter is parked for more than 8 hours without interruption, in which case the fee is due for the whole duration. However, this fee is not due for the period between 11.00 p.m. and 6.00 a.m. (local time).



#### **Art. 4.**

§ 1. The **passenger charges** are split up between originating, transfer and transit departing passengers.

the passenger charges is **22.99 Euro** per departing originating passenger even if they take a return flight the same day. This charge is reduced to **12.12 Euro** per departing transfer passenger. There is **0 Euro** charge per transit departing passenger.

Above mentioned charges are the reference unit fee for the QQ4 period and the charges are subject to formula for tariff control (art. 9), as from April 1<sup>st</sup>, 2023.

The passenger charges for originating passengers will decrease yearly with a fixed amount of **€0.90** over the QQ4 period as of the 1<sup>st</sup> of April 2023, after the application of the formula for tariff control. The passenger charges for transfer passengers will decrease yearly with a fixed amount of **€0.45** over the QQ4 period as of the 1<sup>st</sup> of April 2023, after the application of the formula for tariff control.

- An originating departing passenger is a passenger who has Brussels Airport as starting point of its journey
- A transfer passenger is a passenger whose routing is mentioned on one air ticket and whose onward journey continues on a connecting flight within 24 hours on the same calendar day of landing at Brussels Airport, but not to the country of origin.
- A transit passenger is a passenger transferring to another airport by means of the same aircraft, this on the condition the passenger does not leave the aircraft, or by means of a flight having the same flight number as the arrival flight (but no code share flight number).

The passenger charges mentioned include the bussing charge for originating and transfer passengers. No individual bussing charge is to be invoiced as of the start of QQ4.

§ 2. The charges mentioned in § 1 are not due for:

- 1° children under two years of age;
- 2° crew members responsible for the aircraft;
- 3° passengers on domestic flights;
- 4° passengers on aircraft referred to in article 7;
- 5° transit passengers staying on board of the aircraft.

§ 3. The charges due by the passengers are levied through the agency of the aircraft operator and the amounts are mentioned separately on the air ticket.

On the first request by Brussels Airport Company the intermediary is bound to remit the passenger charges, within the term set by Brussels Airport Company (under article 10), on a bank account that it – acting as a proxy on behalf and for account of Brussels Airport Company – will previously have opened at a bank approved by Brussels Airport Company and on which Brussels Airport Company has a shared signatory power and an exclusive power in case of overdue payment, suspension of payment, request for composition, bankruptcy and in any other case that might put an end to the proxy.

The assets on this account and, more generally, any charges collected by the aircraft operator on behalf of Brussels Airport Company are the exclusive property of Brussels Airport Company and will be transferred to Brussels Airport Company within the terms it has fixed with each individual operator.

## Art. 5.

§ 1. The **security charges** apply to all kind of passengers (originating, transfer and transit departing passengers).

The security charges due are **7.50 Euro** per departing passenger. This charge is applicable for the period 1/4/2022 – 31/3/2023. This is the reference unit fee for the QQ4 period and is subject to formula for tariff control (art. 9), as from April 1<sup>st</sup>, 2023.

§ 2. The charges mentioned in § 1 are not due for:

- 1° children under two years of age;
- 2° crew members responsible for the aircraft;
- 3° passengers on domestic flights;
- 4° passengers on aircraft referred to in article 10;
- 5° transit passengers staying on board of the aircraft.

## Art. 6.

Brussels Airport Company offers a series of incentives to encourage Users to develop their services at Brussels Airport.

The incentive scheme for the period 1/1/2023 – 31/12/2027 is composed out of the elements presented below. It is not possible to cumulate between the different passenger related incentives.

### 6.1. The new destination scheme for passenger operations:

<b>Jan 2023-Dec 2027</b>	<b>Incentives on PSC (1,2)<sup>4</sup></b>		
<u>New destinations</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<u>Long haul</u>	<u>€20</u>	<u>€15</u>	<u>€15</u>
<u>Short haul</u>	<u>€10</u>	<u>€10</u>	<u>€10</u>

### 6.2. The passenger growth scheme (in comparison with 75% of 2019 traffic):

<b>Jan 2023-Dec 2027</b>	<b>Incentives on PSC (1,2)<sup>5</sup></b>		
<b>Airline pax growth vs 75%</b>	<b>Year 1</b>		
Long haul	€15		
Short haul	€10		

### 6.3. The passenger Value Growth incentive:

<u>Jan 2023-Dec 2027</u>	<u>Incentives on PSC (1,2)<sup>6</sup></u>
<u>Value Growth Incentive</u>	<u>Up to 4 or more based aircraft</u>
<u>Short &amp; long haul</u>	<u>Up to 4 years €15</u>

6.4. The incremental frequency scheme for cargo:

<u>Jan 2023-Dec 2027</u>	<u>Incentives on LTO and Parking</u>		
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Additional cargo freq.</b>	75%	50%	25%

These incentive amounts are not subject to the formula for tariff control.

Specific terms and conditions applying to the incentive scheme are available in Appendix 4 of this document.

#### **Art. 7.**

**Exempted** of the charges referred to in articles 1, 3, 4 and 5 is the use of the airport infrastructure by:

- 1° aircraft used for the exclusive transportation of Heads of State and their retinue;
- 2° aircraft used for the exclusive transportation of Government leaders in office and their retinue;
- 3° aircraft carrying out calibration or measurement flights for the purpose of air traffic control;
- 4° aircraft carrying out non-commercial flights of an exceptional humanitarian nature acknowledged by Brussels Airport Company;
- 5° aircraft making a forced return;
- 6° aircraft on military flights.

#### **Art. 8.**

§ 1. The weight of the aircraft (W) that is used as the basis for calculating the charges referred to in articles 1 and 3, is the maximum authorized take-off weight ("MTOW") stipulated in the certificate of airworthiness, the flight manual or any other record annexed to the certificate of airworthiness.

§ 2. For the calculation of the charges referred to in articles 1 and 3, each fraction of a ton is counted as a whole ton, each fraction of a day as a whole day and each fraction of an hour as a whole hour.

§ 3. In the charges referred to in these terms and conditions of use the value-added tax, if any, is not included.

## Art. 9.

§ 1. The charges referred to in articles 1, 3, 4, and 5 are subject to the formula for tariff control, which is to be applied each year as from April 1<sup>st</sup>.

This formula for tariff control consist of:

- For the first year of QQ4 (2023): A one-time rebase of **+6.8%** + Consumer Price Index (CPI)
- For the following years of QQ4: An X-factor of **+0.2%** + Consumer Price Index (CPI)

The "consumer price index" factor is calculated based on the CPI of the month of September of the year prior to the charges update of April 1<sup>st</sup>, as published in the Belgian Official Gazette. The first reference value is the CPI from September 2022.

The adjusted amounts will be communicated to the Users before the end of each calendar year and will be applied as from the 1<sup>st</sup> of April of the following year.

An overview of the consulted regulated aeronautical charges for the QQ4 period is presented below in real terms (prior to the application of the yearly CPI).

€		RY 2023	RY 2024	RY 2025	RY 2026	RY 2027
Pax charges <i>(incl. bussing)</i>	od	23.66	22.81	21.96	21.10	20.25
	transfer	12.50	12.07	11.65	11.23	10.80
	transit					
Parking charges	pax	0.86	0.86	0.86	0.86	0.86
	cargo	0.24	0.24	0.24	0.24	0.24
Security charges	od	8.01	8.03	8.05	8.07	8.09
	transfer	8.01	8.03	8.05	8.07	8.09
	transit	8.01	8.03	8.05	8.07	8.09
LTO charges	pax	3.28	3.80	4.33	4.85	5.38
	cargo	1.99	1.99	2.00	2.00	2.01
	Emission (N)	3.92	3.93	3.94	3.95	3.96

## Art. 10.

§ 1. Brussels Airport Company requires that the charges referred to in art. 1, 3, 4 and 5 are paid upon receipt of the invoice and according to the conditions thereof. The deposit of a guarantee may be demanded. Brussels Airport Company determines in which cases a guarantee is to be deposited and what the amount of the guarantee should be.

§ 2. In absence of compliance with the elements contained in §1, the charges referred to in art. 1, 3, 4 and 5 have to be paid on departure and/or arrival to Brussels Airport Company, in euro or by any other electronic means of payment.

§ 3. In case of long-term parking of an aircraft, Brussels Airport Company has the right to set up intermediate invoices. A final count will be made after the departure or after decommissioning of the aircraft.

## **Art. 11.**

§ 1. For the collection of the charges referred to in article 10 every User or his representative has to return the traffic form put at its disposal by Brussels Airport Company.

§ 2. The traffic form has to be returned at the latest on the day following the aircraft movement before 10.00 a.m. (local time).

If the traffic form is not returned within the set time, is incorrect or incomplete, the charges referred to in article 10, will be calculated on the basis of the maximum weight and capacity of the aircraft type, according to the documents Brussels Airport Company has at its disposal. The data provided on the traffic form are binding upon the aircraft operator and Brussels Airport Company reserves the right to verify them.

§ 3. The traffic form referred to in § 1 and 2 has to be returned electronically according to the procedure determined by Brussels Airport Company.

Provision and transfer of all necessary inbound and outbound messages for the preparation of the flight reports and statistics for Brussels Airport Company must be secured by the Users.

Typical messages of that kind are Load Data Messages (LDM), Passenger Transfer Messages (PTM), Movement (MVT), Inbound Connection List (ICL), Container Pallet Messages (CPM), Statistical Load Summary (SLS) and others.

These messages must include the point of departure, the point of destination and the respective flight numbers. Passenger names included in these messages should not be passed to Brussels Airport Company.

Brussels Airport Company uses the system FLIRT for electronic data entry and transmission to produce both the Flight Report and for the official statistics to fulfil the EU Law. This application is made available to the handling companies operating at Brussels Airport free of any extra charge.

§ 4. Brussels Airport Company has the right to communicate the data supplied on the traffic form to Skeyes for the purpose of the collection of the charges referred to in article 172 of the law of 21 March 1991 on the reform of certain economic state enterprises.

## **Art. 12.**

This document is not a publication directed towards the general public. This document is intended for Users. The Dutch version of this document is the sole official version of the terms and conditions for Tariffs for regulated aeronautical activities at Brussels National Airport. The English and French versions are added for information purposes only. If certain formulations in this document can be interpreted differently depending on the language of the document, then the wording in the Dutch version of this document prevails the English and French versions.

Zaventem, 13 May 2022

### 5.3. Investigation of the arguments

50. The following, under section 5.3.1, will present the arguments of the complainants as relied upon in their petitions and concluding remarks. These arguments will be brought together under the following overarching themes:

- Provision of information;
- Traffic forecasts;
- WACC;
- Investments/CAPEX;
- Operating expenses (OPEX);
- Asset allocation;
- Tariff structure;
- Benchmarking.

51. Section 5.3.2. will discuss BAC's responses to the arguments of the complainants. These responses will also be grouped together by theme.

52. Under Section 5.3.3, the Regulatory Body will examine the arguments relied upon by the complainants and BAC's responses to these arguments.

#### 5.3.1. Arguments of the complaining parties

##### A. Provision of information

###### **A1. Negotiating margin of the users**

53. Both IATA and Ryanair complained about the way in which the whole tariff consultation was conducted. More specifically, according to IATA, there was no form of negotiation or substantive discussion with the users.<sup>17</sup> Together with Ryanair, it accuses the operator of not taking into account the views of users and an unwillingness to make any concessions or adjustments that would respond to the complaints of the sector.<sup>18</sup> They believe that such an approach is in violation of Article 6.2 of Directive 2009/12/EC<sup>19</sup> (hereinafter

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<sup>17</sup> Concluding remarks IATA, p. 1.

<sup>18</sup> Concluding remarks IATA, p. 3; Concluding remarks Ryanair, p. 1.

<sup>19</sup> Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, *Pb.* 14 March 2009, L 70/11.



"Airport Charges Directive"), which in their opinion stipulates that the considerations of airlines must be taken into account in order to find agreement on the content of the consultation.

## **A2. Provision of substantive information**

54. IATA believes that, during the consultations, BAC violated its obligation of transparency under Articles 42 and 53 of the License Decree. The information provided is claimed to have been insufficient in order to understand, comment on or object to the tariff system.<sup>20</sup>

Specifically, IATA refers to the efficiency target of the OPEX, for which BAC apparently limited itself to a non-binding percentage, with no information regarding the individual measures that would be taken to achieve the efficiency target.

It also refers to BAC's proposed increase in OPEX due to energy prices, which is apparently inadequately justified. Moreover, since the consumer price index affects OPEX, and this is also linked to energy prices, IATA believes it would be possible that energy prices are paid twice.

55. According to Ryanair, BAC violated the information requirement of Article 53, §1, g) of the License Decree by failing to demonstrate the benefits to users of the proposed investments and how these benefits were calculated. As an example, it refers to the cost of the new baggage system. BAC apparently did not demonstrate any effect on capacity from this system in terms of figures. It accuses BAC of not submitting any business cases or cost details of the projects, even though it apparently had these internally. For these reasons, Ryanair requests that investment projects for which the efficiency or capacity benefits were not demonstrated be excluded from the QQ4 asset base.<sup>21</sup> In its concluding remarks, it states that BAC did not provide information regarding the key parameters of each major investment project, including the sustainability impact in terms of emissions reductions, efficiency gains and capacity expansions.<sup>22</sup>

## **A3. Misleading information regarding investments**

56. Ryanair disputes the fact that BAC can invoke licence obligations as a legal basis to justify certain investments. For example, the project "New engine run up location" could not be based on the obligation in Article 33, § 1 of the License Decree cited by BAC, since the

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<sup>20</sup> IATA's petition, p.4.

<sup>21</sup> Ryanair petition, pp. 8-9.

<sup>22</sup> Concluding remarks Ryanair, p. 6.

operations at the new engine run up location cannot be considered as "ground movement of aircraft", but rather fall within aircraft maintenance.<sup>23</sup>

It also believes that the "Intermodal Hub" project cannot be based on Article 4, 5° of the License Decree, since this provision would not oblige the licensee to put in place public transport infrastructure.<sup>24</sup>

With regard to these investments, BAC allegedly provided misleading information within the meaning of Article 55, §2, a) of the License Decree. On this basis, Ryanair requested the regulator to exclude the projects from the asset base.

### B. Traffic forecast

57. The complainants believe that BAC's traffic forecast is far too conservative (as was also the case in 2015), far below the industry's own forecasts, and that it did not take into account user input during the consultation period.<sup>25</sup>

58. This includes references to forecasts by ACI<sup>26</sup> (of which BAC is a member), Eurocontrol, IATA<sup>27</sup> and ICAO<sup>28</sup>, all of which envisage a faster recovery than BAC. To this end, Ryanair adds the following forecasts in its petition<sup>29</sup>:

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<sup>23</sup> Ryanair Petition, pp. 9.

<sup>24</sup> *Idem*.

<sup>25</sup> Ryanair Petition, pp. 1-3 and IATA Petition, pp. 4-7.

<sup>26</sup> Airports Council International.

<sup>27</sup> International Air Transport Association.

<sup>28</sup> International Civil Aviation Organisation.

<sup>29</sup> Ryanair Petition, pp. 2-3.



**Table 1: Summary of forecasts**

Organisation	Represented by	Latest 2022 Base Forecast (% of 2019 levels)	Recovery to 2019 level (year)	Previous forecast
BAC	BAC	68.8% passengers	2026	No update since 2021
ACI	Airports	78% passengers	2024	Recovery by 2025
IATA	Airlines	86% passengers	2024	Recovery by 2025
Eurocontrol	Neutral	89% movements	2024	n.b.
ICAO	Neutral	78.7%-85.4% passengers	n.b.	n.b.

59. According to the complainants, there is no reason to believe that the recovery at Brussels Airport would be much slower than in the rest of Europe. In any case, BAC apparently failed to provide any evidence. According to IATA, the latest figures available show that several airports, including Frankfurt and Aéroports de Paris (AdP), are already having to adjust their forecasts to meet the faster recovery.<sup>30</sup>

60. IATA also adds that it cannot verify BAC's own assumptions and therefore does not know whether or not specific elements have already been included in the model.<sup>31</sup> IATA also asserts that BAC's argument regarding the correlation between passengers and GDP coefficients is contradicted by reality.<sup>32</sup>

61. The complainants therefore request the Regulatory Body to revise the traffic forecast for QQ4 upward. To this end, IATA asks if an independent audit can be conducted.<sup>33</sup> Ryanair in turn requests the Regulatory Body to impose new consultations pursuant to Article 55, §2, a) of the License Decree.<sup>34</sup> In its concluding remarks, IATA adds that this adjustment of the forecast cannot or should not be accompanied by a rise in OPEX. Indeed, additional

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<sup>30</sup> Concluding remarks IATA, p. 5.

<sup>31</sup> Concluding remarks IATA, p. 5.

<sup>32</sup> Concluding remarks IATA, p. 4.

<sup>33</sup> IATA's petition, p.7.

<sup>34</sup> Ryanair Petition, pp. 3.

staff would not be necessary, and above all could not be recruited in time and (other) cost increases would be neutralised by including the CPI component in the tariff formula.<sup>35</sup>

### C. WACC<sup>36</sup>

62. The complainants disagree with the calculation of various parameters within the WACC and believe that this makes the WACC far too high. They state that the methodology used is largely inconsistent with how the WACC was calculated for QQ3, and according to the complainants there is no reason to change the established model. Moreover, BAC's current approach is also apparently inconsistent with the most recent advice of the Thessaloniki Forum of Airport Charges Regulators (TF). The complainants therefore request the Regulatory Body to adjust the WACC to a more realistic level, which according to IATA<sup>37</sup> should be between -0.36% and 2.33%. Since this is a real WACC, a slightly negative nominal WACC is possible when all market factors (including CPI) are correctly identified and applied.<sup>38</sup> In its final conclusions, Ryanair also adds that it does not agree with the claim that BAC has a higher risk profile than other airports, since it has not been able to compensate its losses from COVID-19. Indeed, according to the complainant, it is clearly not the norm in Europe for airports to compensate for their losses due to the pandemic.

### **Risk-Free Rate (RFR)**

63. The complainants disagree with the methodology applied by BAC to calculate the RFR.<sup>39</sup> They disagree with BAC's viewpoint that the markets have changed (to such an extent) that they need a different approach, namely a forward-looking determination based on future interest rates (which was proposed by IATA in 2015 but rejected by the Regulatory Body). In its final conclusions, IATA states that while the CPI has been on an upward trajectory and bond yields have been rising, these developments were not unexpected and could have long been anticipated (even though no-one could have determined the exact timing).<sup>40</sup> The financial markets and actions of central banks would follow the same path as in the past: rising CPI leads to rising bond yields. Ryanair states in its final conclusions that future interest rates are unprecedented and unlikely to rise (referring to

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<sup>35</sup> Concluding remarks IATA, p. 8.

<sup>36</sup> Weighted average cost of capital.

<sup>37</sup> IATA's petition, p.12.

<sup>38</sup> Concluding remarks IATA, p. 8.

<sup>39</sup> Ryanair Petition, pp. 3-4 and IATA Petition, pp. 8-9.

<sup>40</sup> Concluding remarks IATA, p. 9.

studies by the ECB) and therefore it is more transparent, fair and robust to follow the Regulator's previous decision and use historical data.<sup>41</sup>

64. Moreover, the complainants indicate that the new methodology has various shortcomings, which is also demonstrated by the market data. In its final conclusions, IATA shows that the data presented are already outdated, in terms of expected bond yields and even more so in terms of CPI. Furthermore, both complainants agree that a *Belgian* future bond yield cannot be discounted by *European* inflation expectations. Therefore, BAC's approach for calculating CPI is not considered adequate, since the financial derivative to determine future inflation rates cannot use Belgian CPI data (cf. inflation swap with zero coupon does not exist for Belgium). Therefore, given the significant differences between the economies of the euro area countries, such financial instruments should not be used for a key parameter (cf. RFR). Ryanair also specifically refers to Eurostat data in this regard, with substantial differences between the Belgian annual HICP<sup>42</sup> and the European one.<sup>43</sup>

65. Accordingly, IATA believes that no convincing evidence has been put forward regarding the need to change the methodology and that the Regulatory Body's decision of 3 November 2015, also recommended by the TF, should be upheld: "*The Regulatory Body considers that the 10-year OLO of the National Bank of Belgium (BNB) provides the best estimate of the evolution of a 10-year risk-free rate in Belgium.*"

66. Ryanair also adds that the RFR should not be based on the Belgian context, as investors in Brussels Airport are likely to diversify their investments internationally. Since it does not opt for European values here, BAC is clearly cherry picking. In its final conclusions, Ryanair argues that the RFR should bear zero risk.<sup>44</sup> By definition, if Belgium's credit rating is downgraded and Belgian government bonds are therefore considered riskier than AAA-rated bonds in the Eurozone, a Belgian bond must have a non-zero risk.

67. BAC's assertion that the TF would advocate a prospective approach to the RFR is questioned by IATA as regards BAC's specific situation.<sup>45</sup> Indeed, the TF Guidance refers to the *forward rate for the issuance of government bonds*. It is doubtful that the guidance referred to had in mind a regulated period of five years where values are determined by financial derivatives. It was therefore requested that the correct view of TF be confirmed.

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<sup>41</sup> Concluding remarks Ryanair, p. 3.

<sup>42</sup> Harmonised Index of Consumer Prices.

<sup>43</sup> Concluding remarks Ryanair, p. 4.

<sup>44</sup> Concluding remarks Ryanair, p. 3.

<sup>45</sup> Concluding remarks IATA, p. 10-11.

68. The complainants believe that the methodology used must be applied consistently, using (long-term) averages, both for calculating the RFR and the CPI (which provides a lower real RFR). Therefore, the complainants request the Regulatory Body to re-assess the situation and adjust the WACC accordingly.

### **Asset Beta calculation**

69. The complainants indicate that the reasons for BAC's higher asset beta are not well-founded. The COVID-19 pandemic was a black swan event and would not continue during the QQ4 period. The higher uncertainty and negative trends (cf. new COVID-19 variants and accompanying measures, government policies in the context of environmental considerations, etc.) cited by BAC are obsolete, with various traffic forecasts (even from the ACI) showing a rapid recovery to 2019 levels. The complainants therefore disagree that the increase in beta is likely to be long-lasting<sup>46</sup>, meaning that the 2-year reference period is too short. Moreover, the TF also apparently states that longer statistical reference periods are more representative of the long-term risk, and these smooth out the short-term impact (whereby, according to the TF recommendations, longer periods also need to be used to avoid giving unjustifiably large weight to the pandemic as a black swan event).<sup>47</sup>

70. In addition, the complainants claim that the calculation of betas is flawed, owing to (the corporate profile of) the airports used. In their opinion, Brussels Airport is not comparable to Groupe AdP, with less varied traffic and different economic and political risks. Furthermore, these risks reflect the investment risk of the company as a whole, and not merely that of the (regulated operations of the) airport, and it is asserted that the commercial activities of a dual or hybrid-till airport should be kept separate.<sup>48</sup>

71. Finally, it is cited that the claim that (freely translated) "BAC also faces competition due to its proximity to Charleroi Airport, while other airports in the sample do not have a competing airport nearby with separate ownership" is incorrect and should not lead to an upward revision. According to Ryanair, the two airports serve different customers and therefore do not compete with each other, and Copenhagen Airport, for example, also has competition from Malmo Airport.<sup>49</sup> In its final conclusions, Ryanair also adds that the European Commission<sup>50</sup> defines the catchment area as a "100 km or 60 min drive," with

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<sup>46</sup> Ryanair also specifically refers to a study by the ISA in Ireland, to this end.

<sup>47</sup> Ryanair Petition, pp. 4-5; IATA Petition, p. 9 and Concluding remarks IATA, p. 11..

<sup>48</sup> Ryanair Petition, pp. 5 and IATA Petition, p. 10.

<sup>49</sup> Ryanair Petition, p. 5.

<sup>50</sup> European Commission (2014), "Guidelines on State aid to airports and airlines".

Malmö Airport - Copenhagen city centre equal to 61km/50 min and Charleroi Airport - Brussels city centre equal to a 60.4km/1 hour drive. It is therefore asserted that Brussels Airport clearly should not be considered as the riskiest airport in Europe and that the *asset beta* should be based on comparable medium-sized airports serving prosperous metropolitan regions (such as also Copenhagen or Malmö), without adjustments due to other airports in the catchment area. IATA also adds that competition for BAC is non-existent (hence the need for airports to be regulated), and that BAC's assertions regarding its competitive position vis-à-vis other airports and high-speed trains are irrelevant in any case, since BAC has not shown that they have changed from the past and that BAC already claims that it is applying the right strategy to strengthen its position as a hub.<sup>51</sup>

72. The complainants therefore request the Regulatory Body to ensure a more realistic asset beta. To this end, IATA also calls for a look at the approach of AdP<sup>52</sup>, the operator of airports including Paris-Charles de Gaulle and the CAA<sup>53</sup>, the UK's civil aviation regulator.

### **Gearing**

73. IATA believes that the assumptions for QQ4 should be based on the actual gearing, as was the case in QQ3.<sup>54</sup> It disagrees with BAC's argument that the market value of the equity of listed airports fell during the crisis, and that the gearing should therefore now be based on market values. In IATA's view, too much importance is placed on the pandemic years, even though the consequences are only expected to be temporary.<sup>55</sup>

74. The complainant requests that the Regulatory Body ensures that the same approach is used for calculating the gearing as in QQ3.

### **Equity-Risk-Premium (ERP)**

75. IATA believes that BAC should remain consistent with the WACC calculations for QQ3. In their opinion, with the modified approach, short- and long-term economic events are not taken into account for the ERP, and BAC does not use the most current data available either.

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<sup>51</sup> Concluding remarks IATA, p. 12.

<sup>52</sup> Aéroports de Paris.

<sup>53</sup> Civil Aviation Authority.

<sup>54</sup> IATA's petition, p.10.

<sup>55</sup> Concluding remarks IATA, p. 13.

76. Reference is also made to the most recent data from DAMODARAN and DIMSON, MARSH and STAUNTON (DMS), where the ERP value is significantly lower than that proposed by BAC.
77. The complainant requests the Regulatory Body not to allow BAC's approach, and use the geometric mean or at least the mean of the geometric and arithmetic mean of the ERP valuation of ADP.<sup>56</sup>

### **Cost of debt**

78. IATA believes that the debt risk premium should not be calculated on the basis of future interest rates, since there is no accurate information regarding the future. The most relevant and accurate way to value the financing costs would be to use the existing approach from QQ3.<sup>57</sup>
79. In their final conclusions, IATA adds that focusing on the most recently issued debt creates a distortion and does not take into account the fact that the WACC parameters are calculated based on real values, rather than nominal values.
80. The Regulatory Body is therefore requested to calculate the real cost of debt by using the recalculated RFR and the actual debt structure.
- 81. Considering all parameters, the complainants believe that the WACC is too high, with IATA indicating that the WACC should be between -0.36% and 2.33%, referring to the tables below<sup>58</sup>:**

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<sup>56</sup> IATA's petition, p.11.

<sup>57</sup> IATA's petition, p.12.

<sup>58</sup> IATA's petition, p.12.

asset beta	0.649	asset beta	0.649
equity beta	1.22	equity beta	1.22
market risk premium	4.84	market risk premium	4.84
cost of equity	1.21	cost of equity	4.31
gearing	54%	gearing	54%
risk free rate	-4.7	risk free rate	-1.6
debt premium	2.45	debt premium	2.45
cost of debt	-2.25	cost of debt	0.85
tax rate	25%	tax rate	25%
post tax WACC	-0.36%	post tax WACC	2.33%
pre tax WACC	-0.47%	pre tax WACC	3.10%

#### D. Investments/CAPEX

##### **D1. No consultation regarding investments**

82. IATA accuses the licensee of using the CAPEX plan as an envelope within which it can unilaterally make changes without consulting users in advance. During the 6-month CAPEX updates, users were apparently only informed of changes that were already being implemented in practice. According to IATA, this would violate Article 7 of the Airport Charges Directive.<sup>59</sup>

83. Ryanair believes that Article 25, §4 of the License Decree was violated in this context and refers to the "Pier B - Replacement Boarding Bridges" project to this end.<sup>60</sup> Given that BAC stated that the contracts with the contractors had already been concluded for this investment, Ryanair said the principle of prior consultation had been violated. For this reason, Ryanair asks the Regulatory Body to exclude the project from the QQ4 cost base and to further verify that there are no other investments included in this cost base, on which BAC did not consult the other parties in advance.

<sup>59</sup> IATA's petition, p.13.

<sup>60</sup> Ryanair Petition, p. 6.

## **D2. Double payment of investments**

84. Both IATA and Ryanair highlight the "Pier B - Replacement Boarding Bridges" project in their appeals as an example of how BAC appears to make users pay twice for certain investments. Projects that were deferred under QQ3 or not fully implemented appear to be reincorporated in the cost base under QQ4, meaning that they would have to be paid for twice.
85. IATA argues in this regard that the licensee cannot consider the CAPEX plan as an investment envelope, within which it can add or remove projects at its discretion, since while this creates some flexibility, it reduces BAC's exposure to risk at the same time. Moreover, in IATA's opinion, the envelope is not reflected in the WACC (calculation).<sup>61</sup>
86. Ryanair goes as far to say that this a violation of Article 46, §2 of the License Decree: if the replacement of the boarding bridges could not be paid in full with the investment tranches consulted on during QQ3, then, in its view, any additional cost should be borne by BAC, and not passed on to users in QQ4. It therefore asks the Regulatory Body to exclude the project from the QQ4 cost base and verify that no other additional costs from QQ3 have been carried forward into QQ4.<sup>62</sup>

### **E. Operating expenses (OPEX)**

87. According to IATA, the forecasts made by BAC regarding staff costs cannot be relied upon in general, as it could be seen during QQ3 that the actual costs were much higher than what was then proposed during the tariff consultation. An independent audit of OPEX would be required in this regard.<sup>63</sup>
- IATA also argues that no evidence has been provided for QQ4 to demonstrate the further expansion of the workforce. OPEX should rise proportionally with the recovering air traffic, but in BAC's proposal they apparently rise much faster.<sup>64</sup>

In addition, since adequate information was apparently not provided regarding the savings targets BAC would pursue, and how they would be achieved, IATA asks the Regulatory Body to introduce an efficiency factor linked to the actual traffic forecasts.

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<sup>61</sup> Concluding remarks IATA, p. 14.

<sup>62</sup> Ryanair Petition, p. 6-7

<sup>63</sup> Concluding remarks IATA, p. 14.

<sup>64</sup> IATA's petition, p.14.



IATA also notes that the application of the consumer price index from September 2022 will further increase OPEX in 2023. It believes that the consumer price index is in fact not appropriate, since not all airport costs are CPI-related, and where they are, IATA believes the operator has considerable purchasing power. For this reason, a negative recalculation is requested at the start of QQ4, supplemented by a negative x-factor.<sup>65</sup>

Finally, IATA would like the Regulatory Body to verify the actual cost forecast for 2022 and compare it with the correct traffic forecasts, to ascertain whether BAC's proposed cost basis for QQ4 is correct.<sup>66</sup>

### F. Asset allocation

88. IATA disputes in its petition that the ABC model applied by BAC respects the mandatory strict separation of assets between aviation-related and commercial activities within a dual till system. Adopting the same ABC model as within the hybrid till in which BAC used to be located would now be impossible to justify. According to IATA, it also cannot be guaranteed that there is no double use of the infrastructure and OPEX within the existing ABC model. It cites as an example the advertising displayed on boarding bridges, which were paid for by users. IATA believes that either airlines should be compensated for this use, or BAC should create separate infrastructure for this purpose. IATA asks the Regulatory Body for a new independent audit of the ABC model to rule out such double use.<sup>67</sup> In its closing remarks, IATA notes that the new Ria money exchange office at the airport was not included in the CAPEX list presented during the consultation. It therefore has reservations regarding the cost allocation of this.<sup>68</sup>

89. Ryanair objects to the fact that the cost of the new engine run up location is allocated in full to users through the ABC model, which appears to violate Article 42, 1° of the License Decree. In fact, it believes that engine run ups do not constitute a regulated activity, but are linked to aircraft maintenance. For this reason, it asks the regulator to exclude the project from the regulated CAPEX.<sup>69</sup>

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<sup>65</sup> IATA's petition, p.14-15.

<sup>66</sup> Concluding remarks IATA, p. 14.

<sup>67</sup> IATA's petition, pp.15-16.

<sup>68</sup> Concluding remarks IATA, p. 15.

<sup>69</sup> Ryanair Petition, p. 7.

90. Ryanair also argues that the cost allocation of the Intermodal Hub was also not implemented in accordance with Article 42, 1° of the License Decree.<sup>70</sup> More specifically, it does not agree that 84.4% of the costs associated with this project should be allocated to users, as this percentage does not take into account the proportion of non-passengers who will use the relevant infrastructure in the future. As an example, Ryanair refers to Cologne Airport, where the Intermodal Hub is also used as a transfer point for commuters whose final destination is not the airport. It therefore asks the Regulatory Body to exclude this project from the QQ4 asset base.

### G. Tariff structure

#### **G1. Gradual rebalancing in violation of the principle of cost-relatedness**

91. Ryanair supports BAC's proposed rebalancing of the tariff structure from passenger to LTO charges, as it encourages efficient and environmentally-friendly operations, but believes that this rebalancing should not be gradual. In its response to BAC's conclusions, Ryanair also objects to the latter's decision to delay and minimize the introduction of efficient and sustainable measures to protect legacy airlines and large cargo carriers at the expense of sustainable operations.<sup>71</sup>

92. The complainant argues that BAC hereby violates Articles 40 and 43 of the License Decree, alleging that the tariff structure is not in accordance with international standards and practices. Indeed, ICAO apparently stated in 2004 that tariffs need to be determined according to the principle of cost-relatedness.<sup>72</sup>

93. Ryanair therefore requests that, pursuant to 55, §4, c) of the License Decree, the proposed rebalancing be applied immediately from the start of QQ4 and therefore not phased over this period. Indeed, BAC has apparently not demonstrated that the costs would actually increase incrementally over the QQ4 period.

#### **G2. Tariff structure is not aligned with reference airports**

94. Ryanair believes that the balance of tariffs between, on the one hand, the charge for aircraft movements and, on the other hand, the charge for passengers, is inconsistent with the practice at reference airports, pursuant to Article 42, 3° of the License Decree. It

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<sup>70</sup> Ryanair Petition, p. 7-8.

<sup>71</sup> Concluding remarks Ryanair, p. 6.

<sup>72</sup> Ryanair Petition, p. 10.

suggests in this context that LTO charges in the 7 reference airports average 24% of total charges, while for BAC this evolves from 12% at the beginning of QQ4 to 19% at the end of QQ4. In Ryanair's view, airports other than those listed in the License Decree should also be included in the comparison.<sup>73</sup>

95. The complainant requests that in accordance with Article 55, §4, c) of the License Decree, a tariff structure be imposed that is in line with the reference airports, as mentioned in Article 1, 6° of the License Decree.

### H. Benchmarking

96. IATA disagrees with BAC's conclusion that the level of tariffs at Brussels Airport is in line with that at comparable airports. It argues that the licensee's benchmark is based on 2019 data and therefore does not take into account the significant tariff increase currently being proposed. According to IATA, the airports with which BAC makes a comparison will raise tariffs to a lesser extent, with the exception of two outliers (London Heathrow Airport and Amsterdam Schiphol Airport).

97. The complainant argues that the total proposed tariff increase of 6.8%, including new elements such as Fuel & Oil, as well as the expected CPI of 7%, which is of course an important part of the tariff formula, should be taken into account. IATA therefore stresses the fact that the CPI is a consumer price index and not an airport price index, and would therefore be too high in the current circumstances. In its opinion, the total tariffs in QQ4 will therefore not be in line with the average at comparable airports. In its final conclusions, IATA nevertheless states that it agrees with BAC that benchmarking is not very important when it comes to setting airport charges, but that it does show that BAC is much less "competitive" than it claims.<sup>74</sup>

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<sup>73</sup> Ryanair Petition, p. 10-11.

<sup>74</sup> Concluding remarks IATA, p. 16.

### 5.3.2. BAC's reply to the arguments of the complainants

#### A. Provision of information

##### **A1. Negotiating margin of the users**

98. BAC believes that the consultation period cannot be viewed as a negotiation in which the different parties make extreme proposals in order to end up somewhere in the middle. In its opinion, the feedback of users was taken into account and addressed during the consultation, but it is not possible to simply agree to all of the counter-proposals of the airlines, as all elements of the development plan cannot be viewed in isolation and cannot be changed without affecting the other building blocks of the plan.<sup>75</sup> It further points out that the initial tariff proposal was in any case adapted at the closing meeting on 11 May 2022.<sup>76</sup>

##### **A2. Provision of substantive information**

99. BAC argues that it has complied with its legal obligations in terms of providing information on OPEX and CAPEX costs, referring to the various meetings organised on this subject during the consultation period, as well as the accompanying presentations.

100. The reason it has not proposed specific savings measures regarding OPEX is because these are top-down targets that it intends to achieve through continuous monitoring of cost evolutions, and through price negotiations at the time contracts are renewed. The impact of rising energy prices on OPEX is also claimed to have been adequately explained. It also refutes in its conclusions the claim that the CPI has been taken into account twice, via OPEX and again via the tariffs:

*"IATA claims that CPI has been charged twice. This is an incorrect assertion. The tariffs for 2023 are determined based on the projected costs for 2023, with 2022 being a reference base. The cost base is subject to inflation. 2023 will most likely be characterised by an atypical inflationary evolution. Indeed, inflation in 2022, which was taken into account for the calculation of OPEX in 2022 for the final tariff proposal, is high, while it is expected that inflation will fall in 2023. Therefore, to avoid the erroneous impact of this atypical CPI (high CPI 2022 versus CPI 2023), that is precisely why BAC incorporated a adjustment to the tariff formula in its final tariff proposal. For the subsequent years, this is no longer relevant. Indeed, BAC only takes into account costs expressed in 2022 terms in its OPEX from 2023. These costs will therefore increase or decrease according to the CPI, expressed*

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<sup>75</sup> Initial remarks BAC/IATA, p. 2; Initial remarks BAC/Ryanair, p. 2.

<sup>76</sup> Concluding remarks BAC/IATA, p. 3.

*in the tariffs. IATA suggests that BAC passes on the increase twice with the CPI: once in OPEX and a second time via the tariffs. This is not all the case."*<sup>77</sup>

101. BAC also disagrees with Ryanair's assertion that a full cost breakdown should be given for each investment project. Contrary to Ryanair's claim, this is not mandatory under recital 14 of the Airport Charges Directive. According to BAC, sufficient information has been provided in order for parties to conduct the necessary future monitoring of the costs for each project. BAC believes that for all investments, including the baggage system, it adequately explained both the need for them and the capacity benefits during the various consultation sessions. In fact, other airlines are said to have explicitly agreed that the renewal and capacity expansion of baggage infrastructure was necessary. The fact that the current baggage system is currently sufficient for Ryanair does not change the fact that the infrastructure is outdated, worn out and in need of structural replacement, in BAC's view.<sup>78</sup>

### **A3. Misleading information regarding investments**

102. With regard to Ryanair's objection to the new engine run up location and the Intermodal Hub, BAC bases its defence on the same arguments as those that will be described below under "Asset Allocation" (Section 5.3.2. F).<sup>79</sup>

### **B. Traffic forecast**

103. Firstly, BAC asserts that none of the users provided it with a forecast of its air traffic in QQ4, or of the composition and planned use of the fleet, as stipulated in the License Decree and despite the fact that BAC had specifically requested these.

104. In addition, BAC indicates that, in accordance with the Regulator's decision of 3 November 2015, the appointment of an independent third party is not desirable, since the traffic forecasts need to be based on the specific context of Brussels Airport and that BAC, as the airport operator, is the best party to draw up the most realistic traffic forecast, taking into account the specific features of the airport.

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<sup>77</sup> Initial remarks BAC/IATA, p. 11-12.

<sup>78</sup> Initial remarks BAC/Ryanair, p. 29-30.

<sup>79</sup> Initial remarks BAC/Ryanair, p. 30.

105. In its final conclusions, BAC asserts that the traffic forecasts it has drawn up in the past have also always been very close to reality, sometimes even predicting more traffic than was actually the case.<sup>80</sup> The largest discrepancies were due to unexpected factors, such as the financial crisis in 2009-2010, the attacks in 2016 or the unexpected launch of Ryanair in 2014.
106. BAC believes that during the consultation procedure, it provided a well-structured presentation of the traffic forecast through a bottom-up approach based on the geographic markets and the different business segments (home carrier, leisure, low cost, other short-haul flights and long-haul flights).
107. BAC argues that the top-down forecasts referred to by the complainants do not apply specifically to traffic at Brussels Airport, but only generally at the Belgian or even European level. Among other things, BAC refers to Brussels Airlines' 'reboot business' plan, the detailed and substantiated assumptions for each airline segment, market competition and other proven assumptions for each segment, which it specifically took into account.
108. BAC also highlights the current evolutions, with traffic segments at Brussels Airport currently not evolving in line with IATA's forecasts, while Charleroi is enjoying strong growth rates (confirming that growth in Europe is mainly dominated by low-cost and leisure traffic), and also points to new factors after February 2022 (including the war in Ukraine, prices of energy and fuel, the decline in purchasing power, as well as the announced departure of Ryanair) that call for caution in adapting forecasts. BAC also refers specifically to ACI's forecast, which was cited by Ryanair, stating that this should be interpreted with caution. In any case, according to ACI, the recovery is still largely driven by leisure traffic and the expansion of ultra-low-cost airline capacity. Moreover, ACI also warns of ongoing staffing problems that disproportionately affect larger airports.
109. In addition, BAC indicates that the low number of aircraft movements is due to regional aircraft movements that will not recover to 2019 levels (owing to specific local events that BAC detailed), but that BAC did take into account the steady growth of larger aircraft in its projections. BAC also indicates that growth in aircraft movements is less relevant or critical to growth in passenger numbers.

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<sup>80</sup> Concluding remarks BAC/IATA, p. 6.

110. In BAC's view, there is also no reason to update the communicated forecast based on the latest available data. As such, the actual results for 2022 would be in line with the forecast figures (with marked underperformance in the early months and slightly better than usual performance in the summer season, partly due to capacity constraints at Schiphol Airport, which disappear after 2023 when larger aircraft are deployed). Furthermore, BAC claims that the communicated forecast already took into account significant catch-up of traffic by 2023. Moreover, BAC states in its final conclusions (p.7-8) that this catch-up has already begun - via leisure traffic - in 2022 and has no impact on the total traffic volume for 2023. The good performance during the summer months in the leisure segment is also not representative of the overall performance at the airport, according to BAC.
111. Finally, BAC also highlights the fact that, bearing in mind that the development of passenger traffic has historically been correlated with the evolution of GDP, the current figures (compared to the December 2021 figures) would result in lower passenger growth than initially expected.
112. BAC therefore concludes that the traffic forecasts by the industry cannot be used for Brussels Airport. In contrast, its own forecasts are much more realistic and do not even take into account various (new) existing risks yet.
113. Connected to this, BAC indicates that if the regulator did revise the traffic forecasts upward, the costs inherent in staffing, security and services to passengers would also have to be adjusted proportionally in accordance with the new traffic figures, and there could potentially be an impact on CAPEX as well. In its final conclusions, BAC adds that applying a general elasticity to calculate the link between OPEX and traffic is irrelevant in a context where BAC needs to scale back its resources after the pandemic. It also indicates that the actual wage cost corresponds to the level of the Development Plan, regardless of whether all vacancies can be filled (indeed, contractors will be used).

### C. WACC

114. In its conclusions, BAC highlights the importance of an appropriate WACC, which should ensure sufficient financial capacity for the continuation of BAC's operations and investment programmes in a market subject to cost or volume fluctuations. Not considering the actual – changed – market conditions would result in an inaccurate WACC. For the contextual evolution that needs to be taken into account to assess whether

consistency from QQ3 will actually lead to the most likely outcome, BAC refers inter alia to the declaration of the ECB to wind down its Quantitative Easing programme from July 2022, the evolution of interest rates since the start of 2022, deteriorating geopolitical conditions in Europe and a pessimistic market outlook. BAC also confirms that the risk profile of airports, and more specifically of BAC itself, have risen since the COVID-19 period (BAC - unlike other airports - has also been unable to offset its losses).<sup>81</sup>

115. BAC also indicates that in defining the various parameters, it took into account the long-term estimate of these parameters which are relevant to the QQ4 period, in accordance with the advice of the Thessaloniki Forum.

### **Risk-Free Rate (RFR)**

116. BAC upholds its assertion from the consultation that an approximation of the RFR based on historical data cannot provide a correct estimate for the period QQ4, owing to the evolutions already mentioned above. Current market data illustrate that the expectation for QQ4 is fundamentally different in terms of interest rates and inflation.
117. BAC calculates the nominal RFR and inflation based on average expectations for each parameter over the period 2023-2028 (cf. with long-term forecasts). BAC argues that IATA's calculation of the RFR for QQ4 ignores current market realities as well as the expected drop in inflation, which BAC calculated based on market data (inflation swap). This illustrates the fact that the high inflation in 2022 is only temporary, and is moving back to 'normal' levels for the QQ4 period, as also predicted by the federal planning agency. Therefore, the current real RFR for 2022 - which is very low - is not relevant for QQ4. In its final conclusions, BAC also adds that the EU is still more than relevant (for determining inflation) because investors in Belgian bonds care more about euro area inflation than Belgian inflation in particular. Moreover, there is a strong correlation between EU and Belgian inflation rates (cf. research period 2001-2021 ECB).<sup>82</sup>
118. According to BAC, the methodology used is also in line with the principles of the Thessaloniki Forum, which accepts the use of forward-looking estimates. Furthermore, the methodology applied by BAC takes into account the expectations for the Belgian OLO over a 5-year period. In its final conclusions, BAC adds that the changed circumstances justify this approach, which is confirmed not only by current market data, but also by the European Central Bank and the Federal Planning Bureau. Other regulators are also

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<sup>81</sup> Initial remarks BAC/Ryanair, p. 14-16 and Initial remarks BAC/IATA, p. 17-19.

<sup>82</sup> Concluding remarks BAC/Ryanair, p. 6-7 and Concluding remarks BAC/IATA, p. 13-15.



currently using this approach, and BAC specifically refers to the CREG, which also uses forward-looking estimates.<sup>82</sup>

119. Finally, BAC also asserts that the current estimate of the RFR based on the new market data is even an underestimation of the proposed RFR (cf. increase in ECB base rates and expectation of lower inflation).

### **Asset Beta calculation**

120. BAC argues that the approach is fully consistent with the methodology used by the Regulator in QQ3, stating in addition that BAC's risk profile is higher than that of AdP.

121. BAC also asserts that a company like AdP (and Fraport) has a broader activity base and therefore a wider spread of risks compared to BAC and therefore, by definition, a lower degree of risk. Furthermore, BAC also has a significantly higher additional risk profile than surrounding airports due to its location, its catchment area and the impact of competing (low-cost and regional) airports, as well as in terms of high-speed rail connections. The recent decision by Ryanair to cease its operations here (temporarily or otherwise) is also highlighted as confirmation of strong competition.<sup>83</sup>

122. On Ryanair's calculation of the asset beta of Copenhagen Airport (CPH), BAC claims that CPH's share is not liquid (very small share of tradable shares), unlike other listed airport shares, meaning that the asset beta for CPH as the only calculation of no value can be used as a reference for BRU.<sup>84</sup>

123. BAC also requests an acknowledgement that airport operations in 2022+ are not necessarily the same as airport operations in 2015: on the one hand, the pandemic demonstrated that airport operations have a higher risk profile than initially estimated but, moreover, a number of additional factors have become relevant (cf. business travel under pressure, more volatility, changed perception of green travel). The newly emerged risks need to be included in the asset beta.<sup>84</sup>

124. Moreover, BAC states that it carried out a benchmark study on several listed airports to confirm the relevance of the level of asset beta of ADP - which is an underestimate of BAC's risk profile.<sup>83</sup>

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<sup>83</sup> Initial remarks BAC/Ryanair, p. 19 and Initial remarks BAC/IATA, p. 22-24.

<sup>84</sup> Initial remarks BAC/Ryanair, p. 21.

125. Finally, BAC indicates that the reference period for the *asset beta* is long enough to smooth out market fluctuations and short enough not to recognise a situation where the market has not fully accounted for sector-specific risks, such as the emphasis on sustainability in air transport or the risk of global events.<sup>83</sup>

### **Gearing**

126. BAC indicates that calculating the gearing based on accounting data would result in a significant understatement of BAC's actual gearing, which should be based on its true market value. Firstly, the book value of BAC's equity has fallen and will continue to fall to cover the net losses of the past two years. Secondly, the market value of equity has probably fallen more sharply than the book value of equity because expectations of the future profitability of airports have fallen significantly. This confirms the fact that the proposed approach is the right one.<sup>85</sup>

### **Equity-Risk-Premium (ERP)**

127. BAC reiterates in its conclusions that the current ERP estimate by Damodaran is problematic for Belgium, given its high volatility over the past 7 years. BAC's ERP value is substantiated based, firstly, on the calculation of the ERP value by the regulator in 2015 (cf. 6.71% based on the Damodaran value), and secondly on the stable ERP for Belgium based on other sources (DMS and Bloomberg).<sup>86</sup>

128. BAC points out that just using the ERP value of DMS (which IATA refers to) will indeed result in a lower value, but just using the ERP value of Bloomberg will result in a higher value.<sup>86</sup>

129. BAC therefore still believes that the ERP estimate serves to ensure a degree of stability for a 5-year period. A stable level of ERP relative to QQ3 is still the most relevant estimate of the ERP for the QQ4 period.

130. Finally, and in connection with the above, BAC claims that using the geometric mean will always result in an underestimate of the expected return (according to relevant economic and financial literature, including Fama, the Ibbotson S&P Yearbook and R.A. Morin).<sup>86</sup>

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<sup>85</sup> Initial remarks BAC/IATA, p. 24-25.

<sup>86</sup> Initial remarks BAC/IATA, p. 25-28.

## Cost of debt

131. BAC disagrees with IATA that "the only valid data available is the current debt structure." In 2015, it made sense to take into account BAC's existing debt at issuance because most of the debt was fairly recent at the time, so the coupons reflected the market rates. There was also little or no renewal of debt planned over QQ3. However, interest rates and spreads have changed since 2015, so the coupons from the current debt position no longer reflect the actual market costs, which are relevant for QQ4. The financing cost for QQ4 will largely be the one from new issues. Furthermore, BAC made several new issues during the course of 2020, which reflect new financing costs. A significant amount of existing/old debt will need to be refinanced, which is about to mature at the start of QQ4. Therefore, it is relevant to consider BAC's most recent debt issues for "debt to be refinanced."<sup>87</sup>

### D. Investments/CAPEX

#### **D1. No consultation regarding investments**

132. BAC contests IATA's claim that projects were implemented during QQ3 for which there were apparently no consultations in advance. In fact, users apparently did have had the opportunity, over this period, to comment on new projects during 10 CAPEX updates.<sup>88</sup>

133. As regards the specific argument that there was no prior consultation on the "Pier B - Boarding bridges," BAC has provided the records of consultation meetings, to illustrate that the project and its scope extensions were consulted on as early as QQ3. Therefore, the fact that orders have already been placed to implement the project is justified.<sup>89</sup>

#### **D2. Double payment of investments**

134. Using a hypothetical example, BAC demonstrates that deferring a project to a subsequent regulated period does not result in the double payment of this project, as it is taken out of the asset base at the start of the new quinquennium and only reincorporated when the project is implemented. For an individual project, it could be asserted that a small portion of the project was already financed. However, BAC claims - in the consultations dated 20 January 2020 regarding the CAPEX and in its conclusions -

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<sup>87</sup> Initial remarks BAC/IATA, p. 28-29.

<sup>88</sup> Initial remarks BAC/IATA, p. 31.

<sup>89</sup> Initial remarks BAC/Ryanair, p. 24.

that the total QQ3 CAPEX had indeed been higher than originally estimated, which meant that these "additional" investments were not financed during QQ3, and this part of the financing was therefore fully borne by BAC. BAC also asserts that on top of the additional investments that were not in the asset base of QQ3, COVID and the expansion of QQ3 had other impacts, such as the decline in traffic, for which BAC had to bear the negative consequences. BAC also states in its conclusions that apart from the new investments 2021-2022 (cf. extension QQ3), the existing asset base over this period also had very limited financing.<sup>90</sup>

135. BAC therefore emphasises that projects are not paid for twice, and that the opposite is true, since BAC bore significant costs that it could not recover as a result of the QQ3 period extension, the freeze on charges and the obligation to continue its investments. Finally, BAC indicates that the QQ4 Development Plan does not include any resources at all to offset some of the losses.

### E. Operating expenses (OPEX)

136. In the first instance, BAC rejects IATA's requested changes to OPEX by referring to the regulator's decision from 2015, in which the latter stated that it had no authority to adjust these costs. An independent audit into the OPEX is not possible under the regulations either.<sup>91</sup>

The fact that OPEX during QQ3 was higher than the estimates from the Development Plan is due, according to the licensee, to an overambitious estimate of these expenses at the beginning of the period, which resulted in lower tariffs to the benefit of users. According to BAC, this is not an argument to contest the cost forecast for QQ4.

Nor can BAC be blamed for including unidentified cost savings in the forecasts, since the risk in case these are not realised lies with BAC.

In addition, IATA appears not to take into account the fact that OPEX is influenced by new business activities and the catch-up of one-off savings made during the pandemic. This catch-up would account for why OPEX rises faster than the recovery of air traffic.

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<sup>90</sup> Initial remarks BAC/Ryanair, p. 8-9.

<sup>91</sup> Concluding remarks BAC/IATA, p. 18.

To absorb a too-high cost increase in 2023 due to the application of the CPI from September 2022, another adjustment was made in the final tariff proposal. This would bring costs below the 2019 levels in 2023.

Finally, according to BAC, the efficiency factor requested by IATA would in fact be the same as its own top-down savings measures.<sup>92</sup>

### F. Asset allocation

137. As regards the criticism against its ABC model, BAC refers to the provisions of the License Decree, which stipulate that the same model must be used as the one from the first regulated period, independently of the till in which BAC finds itself. It asserts that the independent audit conducted by Ernst & Young in 2021 would confirm the conformity of the current model.
138. As regards advertising on aviation-related infrastructure, it notes that this situation in itself does not violate the ABC model. According to the methodology of the model, the costs of this infrastructure are allocated to the activities that generate the costs, in this case the users. The fact that advertising is displayed on the infrastructure, which generates revenue for BAC, does not change that fact, according to the operator. Whether no advertising is displayed on it, or advertising is displayed on commercial infrastructure, makes no difference to the amount of regulated charges. According to BAC, the complainant's argument pertains to revenue sharing in a single till environment, rather than to cost allocation. However, BAC argues that it cannot choose the till in which it is located, it just has to comply with licence obligations in this regard.<sup>93</sup>
139. According to BAC, the new Ria money exchange is an unregulated commercial activity for which there is no need to consult with users.<sup>94</sup>
140. BAC refers to Articles 4.5° and 33 of the License Decree to conclude that the construction of a new engine run up location is a 100% regulated investment. Moreover, it is essential infrastructure that BAC is obliged to make available to users, given that, in the event of maintenance without an engine run up location, an aircraft would not be able to take off. The argument that the investment is an unregulated activity is incorrect,

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<sup>92</sup> Initial remarks BAC/IATA, p. 32-34.

<sup>93</sup> Initial remarks BAC/IATA, p. 36-37.

<sup>94</sup> Concluding remarks BAC/IATA, p. 19.

since the engine run up location is not included in the License Decree as a subsidising activity.<sup>95</sup>

141. As regards the Intermodal Hub, BAC maintains that this project should be seen as an access route to the airport, meaning that a licence is required. In its view, the allocation of 84.4% of the cost of this infrastructure to regulated activities is the correct allocation key based on the available data. Indeed, according to the operator's estimate, no increase in non-airport passengers is envisaged for the QQ4 period. What is more, the allocation key for this project is the same as for all other investments related to landside mobility.<sup>96</sup>

### G. Tariff structure

#### **G1. Gradual rebalancing in violation of the principle of cost-relatedness**

142. BAC agrees that the principle of cost-relatedness must indeed be taken into account, in accordance with Article 42 of the License Decree.
143. BAC therefore argues that the relationship between costs should be seen with respect to total regulated costs versus total regulated revenues. This should not be the case at a granular level. Therefore, in calculating the tariff structure, cost allocation is no longer relevant, according to BAC. Rather, it believes, the gradual rebalancing of tariffs is a way, over the five-year regulated period, to incrementally place more weight on differentiating tariffs in favour of the overall ecosystem and sustainability. Such differentiation, moreover, is permitted under Article 3 of the Airport Charges Directive. However, BAC stresses that implementing this rebalancing needs to remain realistic, so that users can take the necessary actions and so that, for example, there can also be no negative impact on the traffic forecast.<sup>97</sup>

#### **G2. Tariff structure is not aligned with reference airports**

144. BAC asserts that in its final tariff proposal it has already proposed a significant change in the tariff structure, via an additional differentiation for environmental aspects (emissions and noise) within the landing and take-off (LTO) charges on the one hand, and via a higher (relative) weight of these LTO charges compared to the other charges, such as passenger charges, on the other.

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<sup>95</sup> Initial remarks BAC/Ryanair, p. 27-28.

<sup>96</sup> Initial remarks BAC/Ryanair, p. 28-29.

<sup>97</sup> Initial remarks BAC/Ryanair, p. 32.

145. Article 42 of the License Decree, in BAC's opinion, required it to align its charges with the tariff practices of the reference airports. Indeed, BAC wanted to further promote more efficient and sustainable operations, with the benchmark showing that LTO charges at Brussels Airport were indeed low. Nevertheless, BAC is of the opinion that this article does not stipulate that the tariff alignment needs to be immediate. BAC highlights the negative consequences if it was immediate, in particular the risk of falls in traffic and excessive cost increases for certain airlines or segments, versus too little time to optimise the fleet.<sup>98</sup>

### H. Benchmarking

146. BAC states that the data used for the benchmark was indeed collected in Q2 2021, where the traffic mix from 2019 was adjusted to accurately reflect the 2021 fleet. The benchmark reflects the situation at the time, which is also the objective of the benchmark, in BAC's view. BAC claims that it cannot predict the evolution of tariffs at other airports, especially for a period up to 2028.

147. BAC also highlights the fact that - compared to most other airports in Europe - it has not increased tariffs since 2019, in part because they were frozen during the corona crisis. It points out that the increase in 2023 is followed by a tariff decrease (based on an unchanged tariff structure) meaning that the net increase - excluding CPI - is 3.9% over five years based on a comparable tariff system, including the additional costs relating to Fuel & Oil. The cumulative impact of the proposed tariff formula<sup>99</sup>, excluding Fuel & Oil, amounts to a 2.6% increase in the tariffs at the end of Q4. BAC claims that this is a very limited increase, taking into account the lower traffic volume compared to 2019 and that a tariff increase should be viewed in the context of the regulated model.<sup>100</sup>

148. BAC also indicates in its final conclusions that using the CPI on top of these tariffs is indeed borne out by reality. For example, material prices, wages, as well as other elements, are subject to inflation. Moreover, the tariff increase with CPI has been upheld by the regulator in its decisions since the start of BAC's regulated framework.<sup>101</sup>

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<sup>98</sup> Initial remarks BAC/Ryanair, p. 32-33.

<sup>99</sup> BAC argues that the relevant comparison for the evolution of tariffs at BRU is the tariff formula without a modified tariff structure.

<sup>100</sup> Initial remarks BAC/IATA, p. 38.

<sup>101</sup> Concluding remarks BAC/IATA, p. 19.

149. Furthermore, BAC argues that its relative position vis-a-vis the reference airports was the yardstick for deciding on an acceleration or slowing of the subsidisation of regulated activities by unregulated revenues when BAC was still in a hybrid-till system. Given that BAC has been in dual till since the start of QQ3, this relative position no longer has a direct influence on the tariffs. BAC refers to Article 50, §2 of the License Decree, which stipulates that, following the introduction of dual till, the return from regulated activities must be maintained at a level that allows for a reasonable profit margin.

150. Finally, BAC argues that the benchmark has no impact on the tariff formula, meaning that IATA's complaint does not have to be considered any further in that regard.<sup>102</sup>

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<sup>102</sup> Initial remarks BAC/IATA, p. 39.



A. Provision of information

**A1. Negotiating margin of the users**

151. The complainants accuse the operator of not taking the feedback of users into account, as well as a lack of flexibility regarding the tariff proposal. They highlight the fact that the licensee ultimately did not make the changes they had requested. IATA therefore believes the consultation left no room for negotiation.

152. In the first instance, it should be noted that throughout the License Decree and the Transformation Decree, there is reference to a "consultation" and not a "negotiation."

153. Subsequently, the consultation is in principle intended to provide information to users, which is evident from the wording of Article 53, §1 of the License Decree (freely translated):

*"During the multi-year consultation, the licensee shall **make** the following **data**, extracts from the five-year plan referred to in Article 18, exclusively **available** to the users of Brussels National Airport or their agents, as well as to the economic regulatory authority"* [emphasis added].

154. In their final conclusions, the complainants refer to Article 6(2) of the Airport Charges Directive, which states that charges must be set "in agreement" between the airport operator and users, and that the airport operator must consider users' views before making a decision. In the complainants' view, these principles go beyond the mere provision of information. They believe the licensee has not respected these principles.

155. However, Article 6(2) of the Airport Charges Directive was not transposed into the License Decree or the Transformation Decree. Since it has no direct effect in the Belgian legal system, the complainants cannot in principle invoke this provision against the operator.<sup>103</sup> Moreover, as there has been no transposition into national regulations, the

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<sup>103</sup> Court of Justice, *Becker v. Finanzamt Münster-Innenstadt*, 19 January 1982, Case 8/81. A provision from a non-transposed Directive can only create rights for individuals if that provision imposes an unconditional and sufficiently clear and certain obligation on the Member States. A provision is unconditional when it leaves the Member States no margin of appreciation or room for manoeuvre (*Court of Justice, Kaefer and Procacci v. French State*, 12 December 1990, Cases C-100/89 and C-101/89). Given that the obligation in Article 6(2) of the Airport Charges

Regulatory Body also has no authority to assess compliance with this provision; indeed, its authority in a complaints procedure is limited under Article 55, §2 of the License Decree to investigating violations of this Decree and the Transformation Decree.

156. However, pursuant to this Article 55, §2 of the License Decree, the Regulatory Body is authorised to verify whether Article 40 of the License Decree has been complied with. According to this article, the licensee must comply with national and international standards and norms regarding the tariff policy for the regulated activities, unless otherwise stipulated. Under Article 1, 19° of the License Decree (freely translated), "national and international standards and practices" refers to "all regulations in force in the aviation sector," such as those issued by ICAO.

157. The Regulatory Body notes that Article 6(2) of the Airport Charges Directive is based on the policy of ICAO in this matter.<sup>104</sup> The latter describes a consultation as follows:

*"The purpose of consultation is to ensure that the provider gives adequate information to users relating to the proposed changes **and gives proper consideration to the views of users** and the effect the charges will have on them. The aim should be that, wherever possible, providers and users reach an agreement."*<sup>105</sup> [own emphasis]

158. This is also confirmed by the Thessaloniki Forum:

*"As a general principle, consultations should be constructive and should not merely provide information with a predetermined outcome, this is, the views of airport users should be taken into account."*<sup>106</sup>

159. The complainants therefore rightly assert that the licensee need to take their feedback on the tariff proposal into account during the consultation. However, they go too far in arguing that the licensee therefore has to modify its tariff proposal in light of their counterarguments. The ICAO guidelines in this regard are as follows:

***"Failing such agreement, the provider would continue to be free to impose the charges proposed, subject to users having the right of appeal to a body independent of the***

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Directive is imposed on Member States "wherever possible," it cannot be concluded that this provision is unconditional.

<sup>104</sup> Recitals 9 and 10 of the Airport Charges Directive.

<sup>105</sup> ICAO's Policies on Charges for Airports and Air Navigation Services, Doc 9082, p. 5.

<sup>106</sup> Thessaloniki Forum of Airport Charges Regulators, "Recommendations on Consultation and Transparency", p. 2.

*provider, where available, but the appeal process should be consistent with the form of economic oversight adopted in the State concerned.*"<sup>107</sup> [own emphasis].

160. However, if the licensee diverges from the users' counterproposals, they are obliged to provide justification:

*"Consultations, in general, should make clear the nature of proposals, the parties most likely to be affected, the specific questions on which feedback is requested, and the time schedule for responses, while ensuring a proper protection of market-sensitive data. All interested parties should be given the opportunity to present their views. **Decision documents should provide appropriate rationale for the decision taken.**"*<sup>108</sup> [own emphasis].

161. From the foregoing, we can conclude that the operator does indeed have to consider the views of the airlines, but, contrary to what the complainants assert, it is not obliged to consent to these views in calculating its final tariff proposal.

This therefore means that the operator can still stand by its original tariff proposal even following objection from the airlines. In such cases, however, it has to justify why it did not take the users' counterarguments into account. If the airlines do not agree with this explanation, they can pursue the matter with the regulator.

This substantive interpretation of the notion of "tariff consultation" is also habitual among other airport regulators.<sup>109</sup>

162. The question which therefore needs to be asked is whether the operator has taken the users' comments into account, by either including them in the final tariff proposal or not including them in the final tariff proposal, together with an explanation.

163. In this regard, the complainants do not dispute the fact that their feedback was responded to and justified by the licensee. For them, the main problem lies in the fact that no changes were ultimately made to the tariff proposal, unless they were

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<sup>107</sup> ICAO "Policies on Charges for Airports and Air Navigation Services", Doc 9082, p. 5.

<sup>108</sup> *Idem*, p. 6.

<sup>109</sup> For example ACM (regulator for Schiphol Airport) (freely translated): "*This consultation obligation does not impose an obligation on Schiphol to actually modify the parts of the proposal on which views have been submitted. However, Schiphol is obliged to provide reasons for whether, to what extent and in what way these views have led to any modification of the proposed charges and conditions*" (Authority Consumer and Market Decision of March 24, 2022, [www.acm.nl](http://www.acm.nl)); Thessaloniki Forum of Airport Charges Regulators: "*The airport should show how it took account of the comments of airport users in its final decision on charges. Where comments were not adapted a reason should be given by the airport in writing to all users.*", Recommendations on Consultation and Transparency, p. 3.

unavoidable.<sup>110</sup> Given the lack of changes, they assume that their arguments were disregarded.

164. However, as explained above, the licensee cannot be required to modify its final tariff proposal following feedback from users. If requested changes were not made, it does not mean that they were not considered.

165. The overview below shows that the licensee addressed all feedback from the complainants, either through individual correspondence or at the consultation sessions:

FEEDBACK FROM COMPLAINANTS	BAC'S RESPONSE
IATA Presentation: "Airline interim consolidated feedback" dated 17.02.2022	Presentation "2 <sup>nd</sup> General Meeting" dated 07.03.2022
Letter from Ryanair "2023-2027 Brussels Airport charge Consultation – Ryanair response" dated 18.02.2022	Letter "Response to Ryanair re Brussels Airport Charges Consultation" dated 21.03.2022
IATA Presentation: "Airline counter proposal" dated 11.04.2022	Presentation "Closing consultation meeting QQ4" dated 11.05.2022
Letter from Ryanair "2023-2027 Brussels Airport charge Consultation – Ryanair position" dated 11.04.2022	Letter "Response to letter Ryanair of 13.4.22 re Brussels Airport Charges Consultation" dated 02.05.2022 + Presentation "Closing consultation meeting QQ4" dated 11.05.2022

<sup>110</sup> "BAC does provide detailed information in this regard, and also responded to a number of requests for additional clarification. However, what BAC generally refuses to do is to modify the proposal (...). Indeed, responding to requests for clarification is fundamentally distinct from making changes or reassessments (...)", concluding remarks IATA, p. 3; "Ryanair s'attend à ce que la position de l'aéroport évolue en réponse à un retour d'information significatif et à la contribution des usagers de l'aéroport. (...) Un aéroport qui refuse d'écouter l'avis des usagers sur les paramètres clés de la construction, tels que le trafic passager, risque sans aucun doute de connaître des échecs structurels futurs.", concluding remarks Ryanair, p. 1.

166. Therefore, on this basis, it cannot be concluded that the licensee did not take into account the views of the complainants, even though the feedback provided only led to a limited number of changes to the tariff proposal. Looking at the responses of the operator, it is also possible to ascertain why it stuck to its initial positions, or not.
167. However, the operator's rationale for rejecting the users' proposed changes to the tariff proposal must be in line with applicable regulations. Therefore, the elements of the tariff proposal objected to by the complainants in their petitions will be further examined in terms of their legitimacy in the present decision.
168. **The Regulatory Body believes that it has now been established that BAC considered the parties' views during the consultation, and put forward different viewpoints. The fact that certain viewpoints of the users were not ultimately taken on board does not take away from the fact that they were actually considered. Therefore, the complainants' criticism cannot be entertained.**
169. **The Regulatory Body believes that there is no violation of Article 40 of the License Decree in this case. BAC did not violate ICAO's guidelines on conducting a consultation.**

## **A2. Provision of substantive information**

170. Article 53, §1 of the License Decree stipulates that the licensee has to provide users with the following substantive information:
- a) a proposal regarding the formula for the tariff control and the tariff system for the regulated period covered by the consultation;
  - b) the traffic forecasts for the regulated period covered by the consultation;
  - c) the costs, revenues, net fixed assets and current assets for each regulated activity for the concluding regulated period resulting from the accounts approved by the licensee's auditor and expectations for the period covered by the consultation;
  - d) the level of subsidisation of regulated activities for the same two regulated periods;
  - e) information that makes it possible to compare the tariffs of regulated activities at Brussels Airport and the tariffs for similar activities at the reference airports;
  - f) the actual use of the airport infrastructure and equipment during the preceding regulated period;
  - g) the forecasted results of any major planned investments in terms of their impact on airport capacity.

171. Article 18, §2, 3° and 5° of the License Decree also states that the development plan, which serves as the basis for the information referred to in Article 53, §1 of the License Decree, must contain the following:

- an overview of the obligations and objectives arising from the terms and conditions of the licence and the service level agreements;
- an estimate of the necessary investments in additional or existing airport facilities to meet the obligations stated under 3° (to maintain and/or increase operational capacity, enhance performance and quality, meet safety conditions, meet the objectives laid down for the licence and environmental regulations and legislation as well as any other conditions).

172. Article 55, §2, a) of the License Decree empowers the Regulatory Body, in a complaints procedure, to verify whether the consultations were conducted in good faith, in terms of the provision of information.

Article 55, §2, b) of the License Decree empowers the Regulatory Body to verify compliance with Article 53, §1 of the License Decree in a complaints procedure.

173. However, under Article 53, §1 of the License Decree, the legislator does not give any indication of the level of detail the licensee has to provide in its response, in the context of its information obligation, nor in what form the information specifically has to be provided. No further clarification can be found in the Airport Charges Directive<sup>111</sup> in this regard, nor in the documents issued by ICAO.<sup>112</sup>

174. The lack of clarification in the regulations and the fact that, by virtue of its *ex-post* authority, it has only powers that are limited both in time and in content, the Regulatory Body is only able to monitor compliance with Article 53, §1 of the License Decree on the basis of a marginal assessment. Specifically, this means that the investigation will be limited to verifying the following elements:

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<sup>111</sup> Recital 14 of the Airport Charges Directive only provides for the information requirement regarding infrastructure projects, and that it should be provided "in order to make monitoring of infrastructure costs possible and with a view to providing suitable and cost-effective facilities at the airport concerned." No such nuance has been transposed into the License Decree.

<sup>112</sup> "Users should be provided with transparent and appropriate financial, operational and other relevant information to allow them to make informed comments", ICAO "Policies on Charges for Airports and Air Navigation Services", Doc 9082, p. 6.

- 1) The information requirement relates to a regulated activity and
- 2) There is no manifest violation of the information requirement.

175. In this case, IATA contests the claim that sufficient information was made available regarding OPEX on the measures associated with the efficiency targets, on the impact of rising energy prices and on the possible double charging of the CPI.

176. The Regulatory Body notes that during the technical session of 3 February 2022, the operator provided extensive information regarding the OPEX associated with each of the regulated activities.

177. Of course, potential cost savings or efficiency targets also have an impact on the total regulated OPEX. Consequently, these also fall within the scope of Article 53, §1, c) of the License Decree.

178. During the consultation, the licensee already listed a number of measures it would implement to achieve the projected cost savings:

## Key drivers (recap general meeting)

**Ambition: ensure a continued focus on cost efficiency**

- The overall opex definition integrates the relevant cost saving targets
  - Assuming the possibility to continue specific cost savings (e.g. temporary discounts suppliers) in the early years of QQ4
  - The re-investment in resources (FTE) to be done, but in a phased approach (no full impact 2023)
  - Targeting to limit the opex increase in 2022-2023 (start year of QQ4)
- This is currently a risk for BAC, as not all cost saving targets have been identified (e.g. aiming for cost reductions in future tenders)

*SOURCE: Presentation "QQ4 consultation - technical session Opex" dated 03/02/2022, slide 20.*

- Airlines have stated that "dedicated cost efficiencies have not been identified". However, there are already efficiency targets included, for example:
  - A challenging phasing of the opex catch up in the early years of QQ4
  - Efficiency targets by 2027 amounting to €8mio included in the DP (illustrated in the opex deep dive presentation and the 2GM), equivalent to 3% of annual opex.
  - Cost containment is therefore already included in the development plan

*SOURCE: Presentation "Closing consultation meeting - final proposal" dated 11.05.2022, slide 36.*

179. The technical session on 3 February 2022, detailed how much the operator planned to save on personnel costs, maintenance costs, security costs, costs associated with passenger services, utilities, services and consulting and other costs.<sup>113</sup>
180. As regards cost savings in the context of future contract negotiations, the licensee further explains in its initial conclusion that this would not be straightforward under the current economic conditions. In its final conclusion, the complainant suggests that achieving the savings targets is therefore uncertain and is not reliable as far as users are concerned.
181. The Regulatory Body believes that in assessing compliance with the information requirement of Article 53, §1, c) of the License Decree, it is irrelevant to consider in content terms whether the savings targets are achievable or not; it is enough that the operator has provided information regarding the fact that cost savings are included in the tariff proposal and regarding the form these savings take.
182. In the present case, the Regulatory Body finds that the information provided by the operator regarding the savings targets meets the obligation referred to in Article 53, §1, c) of the License Decree.
183. IATA also accuses BAC of having anticipated an increase in OPEX due to higher energy prices during the final consultations of the consultation process, but without calculations and further explanation.
184. At the closing meeting, BAC increased the OPEX as follows:

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<sup>113</sup> Slides 28, 31, 33, 35, 37, 40 and 43.



# Opex

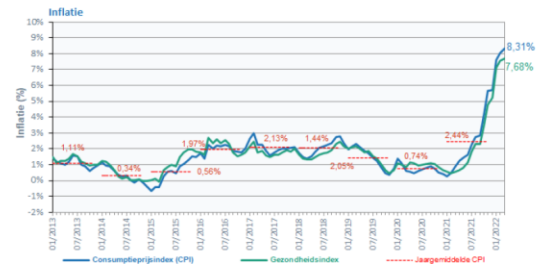
## BAC's assessment – 2022 evolutions

Recent developments illustrate some major underestimations of the 2022 regulated opex, due to market evolutions

Based on a conservative assessment of some cost increases, and knowing there is a substantial risk for an even larger increase, following minimum cost increases were identified:

Payroll impacted by inflation*	€2.5mio
Higher utility costs	€4.8mio
Green certificates:	€0.4mio
Inflation* on other cost line items:	€4.9mio

→ **Total impact on 2022 regulated costs: €12.6mio**



\* Based on March 2022 CPI estimation of the federal planning bureau

SOURCE: Presentation "Closing consultation meeting - Final Proposal" dated 11.05.2022, slide 37.

185. At the request of the users, BAC supplemented the minutes of this meeting with the details of the cost increase:

- Related to **opex** users have questions related to the extra costs in 2022 (slide 37) and ask BAC to give more explanations on the proposed increases and ask BAC to demonstrate these numbers.
  - o BAC explains that the payroll increase is directly related to the three additional index increases of BAC's personnel, currently on the payroll.
  - o The increase of the utility costs is also the increase of these costs due to higher prices.
  - o The increase of 4.9 mio euro is a.o. due to the increase of personnel costs of BAC's suppliers.
  - o As requested by the Users, BAC has provided full clarification of the additional opex costs taken into account in 2022 in the paragraphs below. :
  
- *The €12.6mio additional regulated costs faced by BAC during 2022, on top of its initial assessment from end of 2021 is defined based on available data of early April and driven by 4 major elements:*
  
- *The personnel costs were initially expected to rise 1 time in 2022 due to inflation. This expectation has been revised by the Federal Planning Bureau ([https://www.plan.be/databases/17-en-consumer\\_price\\_index\\_inflation\\_forecasts](https://www.plan.be/databases/17-en-consumer_price_index_inflation_forecasts)), leading to a first adaptation of the salary in February (early than initially planned), along with 3 additional CPI related salary adaptations over 2022. The full year impact of these 3 additional salary increases (of 2% each), on top of the 2% already planned, represent an additional €4mio (value 2022 as a result of the triple additional 2022 indexation on top of the €64.6mio) regulated costs and will have a full impact on BAC's 2023 cost base (which again will be indexed, taking into account the forecasted inflation). This full impact is not reflected in the 2022 cost base but only represents a €2.5mio increase of the regulated salary costs given the phasing of the salary indexation. (note: to be fully consistent, the €4mio impact should impact on 2023 instead of the €2.5mio currently taken into consideration in the final tariff presentation).*
  
- *Regarding Utility costs, the presented evolution of the utility costs are based on the actual price increases faced by BAC in comparison with the initial forecast presented at the start of the consultation. The price increase is linked to the increase in electricity and gas prices, fixed post finalisation of the Development Plan, approved by the Board of Directors early December. This has led to a €4.8mio additional cost in regulated terms, taking into consideration the regulated percentage of Utility related costs of ABC being 72.3%. These prices are now fixed for 2022 and will not be subject to price fluctuations, hereby limiting the price increase to be considered in 2022. However, 2023 prices will be subject to the new market prices (assumption: CPI 2023).*

*This implies a risk that 2023 utility cost will increase well above the standard assumed CPI for 2023.*

- *Regarding EUA's (green certificates) the evolution of the market prices has already been illustrated thoroughly in the 2nd GM presentation (see slide 56) and was translated in a €0.6mio euro increase compared to the initial forecast linked to the 50% in prices between October and February. Taking the regulated % of Utilities (72.3%) into consideration this leads to €0.4mio additional regulated costs*
- *Regarding the impact of CPI evolution on the other cost lines, this is the direct impact between the expected CPI for 2022 at the start of the consultation (+3.27%) vs the expectation of CPI for 2022 of the Federal Plan Bureau in March (+7.4% average 2023). Applying this CPI evolution on the regulated cost based 2022 excluding Personnel costs, Utilities and ETS = 118mio \*4.13% = €4.9mio*

*SOURCE: Meeting minutes of the Closing Consultation Meeting of the Q4 consultation, pp. 3-4.*

186. The Regulatory Body believes that with this clarification, the licensee has adequately explained the calculation of the 2022 increase in regulated OPEX. As regards this aspect, the licensee has complied with its information obligation under Article 53, §1, c) of the License Decree.

187. In addition, the Regulatory Body has investigated whether BAC has provided sufficient information regarding the potential double charging of costs through the CPI used (i.e. first through OPEX increases and then through the CPI on the tariffs). In this regard, the Regulatory Body believes that BAC has sufficiently demonstrated that the inflation and/or actual price increases already applied in 2022, relate only to the costs for 2022 itself and therefore correctly reflect the estimated<sup>114</sup> costs in 2022.

188. As indicated by BAC, due to "atypical inflation," there is a discrepancy between the CPI of September 2022 - applied to the April 2023 rates - and the CPI of 2023 itself (which is relevant to the costs for 2023). This was addressed more specifically by BAC during the closing consultation meeting, leading to an adjustment, equivalent to a rebase of -3.8%:

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<sup>114</sup> At the time of publication of the final proposal.

## Final update/check (atypical trend CPI)

### Based on an unchanged (QQ3) tariff structure

- A final check however is needed regarding CPI
    - The regulatory model and tariff formula are expressed in real terms. The tariff formula includes CPI
    - The tariff formula of year(N), uses the CPI of year (N-1), whereas the cost base is impacted by CPI year (N)
    - In a standard context, in which CPI is expected to be stable, no correction is necessary (CPI tariff formula year(N-1) is equivalent to CPI cost base year(N))
  - In 2023 however, this is not the case
    - Revenues will be inflated by CPI of 9/2022 (estimated at 6.9%)
    - forecasted CPI 2023 (QQ4 overall 2.5%/y, of which 2.8% in 2023)
    - CPI Revenues > CPI cost base
    - This is a-typical an needs to be corrected
- A downward correction of the initial rebase is needed

Source: Closing consultation meeting - Final Proposal, dated 11.05.2022

189. In this regard, BAC has demonstrated that the ROCE based on this rebase in 2023 remains the same as the WACC, with the 2023 tariffs - based on expected inflation - linked to projected costs for 2023. Therefore, no discrepancy between costs and tariffs is expected in 2023.

190. BAC therefore provided sufficient information regarding the OPEX in the total cost base, as well as the applied CPI and CPI adjustment. Whether the (level of) OPEX and CPI is correct for the tariffs in QQ4 will be further examined under the subject "OPEX."

191. **The Regulatory Body, in light of its marginal powers and the above-stated considerations, is of the opinion that there is no manifest violation of Article 53, §1(c) of the License Decree in this case.**

192. **IATA's argument regarding the 'Provision of information', as addressed in paragraphs A1 and A2 under this section, is admissible but unfounded.**

193. For its part, Ryanair invokes the lack of information regarding the costs of CAPEX projects, while recital 14 of the Airport Charges Directive states that information on infrastructure projects should be provided "in order to make monitoring of infrastructure costs possible and with a view to providing suitable and cost-effective facilities at the airport concerned." It also cites a lack of information regarding the efficiency of investments and their impact on capacity, which would violate Articles 7(h) of the Airport Charges Directive and 53, §1(g) of the License Decree. The projects that have not been shown to have a capacity or efficiency benefit should be excluded from the regulated asset base, according to this complainant.

194. First, with respect to the information on CAPEX costs, it is not clear from Article 53 §1(c) of the License Decree to what extent the information provided by the licensee must be detailed or in what form the information must be provided. No *verbatim* obligation arises from this provision for the licensee to provide a comprehensive cost breakdown per project, as demanded by the complainant.
195. The information made available at the CAPEX session of 1 February 2022, reflecting both the total estimated cost of a regulated investment and the breakdown of costs by individual year of the regulated period, meets the requirement of Article 53, §1, c) of the License Decree, in the Regulatory Body's view. In addition, the 6-month CAPEX updates organised by the licensee provide further insight into the status of projects in terms of their implementation and costs. The combination of these elements means that users can adequately monitor costs.
196. Secondly, regarding the capacity benefits of the regulated infrastructure projects, Article 53, §1(g) of the License Decree stipulates the obligation to provide information on (freely translated) "the predicted results of any major planned investments in terms of their impact on airport capacity." Article 18, §2, 5° of the License Decree also states that necessary investments in additional or existing airport facilities may be made (freely translated) "to maintain and/or increase operational capacity." Although Ryanair believes that the operator also needs to provide information on all key parameters of investments, such as efficiency gains, impacts on emissions or their sustainability impact, these elements, although recommendable, are not required by the regulations.
197. In light of Article 53, §1, g) of the License Decree, the Regulatory Body should first note that the licensee is not required to demonstrate the impact on operational capacity of *all* projects since, by definition, not all projects have an impact on capacity. As such, Article 18, §2, 5° of the License Decree stipulates that investments can also be made (freely translated) "to enhance performance and quality, meet safety conditions, meet the objectives set by the licence and environmental regulations and legislation as well as any other conditions". The licensee cannot therefore be expected to demonstrate that such investments can maintain and/or enhance operational capacity. As regards these projects, it cannot be asserted that BAC is in violation of Article 53, §1, g) of the License Decree.
198. Moreover, the Regulatory Body agrees with the licensee that the latter does not necessarily need to quantify the impact on capacity or present a business case for it, as Ryanair demands. Indeed, this is not a requirement under Article 53, § 1, g) of the License

Decree either. Furthermore, it is often not possible to predict these impacts on capacity in numerical terms in advance. In such cases, the Regulatory Body may agree that the impacts are described by the operator in general terms.

199. Finally, the assessment of transparency regarding the impacts on capacity must take into account the obligation in Article 5, 3° of the License Decree, which states that the licensee must take into account the interests of its users and passengers in operating the airport. As BAC rightly points out, this means taking into account the interests of *all* users and passengers. So although Ryanair believes that a project would not add value for itself, for example the replacement of the baggage system, this is not necessarily the case for other users. If an impact on capacity was demonstrated in the cases where it is necessary, then there is no violation of Article 53, § 1, g) of the License Decree, even if an individual user does not benefit from a project or it does not fit their business model.

200. In Annex 1 to this decision, the Regulatory Body identified for which regulated infrastructure projects<sup>115</sup> the licensee was required to provide information regarding the impact on airport capacity during the consultation period, in accordance with Article 53 § 1, g) of the License Decree. Indeed, as already indicated during the technical session of 1 February 2022<sup>116</sup>, this overview shows that the vast majority of the proposed CAPEX is not intended to expand or maintain the operational capacity of the airport, but results from one of the licence obligations of the licensee. As explained above, as regards these investments, the operator does not need to demonstrate an impact on capacity, as the licence obligation in itself is enough as the basis for the investment.

201. As shown in the annex, the Regulatory Body believes that users were adequately informed during the consultation regarding the impacts on capacity that certain investments may bring about. Where it was actually possible to quantify these impacts, this was done either in the presentation of 1 February 2022, or in the presentation of the second general meeting of 7 March 2022. Where it was not possible to quantify the impacts on capacity, a general description was given by the licensee in each project slide.

202. **The Regulatory Body, in light of its marginal powers and the above-stated considerations, is of the opinion that no manifest violation of Article 53 §1(c) of the License Decree took place in this regard. The argument that "BAC has not obliged with**

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<sup>115</sup> The engine run up location, which in the petition the complainant contests as being connected with a regulated activity, should be omitted from the regulated asset base based on the considerations in Section 5.3.3.F.

<sup>116</sup> CAPEX Technical Session dated 1 February 2022, slide 14.

**their transparency obligations required for a consultation on capital investment” is admissible but unfounded.**

### **A3. Misleading information regarding investments**

203. Ryanair believes that BAC provided misleading information within the meaning of Article 55, §2, a) of the License Decree, by relying on licence obligations for the implementation of the engine run up location and the Intermodal Hub, which it believes have no legitimate legal basis. With no legal basis, these investments should be removed from the regulated asset base.
204. The operator relies on Article 33, §1 of the License Decree to justify the implementation of a new engine run up location. This article provides that BAC, within the limits of its powers and capabilities, must make every effort (freely translated) "to reduce the noise caused by the movements of aircraft on the ground, by introducing suitable traffic policies, putting in place the necessary infrastructure, and laying down the necessary procedures."
205. Nevertheless, in Ryanair's view, the operations at the engine run up location do not fall under the "movements of aircraft on the ground," as these would be maintenance operations.
206. In its response to the Regulatory Body on this question dated 20 September 2022, BAC highlighted the European regulations which, on the one hand, oblige the airport operator to lay down procedures related to engine testing, including the zones where this must be carried out, and, on the other hand, lay down the conditions that these zones need to meet.<sup>117</sup> Among other things, these regulations require the licensee to establish separately located engine run up locations.
207. Article 17 of the License Decree provides that the licensee must offer airport services to passengers in accordance with national and international recommendations, standards and guidelines, and in particular those of ICAO, ECB and, where applicable, the ACI.

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<sup>117</sup> Annex III to Commission Delegated Regulation (EU) 2020/1234 of 9 June 2020 amending Regulation (EU) No 139/2014 as regards the conditions and procedures for the declaration by organisations responsible for the provision of apron management services, *OJ L 282, 31.8.2020, p. 1-16 and* Executive Director Decision 2020/021/R of 14 December 2020 issuing Amendment 4 to Issue 1 of the Acceptable Means of Compliance and Guidance Material to Commission Regulation (EU) No 139/2014 - Issue 1, Amendment 4 'Requirements for the provision of apron management services at aerodromes'.

208. Under this provision, BAC must comply with the above-mentioned European regulations. These regulations stipulate that, where possible, it should establish separate infrastructure for flight engine testing.<sup>118</sup> The Regulatory Body confirms that the licensee therefore has a legal basis for constructing the engine run up location.
209. Even if the information provided during the consultation regarding the legal basis was incorrect, the project cannot be removed from the regulated asset base for this reason alone, since there is indeed a legal basis for it.
210. Moreover, Article 55, §2, a) of the License Decree stipulates that it must be demonstrated that the licensee has a specific intention to provide the information in a disingenuous manner. The Regulatory Body believes that having a different interpretation regarding the legal basis of the investment is not in itself enough to conclude that the consultation was conducted in a disingenuous manner. For this reason, the complainant's demand to remove the project from the regulated asset base cannot be entertained. Nevertheless, later in this decision (Section 5.3.3. F.), we will examine whether the claim that engine run up constitutes an unregulated activity is indeed sufficient to exclude the infrastructure from the asset base.
211. As regards the Intermodal Hub, there is also disagreement between the parties regarding the legal basis. According to Ryanair, this project falls within public transport infrastructure, which cannot be covered by Article 4, 5° of the License Decree. In BAC's view, the Hub can be considered an access road to the airport, which does fall within the scope of this article.
212. From the information BAC made available regarding the Intermodal Hub, the Regulatory Body cannot conclude that the project includes costs for public transportation infrastructure, such as, for example, tram tracks, bus stops or changes to station infrastructure.<sup>119</sup> Moreover, the Regulatory Body believes that if the project did include these costs, they would cost considerably more than the €19.8 million envisaged. For this reason, the Regulatory Body agrees with the operator that the public transport infrastructure falls outside the scope of the project and therefore its costs will not be passed on to users.

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<sup>118</sup> Article GM1 ADR.OPS.D.065 of Executive Director Decision 2020/021/R of 14 December 2020 issuing Amendment 4 to Issue 1 of the Acceptable Means of Compliance and Guidance Material to Commission Regulation (EU) No 139/2014 - Issue 1, Amendment 4 'Requirements for the provision of apron management services at aerodromes'.

<sup>119</sup> This is not apparent either from the presentations during the consultation or from the separate investigation conducted by the Regulatory Body.



213. In contrast, the Intermodal Hub can be considered an "access road" to the airport, as it is intended to connect the various available modes of transport to get to the airport via one central point to the terminal. Article 4, 5° of the License Decree is the correct basis as regards this project. The complainant's request to exclude the project from the regulated asset base, because the information regarding the legal basis was said to be incorrect, must therefore be rejected.

214. **The Regulatory Body is of the opinion that Article 55, §2, a) of the License Decree was not violated as regards the information relating to the Intermodal Hub and the engine run up location. The argument that "BAC provided misleading information regarding its licence obligations and capital projects" put forward by Ryanair is admissible but unfounded.**

### *B. Traffic forecast*

215. The complainants reject BAC's traffic forecast, claiming it is far too conservative and not in line with airline industry forecasts.

216. Article 43 of the License Decree stipulates that the formula for tariff control, the tariff system and their evolution must be established, among other things, "taking into account the outlook in terms of traffic." Pursuant to Article 55, §2, b) of the License Decree, the Regulatory Body verified compliance with this article, in other words whether the operator's predicted outlook is justifiable.

217. IATA's request to appoint an independent third party to forecast traffic cannot be considered in this context. Indeed, this possibility is not provided for in Article 55, §4 of the License Decree.

218. Firstly, the Regulatory Body recognises the difficulty of making traffic forecasts, especially due to the pandemic, the geopolitical situation and other possible changed market conditions. In this regard, the Regulatory Body would like to indicate that BAC - as in the previous tariff consultation from 2015 - provided a well-structured presentation of the traffic forecasts, using a bottom-up approach, and based on geographic markets and business segments.<sup>120</sup> In light of its marginal assessment, the Regulatory Body believes that, in any event, BAC already complies with Article 53, §1, b) of the License Decree,

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<sup>120</sup> Consultation meeting "Traffic forecast" dated 2 February 2022, slides 15-22.

which requires the licensee to provide information during the multi-year consultation on "the traffic outlook for the regulated period covered by the consultation."

219. The Regulatory Body also takes note of the fact that several airlines, including the complainants, did not comply with the obligation under Article 53, §2 of the License Decree, which stipulates that, at least 3 months before the multi-year consultation, they shall make the following information exclusively available to the licensee:

- a) the forecasts regarding the volume of their traffic and transport;
  - b) their forecasts regarding the composition and planned use of their fleet;
- (...)

However, as already stated in its decision D-2015-12-LA, the Regulatory Body understands that this information is particularly sensitive and that a forecast covering a long period of five years<sup>121</sup> is also very difficult to make in a competitive context.

It also notes that BAC's traffic forecast for the first two years of QQ4 is actually based on information obtained or known from the various airlines (cf. expected new destinations, changes to the fleet, etc.).<sup>122</sup>

220. Finally, the Regulatory Body agrees with the operator that the traffic forecast should not rely solely on forecasts from the industry. Indeed, the projections should also take into account all other elements of the five-year development plan, and any specificities or constraints inherent in the operation of the airport. However, given the complexity and significant uncertainty - especially over a five-year period - it may be an additional verification to include top down studies by international manufacturers (Boeing, Airbus) and/or institutions (AIC, IATA, Eurocontrol, ICAO). The Regulatory Body will therefore assess the complainants' request to adjust the traffic forecast both on the basis of the industry forecasts made, and taking into account BAC's specificities that could potentially mean that the recovery at the airport is slower than in the rest of Europe. BAC explained these different (market) specificities and assumptions in detail during the consultation sessions.<sup>123</sup>

221. Nevertheless, this analysis is not intended to verify all of BAC's assumptions made and/or to completely modify BAC's model. Indeed, the Regulatory Body is still of the opinion that the operator itself is best placed to make the forecast. The investigation below will therefore be limited to a consistency check (top-down) of various assumptions,

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<sup>121</sup> As required by Articles 43 and 53, §1 of the License Decree.

<sup>122</sup> Meeting BAC-Regulatory Body, Explanation of methodology QQ4 traffic forecast, dated 5 October 2022.

<sup>123</sup> Deep Dive "Traffic Forecast" dated 2 February 2022, slides 11-12 and 15-17.

which may have led to an adaptation of the (bottom-up) forecast made, as well as an analysis of the latest (market) developments.

222. The tables below provide a preliminary overview of the latest forecasts by BAC and the industry:

**Table 2: BAC forecast 2022-2027 and % compared to 2019**

Year	passengers (million)	% vs. 2019	movements (000)	% vs. 2019
2022	18.1	69%	185	79%
2023	23	87%	212	91%
2024	25	95%	221	94%
2025	26.1	99%	222	95%
2026	26.9	102%	224	96%
2027	27.6	105%	225	96%

**Table 3: Most recent forecasts of the industry vs BAC**

Organisation	Forecast	2022 Base Forecast (% of 2019 levels)	Recovery to 2019 level (year)	Comments
BAC	May 2022 Forecast 2022-2027	69% passengers / 79% movements	PAX: 2026 / movements: not in Q4	BAC indicated that the latest forecasts were probably still too optimistic (e.g. impact of geo-political / market situation).
ACI	October 2022 Forecast 2022-2025	82.5% passengers in Europe - 74.4% worldwide	2024	Update compared to May 2022 forecast, recovery remains envisaged (in Europe) in 2024
IATA	March 2022 Forecast 2022-2025 (update 'recovery' in May)	83% passengers	2024 (2023)	Does not take into account Russia-Ukraine conflict, where influence is however expected to be limited. In May 2022, the CEO stated that given the traffic developments, recovery (overall) will be as early as 2023.
Eurocontrol	October 2022 forecast 2022-2028	84% movements	2025	Forecast compared to June 2022, with recovery still expected in 2025 <sup>124</sup>
ICAO		80% passengers	n.a.	

<sup>124</sup> Ryanair referred to a forecast dated October 2021 pertaining to 2021-2027, with recovery still anticipated in 2024. In the latest update, around 99% of the 2019 levels will be achieved in 2024.

**Brussels Airport vs. European airports: recovery 2022 vs. 2019**

223. In order to make a first assessment of how Brussels Airport compares with the other airports in Europe, and thus to check how relevant the industry's forecasts are (as a consistency check), the Regulatory Body made a comparison between the traffic figures of Brussels Airport and the European airports in 2022 (Jan-Sep)<sup>125</sup> and more specifically the evolution and degree of recovery compared to 2019:

**Table 4: Share of movements/passengers 2022 vs. 2019 at Brussels Airport vs. Europe**

Period	Number of flights		Number of passengers	
	Europe	Brussels Airport	Europe	Brussels Airport
jan/22	68.0%	61.4%	54.3%	48.1%
feb/22	71.0%	64.0%	61.0%	50.3%
mar/22	76.0%	72.4%	65.9%	56.5%
apr/22	82.0%	75.3%	73.0%	68.6%
may/22	86.0%	78.0%	78.0%	74.4%
jun/22	86.0%	77.1%	82.7%	71.9%
jul/22	87.0%	80.5%	85.6%	81.3%
aug/22	88.0%	82.7%	88.0%	81.5%
sep/22	87.0%	80.7%	88.0%	80.5%
<b>Year to date:</b>	<b>84.0%</b>	<b>75.4%</b>	<b>79.5%</b>	<b>70.1%</b>

*Source: Eurocontrol, ACI-Europe and Brussels Airport website*

224. It can be seen from this that Brussels Airport has not yet recovered to the same level as in 2019, in line with the average in Europe. Sure enough, certain factors, such as the strikes in June or Belgium's specific COVID measures in the first months of 2022, play a role here. Nevertheless, this overview shows that the special characteristics of the

<sup>125</sup> 2022 was looked at, rather than 2021, as the slightly longer-term impact of COVID on airports is then taken into account (e.g., less business traffic, more low cost, etc.), with data for Europe at the time of writing available until September.

airport do need to be taken into account and that in 2022 Brussels Airport has not experienced the same evolution as other European airports (on average). Forecasts from the industry should therefore be treated with caution, taking into account specific trends that have a direct impact on Brussels Airport. For example, ACI-Europe notes that the European market has experienced a structural (permanent) shift, with Low-Cost Carriers (LCCs) now having 40% market share (cf. direct air connectivity) compared to 27% for COVID-19 (cf. 2019 figures).

225. **Based on the above figures, it is clear that the industry forecasts truly cannot be simply adopted and are likely too optimistic for Brussels Airport. It is not unlikely that Brussels Airport will return to pre-pandemic figures (cf. 2019) later than the European average, since certain segments are currently recovering faster than others.**

226. As regards the year-to-date figures (from Jan-Sept) 2022 vs. 2019, BAC is nearly 10% below the European average in terms of passenger numbers, while BAC's 2023 forecast (cf. Q4 start) is only 3-7% below the industry in terms of passengers.<sup>126</sup> In terms of movements, BAC is currently 8.6% below the average of Europe, but expects to be at more or less the same percentage as the industry at the start of Q4 (cf. 2023) (cf. Eurocontrol: 92% vs. 91% BAC). It can be concluded from this that BAC's figures at the start of Q4 are not necessarily too pessimistic relative to the industry forecasts. Nevertheless, it should be noted that the specific conditions at Brussels Airport in 2022 (cf. stricter measures due to COVID, strike) may cause a slightly distorted picture. If these elements are excluded, the difference may become smaller. This will be discussed below in the following paragraphs. But a clear difference can also be seen in the further evolution of traffic over the Q4 period. Where the industry continues to predict annual growth of around 6 to 10% in passenger numbers (vs. 2% movements) - after recovering to pre-pandemic levels - BAC envisages further annual growth of 9% and 4% in 2024 and 2025, respectively, with the 2019 level not yet reached, and around 3% in 2026 and 2027, after reaching pre-pandemic levels. This is also discussed in later sections.<sup>127</sup>

### **Forecast vs actuals Brussels Airport 2022**

227. To get further insight into the accuracy of the estimated figures - regardless of the industry predictions - we can look at the latest estimated figures from 2022. Indeed, BAC made an estimate of traffic for the 2022-2027 period prior to the consultation sessions.

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<sup>126</sup> BAC anticipates an 87% recovery by 2023; ACI is at 90% recovery by 2023 and IATA at 94%

<sup>127</sup> ACI (cf. ACI World, dated 6 October 2022) predicts 22% growth between 2022 and 2023; while IATA envisages another 12% (as these are also already closer to recovery).

The difference between the forecasts made for 2022 and the difference with the currently available actual figures also gives a first indication, according to the complainants, that the figures for all of Q4, which were estimated through the same model, were artificially underestimated (during the COVID-19 pandemic, which the complainants say was a black swan event) and that the forecasts need to be adjusted to current market conditions (which the industry has already done).

228. Nevertheless, we will also look at specific reasons for “too-high” or “too-low” predictions, so that unforeseen (positive or negative) circumstances - cf. those that are also impossible/difficult to predict in the future - can be filtered out. This will help provide insight into the accuracy or cautiousness of the assumptions made by BAC.

**Table 5: Forecast vs Actuals January - October 2022 BAC**

Period	Forecast BAC	Actuals passengers	Difference (in number of passengers and %)		Possible explanation (partial) difference (incl. unforeseen circumstances)
Jan 2022	1,122,000	800,518	-321,482	-28.7%	Deteriorating of the epidemiological situation in Europe and imposed travel restrictions/testing requirements. Ban on flights to Morocco until 7 February.
Feb 2022	1,011,000	824,812	-186,188	-18.4%	
Mar 2022	1,171,000	1,128,791	-42,209	-3.6%	
Apr 2022	1,518,000	1,568,413	50,413	3.3%	Growth observable primarily via leisure (start of holidays 1 April)
May 2022	1,634,000	1,697,334	63,334	3.9%	Growth has continued, including mostly local (not many transfers)
Jun 2022	1,672,000	1,711,933	61,933	3.7%	Strikes in June and cancellations by airlines experiencing capacity problems at other airports kept the traffic figure from rising even higher.
Jul 2022	1,886,000	2,223,105	337,105	17.9%	Increased number of bookings from Dutch travellers and reorganising of flights from the Netherlands to Brussels.

Aug 2022	1,879,000	2,154,380	275,380	14.7%	Still more travellers from the Netherlands due to capacity and staffing problems; increase in transfer passengers
Sept 2022	1,731,000	2,002,540	271,540	15.7%	Same trend regarding Dutch travellers and transfers; increase in business travellers
Oct 2022	1,653,000	1,871,732	218,732	13.2%	Still more Dutch travellers and growth in business travel observable
<b>Cumulative</b>	<b>15,277,000</b>	<b>16,005,558</b>	<b>728,558</b>	<b>4.8%</b>	

*Source: Brussels Airport website*

229. It can be concluded from this that, overall, BAC underestimated the traffic forecast for the period January 2022 - October 2022 by about 4.8%.

230. However, certain unforeseen circumstances were difficult or impossible to predict by BAC - or by other parties. Under "normal circumstances" (cf. no unforeseen circumstances, e.g. deterioration of the pandemic situation or the strikes/cancellations, as well as the unexpected strong growth due to the problems at Schiphol), BAC underestimated the traffic forecast for the period January - October 2022 by about 7%.<sup>128</sup>

231. Given that the Regulatory Body cannot anticipate any unforeseen circumstances (such as a pandemic and its accompanying measures) in the future (and more specifically for the Q4 period), the difference between the actual figures and BAC's estimates without these "unforeseen circumstances" is taken as the benchmark for the (possible adjustment of the) forecast. An important note here, nonetheless, is that the additional passengers that were recorded following the capacity problems at Schiphol may continue to pass partly through Brussels Airport. This will be discussed below in the following paragraphs.

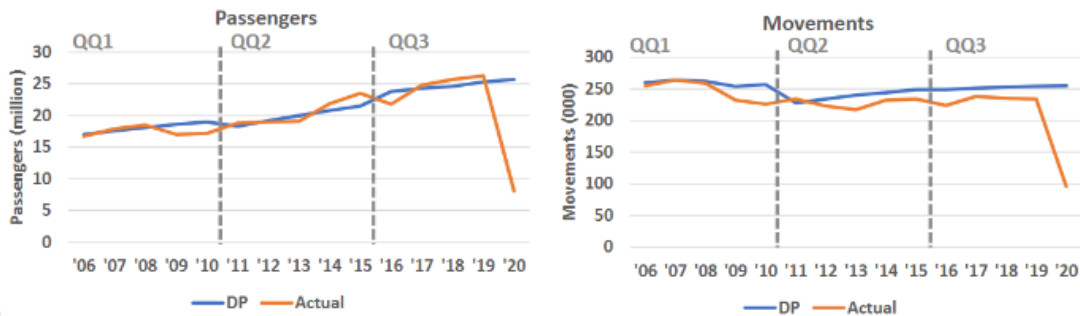
232. In response to the complainants' criticism that BAC's traffic forecast was conservative in the past, the Regulatory Body notes that in the past the forecasts were estimated fairly accurately, or slightly conservatively (mainly in Q3) if the exceptional unforeseen circumstances (such as the impact of the financial crisis and the attacks on

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<sup>128</sup> The first 2 months were excluded, as were the estimated additional Dutch passengers.



the airport, but also the unanticipated start-up of Ryanair in 2014) are taken out of the equation, at least in terms of passenger numbers (see chart below). In contrast, the number of movements was often overestimated in the past. Therefore, the Regulatory Body does not consider it relevant to adjust the passengers or the number of movements based on any erroneous estimates from previous regulated periods.



Source: Consultation meeting "Traffic forecast" dated 2 February 2022, slide 8.

233. **The Regulatory Body concludes in this regard that, based on BAC's forecasts and the actual figures of 2022, the starting point of the QQ4 period, but possibly also further evolutions, may have to be adjusted.** This appears to be primarily due to several unforeseen circumstances, but also the faster recovery of the market compared to forecasts. Given that the better figures (relative to expectations) were primarily recorded in the leisure segment, the following paragraphs will look at the specific evolutions per market segment, and any possible adjustments. Furthermore, the specific market conditions - which may not yet have been taken into account - will also be considered in assessing a possible adjustment.

### **Forecasts and actuals in specific market segments**

234. BAC indicated that the current recovery - primarily in the leisure segment - is not representative of the airport's overall performance. It also argues that various other circumstances, such as the possible departure of Ryanair, will lead to adjustments within the segments.<sup>129</sup> For this reason, the various market segments (incl. their evolution over time) will be briefly examined below.

<sup>129</sup> Whereby BAC does not ask that forecasts be adjusted downward.

235. For example, BAC indicated<sup>130</sup> to the Regulatory Body that according to its latest forecasts (dated 23 August 2022) - although 2022 was adjusted upward - 2023 was revised downward, due to the various circumstances highlighted. Specifically, there were expected to be about 22.5 million passengers in 2023 instead of the projected 23 million. The short haul segment in general was estimated at 84.5% of 2019 and long haul at 89.2%.
236. As already indicated, the leisure segment has recovered faster than expected. For 2023, it is expected to be at 116.8% of the 2019 level. Consequently, the Regulatory Body can also (partly) acknowledge BAC's argument that growth will be more organic from 2023.<sup>131</sup> It should be noted, however, e.g., that the faster recovery in 2022 was partly due to capacity problems at Schiphol (cf. jobs and max. number of aircraft movements). In 2023, some of this growth may well disappear, but it can be assumed that there are still opportunities here for Brussels Airport even within Q4. Of course, airlines can and will use larger aircraft, as BAC stated (and has also been the case in the past, inter alia, by KLM). However, this will not fully compensate for capacity constraints. In addition, the Dutch cabinet has decided to reduce the number of slots at Schiphol as of November 2023 (by 60,000 movements, to 440,000 aircraft movements).<sup>132</sup> This has already prompted several airlines to consider reducing the number of flights at Schiphol for the long term, or look for another European hub. The airline tax that was recently increased from about 8 to about 28 euros may also play a role here. More specifically, for example, tour operator Corendon has already announced it is doubling its capacity at Brussels Airport (and decreasing capacity at Schiphol).<sup>133</sup>
237. As regards the low cost segment, BAC also expects that the forecast for 2023 was too optimistic, given recent developments in the market (for which BAC refers to EasyJet's and Vueling's costs and the shortage of aircraft/crew at Transavia<sup>134</sup>, among others), but especially due to the announcements from the dominant player Ryanair. The current decision is to close the Brussels Airport base only for the winter season 2022/2023, but, among other things, the extension of the contract with Charleroi Airport and the planned expansion of activities there, means that the (predicted) growth figures at Brussels Airport are highly uncertain. BAC anticipates that some of this impact will be absorbed by

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<sup>130</sup> During a presentation dated XX and in its response dated 28 October 2022 to additional questions from the Regulatory Body dated 12 October 2022.

<sup>131</sup> This assumption does not (yet) take into account any other economic conditions (such as lower GDP).

<sup>132</sup> Source: <https://www.rijksoverheid.nl/onderwerpen/luchtvaart/nieuws/2022/06/24/kabinet-beperkt-aantal-vluchten-op-schiphol>

<sup>133</sup> Source: <https://www.vrt.be/vrtnews/nl/2022/11/28/corendon-breidt-uit-op-brussel-na-chaos-op-schiphol-van-afgelope/>

<sup>134</sup> "Response to additional questions from the Regulatory Body regarding the Q4 consultation and the open complaint process," BAC, 20 September 2022.

other airlines, but still estimates the negative impact at 300,000 to 400,000 passengers annually. The Regulatory Body agrees with BAC that the impact on this segment is very difficult to estimate. However, since it is uncertain whether Ryanair will actually leave and/or to what extent other airlines will fill the gap - also assuming that the market share of low cost (in Europe), having risen sharply (from 27% to 40%), will remain high - the Regulatory Body deems it appropriate to maintain BAC's current estimate, at least for 2023.

238. As regards short haul, BAC states that the data for 2023 will be lower than expected, given new available information: for example, certain anticipated airlines will not yet return in 2023 (cf. Aeroflot, Ukraine International, CSA Czech Airlines and El Al) - partially offset by the faster recovery of other airlines, primarily towards Southern Europe - and, based on data from 2022, there would be approximately 500,000 fewer passengers flying through Brussels Airlines as a result of their available crew and new schedules, the phasing in of the fleet and the slower recovery of the European business market.<sup>135</sup> However, the Regulatory Body believes that the decline will be rather limited here. Indeed, according to the latest reports<sup>136</sup>, Brussels Airlines is actually looking to expand, with more aircraft and more staff, with the decision already taken even before winter 2022 to extend the contracts of 200 temporary cabin crew members and hire additional cabin crew, pilots and maintenance staff. This is also confirmed by Brussels Airlines' strong results in the third quarter of 2022 (with 2.28 million passengers), which prompted it to announce that it planned to repay the €290 million loan from the federal government already by the end of 2022 (instead of before 2026) - with the support of Lufthansa.<sup>137</sup> It said the strong results were due to the growth in business travel and the continued recovery in demand for leisure travel (on top of the restructuring, which has significantly reduced costs).

239. Finally, within the long haul segment, BAC also expects several changes with minimal negative impact. While North America is recovering faster than expected, Asia is lagging much further behind, for example. The Regulatory Body believes that BAC's current forecast for 2023 can be kept as is.

240. **The Regulatory Body believes that the 2023 estimate does not have to be adjusted based on the latest expectations within the market segments themselves.**

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<sup>135</sup> "Responses to additional questions from the Regulatory Body regarding the QQ4 consultation and the open complaint process," BAC, 20 September 2022.

<sup>136</sup> Inter alia De Standaard, "Brussels Airlines wil uitbreiden", 23 August 2022.

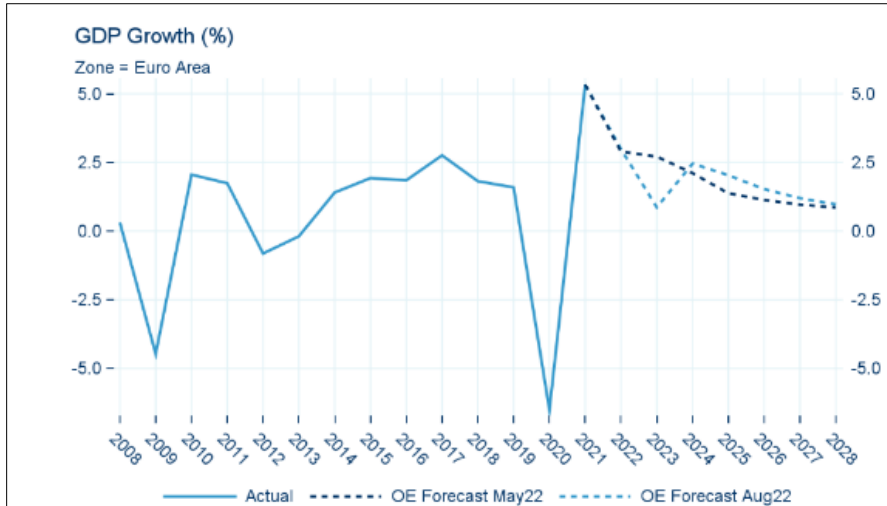
<sup>137</sup> Inter alia De Tijd, "Brussels Airlines betaalt staatssteun voor einde van het jaar volledig terug", dated 27 October 2022.

**Taking into account current traffic figures and the latest expectations within the industry, the Regulatory Body deems it appropriate to keep the estimates as they are - despite possible shifts within/between market segments.**

### **Impact of geopolitical market conditions**

241. As already indicated in BAC's final conclusions, certain (market) evolutions were not (fully) included in the traffic forecasts, including the impact of the war in Ukraine and the current energy crisis.
242. For example, BAC also highlighted the fact that, bearing in mind that the development of passenger traffic has historically been correlated with the evolution of GDP, the current figures (compared to the December 2021 figures) would result in lower passenger growth than initially expected.
243. Since it is impossible for the Regulatory Body to apply a 100% accurate adjustment to the forecasts, it will use the industry forecasts for this purpose. For example, Eurocontrol and ACI, among others, have already included this in their latest October 2022 updates. In this regard, the Regulatory Body also believes that the impacts - despite the differences from country to country - of the current (energy) crisis will persist (and will - for the most part - be acted on) across Europe, so its impact on these forecasts can be taken as the basis.
244. Specifically, Eurocontrol anticipates that recovery in Europe is still expected in 2025. As stated, while in October 2021 this recovery was still projected for 2024, it was already adjusted to 2025 in May 2022 (cf. at the time of BAC's final tariff proposal). For 2023, however, the recovery was adjusted from 95% in June 2022 to 92% in October 2022 (cf. baseline scenario). Nevertheless, this is already almost fully caught up by 2024 (99% vs. 98% respectively).
245. This is due in part to the GDP baseline forecasts that were adjusted downward for 2023, but for which a positive spillover effect was also anticipated in the rest of their forecast (corresponding to QQ4). This is shown in the graph below.

**Figure 1: Projected GDP growth in Europe 2022-2028, Eurocontrol**



Source: Eurocontrol, Seven-year Forecast Update 2022-2028, dated October 2022, slide 5

246. In addition to the impact of the war, the energy crisis and possible new variants of COVID, their analysis already took into account rising fares (which in 2022 have already increased by about 5% on top of inflation) and rising fuel prices (which have already increased by 47% since the beginning of 2022). The analysis also included restrictions over certain airspace - expected to continue until the end of their estimate in 2028 - as well as capacity and staffing problems at certain airports, which are expected to be mitigated by 2023. BAC's argument that some of these will have a major impact on the traffic forecast must therefore be refuted.

247. ACI anticipates that, despite risks of slowing growth during the autumn and winter seasons, Europe will return to pre-pandemic levels by 2024 (cf. 2019). It therefore only envisages minimal impact from the latest known market conditions, with no shifting of the recovery into a subsequent year.

248. Finally, IATA does not expect the war to have any real impact either: *"In Europe, the Russia-Ukraine war will continue to disrupt travel patterns within Europe and between Europe and Asia-Pacific. However, the war is not expected to derail the travel recovery, with the region edging closer to profitability in 2022"*.<sup>138</sup>

<sup>138</sup> IATA, Travel Recovery Rebuilding Airline Profitability, June 2022

249. The Regulatory Body takes the same reasoning regarding a possible impact of a (new) pandemic (COVID, monkeypox, etc.). Indeed, these are impossible to accurately estimate in advance. Again, the latest industry forecasts have already been included.
250. **The Regulatory Body notes that the impact of the current (energy) crisis and/or other specific market conditions is generally limited according to the latest industry forecasts (cf. most obvious "base scenario"), in the sense that the recovery to 2019 levels is continuing apace. A downturn is anticipated in 2023, but this is expected to be caught up quickly (cf. positive spillovers).**

### Conclusion

251. The Regulatory Body cannot establish that certain assumptions within BAC's traffic forecast were (knowingly) misstated. In any case, BAC is still best positioned to make these assumptions, and can fully incorporate the expertise from the industry (cf. airlines). Of course, traffic forecasts are subject to change based on new data, developments and/or market conditions, such as the geopolitical situation, but also the announced departure of Ryanair or the situation at Schiphol Airport.
252. The analysis above therefore took into account the impact of these "new" elements on the 2022 estimate already made, over and above any adjustment due to a possibly slightly too conservative 2022 estimate. Furthermore, the Regulatory Body also looked at how BAC compares to other airports in Europe, both the level of recovery versus 2019 (as an indication of BAC's specificities) and further evolution through Q4.
253. Based on these considerations, the Regulatory Body has decided to adjust BAC's forecasts as follows:
254. **Taking into account the higher than forecasted actual figures in 2022, the expectations in each market segment in 2023, as well as the slower recovery of BAC compared to the rest of Europe, weighted by the expected fall in GDP in 2023, the Regulatory Body has decided to keep the 2023 figures as estimated by BAC as they are.**
255. **Taking into account the further recovery from the COVID crisis<sup>139</sup> and the expected positive spillover effects in 2024 (and beyond), taking into account the**

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<sup>139</sup> Whereby other segments at Brussels Airport, such as business traffic will also continue to recover, following the most recent evolutions, which will also bring BAC's forecasts closer to the rest of the industry.

expected growth rates in each market segment<sup>140</sup> and taking into account the evolution from industry forecasts, the Regulatory Body has decided to increase the growth rate by 2%<sup>141</sup> in 2024 and 3.5%<sup>142</sup> in 2025. From 2026 - when there are already expected to be more passengers than in 2019 - BAC's growth rates can be kept as is. These are also in line with evolution before the pandemic.

256. This gives the following result overall:

**Table 6: Adaptation of traffic forecast by the Regulatory Body**

Year	Passengers (million)	% increase vs. last year	% recovery vs. 2019
2023	23	23.0%	87%
2024	25.5	10.7%	96%
2025	27.5	7.9%	104%
2026	28.3	3.1%	107%
2027	29.1	2.6%	110%

257. In this regard, the Regulatory Body assumes in first instance that the number of movements does not have to be revised upwards. It is conservatively assumed here that this increase may occur via a higher seat load factor. As BAC also indicated in its final conclusions to IATA, the growth in aircraft movements is less relevant or critical to growth in passenger numbers.

258. **In view of the foregoing, the Regulatory Body finds that the argument "BAC's traffic forecast is too low" asserted by Ryanair and the "Traffic forecast" argument asserted by IATA are admissible and partially justified. The Regulatory Body rules that BAC's proposed traffic forecast is incorrect and therefore constitutes a violation of**

<sup>140</sup> Whereby e.g. the leisure segment had already caught up more than anticipated, but where estimates for other short haul and long haul in 2023 are still (far) below 2019 levels, and there has also recently been an increase in business traffic.

<sup>141</sup> Since the underestimated figures for 2022 will continue and the industry is still growing at the 87% recovery rate achieved (cf. end 2023) by 10-13% on average (annually), with BAC still expected to be at the lower bound, the figures are also revised upwards owing to the expected positive spillover effect (to 10.7% from **Table 6**).

<sup>142</sup> Since the industry, at 96% recovery, is still growing at an average rate of 9-10%, but this is corrected because the high growth rates from the leisure segment in particular are expected to have already stabilised at Brussels Airport.

**Article 43 of the License Decree. Based on this, the Regulatory Body has produced an adjusted traffic forecast, as shown above in Table 6.**

**Impact of changed traffic figures on certain costs**

259. BAC indicated that the costs inherent in security and services to passengers should be adjusted in proportion to the new traffic figures. The Regulatory Body agrees with this. The same applies to CAPEX projects where there is a direct link to the number of passengers. This adjustment can be found under section 6.1.1 of this decision.

260. In addition, BAC indicated in its remarks to the complainants that costs inherent in personnel should also be adjusted proportionately.<sup>143</sup> However, as BAC indicated in the consultations, as well as in its responses to the Regulatory Body, the relationship between staff costs and passenger numbers is not linear:

De relatie tussen personeel(-kosten) en passagiers is niet eenduidig.

Het grootste deel van de personeelskost is gedreven door de taken en de organisatie die hiervoor noodzakelijk zijn. Dit is niet zozeer gedreven door het aantal passagiers. Uiteraard zal een groter volume aan passagiers leiden tot een nood aan een verder uitgebouwde organisatiestructuur. Er is echter geen lineaire correlatie te maken.

- Zo zal bijvoorbeeld het juridische team moeten opgeschaald te worden in functie van een groeiend aantal projecten/investeringen/contracten.
- Zo zal er een belangrijke stijging zijn in ICT-functies omdat data meer en meer belangrijk worden. Die data worden gebruikt om de processen beter te kunnen monitoren en bij te sturen. Op die manier wordt gestreefd naar een meer kwalitatieve dienstverlening. Dit staat echter los van de groei van het aantal passagiers.
- Zo zal het departement Asset Management evolueren in functie van de uitbouw van de infrastructuur. Dit zijn geen gekapitaliseerde personeelskosten maar puur mensen om de infrastructuur kwalitatief te onderhouden.

*Source: BAC's responses to the Regulatory Body dated 27 July 2022*

261. The Regulatory Body believes that costs inherent in personnel themselves should not be adjusted linearly. These costs will be adjusted according to the CAPEX projects that have a direct link to the number of passengers. This adjustment can be found under section 6.1.1 of this decision.

**C. WACC**

262. The complainants object to BAC's approach to calculating WACC parameter values. The approach is said to be largely inconsistent with how the WACC was calculated for QQ3; there is no reason to change the established model; and the approach is said to be inconsistent with TF's most recent advice.

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<sup>143</sup> Initial remarks BAC/IATA, p. 17 and Initial remarks BAC/Ryanair, p. 14.



263. In this regard, BAC's WACC formula is as follows:<sup>144</sup>

$$WACC = g \times (RFR + D) \times (1 - T) + (1 - g) \times (RFR + (ERP \times \text{Equity Beta}))$$

Where :

- **g** : **Gearing** is the ratio of Debt on Debt and Equity;
- **RFR** : risk free rate is (OLO 10 year in Belgium);
- **D** : Debt premium is;
- **T** : **Corporate tax rate** (currently 25%);
- **ERP** : **Equity Risk Premium for Belgium as a country**;
- **Equity beta** = Asset Beta + (Asset Beta \*G/(1-G) \*(1-T))

264. Article 50, §1 and 2 of the License Decree states the following (freely translated):

*§1. The profitability of the regulated activities (ROCE) is measured by the income before financial charges and taxes of the regulated activities after subsidisation (EBIT) divided by the sum of the net fixed assets and current assets earmarked for those regulated activities. For the first full calendar year of the first regulated period, this profitability shall not be lower than zero; it may be higher than zero to the extent that, at the time the tariff formula is drawn up pursuant to Article 7.7°, the average income of the regulated activities per traffic unit at Brussels Airport is lower than the average of the similar regulated activities of the reference airports. This profitability will then evolve in a linear manner to ensure a fair profit margin to remunerate the capital invested at the time the dual till mechanism was implemented. Whether the remuneration of the invested capital is equitable is*

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<sup>144</sup> Technical consultation meeting WACC QQ4, Brussels, 3 February 2022, slide 13.

*assessed on the basis of the market references and by using the weighted average cost of capital (WACC) method.*

*§ 2. The profitability of the regulated activities after the introduction of the dual till mechanism will be maintained at a level that makes it possible to guarantee a fair profit margin to remunerate the invested capitals.*

Article 42, 2° of the License Decree states the following (freely translated):

*The formula for the tariff control referred to in Article 30, 7°, of the Royal Decree of 27 May 2004 on the conversion of BIAC into a public limited company (NV/SA) under private law and on the airport facilities and the tariff system are established in such a way that:*

*(...)*

*2° a fair profit margin is guaranteed in return for the capital invested, particularly with a view to ensuring the development of the airport facilities in accordance with the provisions of Chapter III, Section V of this Decree;"*

265. Pursuant to Article 55, §2, b) of the License Decree, the Regulatory Body is authorised to verify that the WACC proposed by BAC complies with these provisions.
266. Below, the Regulatory Body will specifically assess the disputed parameters as used by BAC in the WACC formula. Specifically, these are (i) the Risk-Free Rate (RFR), (ii) the Asset Beta, (iii) the gearing, (iv) the Equity-Risk-Premium (ERP) and (v) the cost of debt.
267. In this regard, the Regulatory Body wishes to reiterate that the regulations, and more specifically Article 50, § 1 of the License Decree, do not specify which parameters need to be used to calculate the WACC and/or how these parameters must be specified. The Regulatory Body therefore has broad discretion in this regard. Specifically, in analysing the disputed parameters, the Regulatory Body relied on its previous decision D-2015-12-LA of 3 November 2015, in which it looked at the relevance of the methodology used (cf. changed market conditions and/or new theories or best practices). This included various economic studies, the decisions of other regulators and the opinions of the TF.

268. The following general principles of the TF were already taken into account:

1. **The use of a prescriptive approach<sup>145</sup> and consistency over time:** *“Given that the WACC represents the cost of remuneration of the licensees of debt and shareholders of the airport managing body and, as such, is included in the cost structure related to airport charges, the ISA should set ex ante a predictable and reproducible method for calculating the WACC.”*
2. **Taking into account the specificity of each airport** (such as the till or credit rating): *“WACC should take into account a transparent remuneration of the non-diversifiable level of risk borne by shareholders and by holders of debt, reflecting the specific situation of the specific airport or airport managing body on the market locally and at a larger scale.”*

### **Risk-Free Rate (RFR)**

269. BAC estimates the value of the RFR at -0.78%.<sup>146</sup> In this regard, the RFR is based on the 10-year OLO yields. This involves examining the forward looking rates of a 10-year OLO over the QQ4 period, minus the average inflation over the same period (cf. market assessment via inflation swap). The complainants object to the use of forward looking rates and discounting by *European* inflation expectations.

270. In accordance with its decision of D-2015-12-LA of 3 November 2015, the Regulatory Body is still of the opinion that the 10-year **OLO of the National Bank of Belgium** (NBB) provides a good estimate of the evolution of a 10-year risk-free rate in Belgium.<sup>147</sup> This practice is also applied by many other regulators and recommended by the TF. Nevertheless, the Regulatory Body will also look at German bonds (10 years). On the one hand, because they are considered as risk-free bonds<sup>148</sup>, as also cited by Ryanair, with Germany still having an 'AAA' rating with a Stable Outlook from Fitch (dated 21 October 2022), while Belgium has an 'AA-' Rating, with a Stable Outlook (dated 16 September 2022). On the other hand, because the nominal RFR still needs to be adjusted

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<sup>145</sup> A prescription approach assumes an efficiently financed airport rather than the actual cost of capital for calculating the cost of capital. As a result, the remuneration should be set at a level that avoids both under-investment and over-investment.

<sup>146</sup> Closing consultation meeting QQ4, Brussels, 11 May 2022, slide 58.

<sup>147</sup> The Belgian government bond best matches Belgian capital market conditions and 10-year is a relatively liquid market, with yields that are generally less volatile.

<sup>148</sup> Whereby Germany also has the largest economy in Europe and German yields are less affected by credit risk.

by the expected inflation and Belgium has no (liquid) index-linked bonds. Ryanair's argument to use another European bond is therefore (partially) maintained here.

271. As regards the **reference period** for taking into account government bond yields, the Regulatory Body again refers to economic theory, which states that using the most recent market data is the best estimate of the expected evolution of the various parameters by market participants in the coming regulatory period. A (very) short reference period would best reflect these expectations. However, averages calculated over a short period of time - especially spot yields (including forward-looking yields) - are often characterised by higher volatility from one period to the next compared to averages over a longer period, which in turn can reduce the stability of tariff parameters. Using spot yields to estimate RFR can lead to significant differences in the RFR between, for example, consultations and the final decision of a complaint. This strong volatility is less desirable from a regulatory perspective (cf. risk mitigation).

272. Given these considerations and practices of other regulators, the Regulatory Body believes that using a two-year reference period, as retained in its decision D-2015-12-LA of 3 November 2015, is still theoretically relevant, whereby this also reflects the cost of BAC's embedded debt (if the RFR is also used as a basis for the cost of debt, which is discussed further below). The complainants' argument can therefore be partially admitted here.

273. Nevertheless, the Regulatory Body deems it useful to perform a verification and possible adjustment based on a shorter reference period and spot rates (including forward-looking derivations). In this regard, the Regulatory Body also acknowledges the changed market conditions, which until recently were very difficult to estimate. Indeed, it should also be stated that the European Central Bank (ECB) phased out its bond purchases in June 2022<sup>149</sup> and has since raised its key interest rate<sup>150</sup>, with the possibility that the next regulated period will not see a return to the very low interest rates from before the crisis (which, of course, must be viewed in relation to inflation and/or depends on various factors, such as (the likelihood of) a recession).

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<sup>149</sup> The ECB had announced in December 2021 that it would scale back its bond purchases, which immediately prompted rises in the yield (including in Germany).

<sup>150</sup> The ECB raised its interest rate by 0.5% in July 2022 - the first rise since 2011, with a second rise of 0.75% in September 2022 and a further 0.75% in October (effective 2 November 2022). As a result, Belgium's 10-year interest rate in 2022 also rose to its highest level since 2012, a phenomenon also witnessed in many other European countries.

274. The chart below shows the nominal 10-year OLO yield. As of 5 December 2022, the interest rate was 2.44%. The average 10-year OLO yield for the last year was 1.56%. The average yield based on the last 2 years was 0.75%.

**Figure 2:** nominal interest rate of the Belgian 10-year OLO.



275. Spot market data can also be used to produce implied forward-looking yields, specifically the implied yield on a bond of a given maturity at a future date. As such, the 10-year OLO is expected to reach 2.84% within 5 years (figure dated 5 December). This is calculated as the difference between the 15-year OLO and the 5-year OLO.<sup>151</sup> In this way, the average 10-year OLO yield is expected to be around 2.62% for Q4 as a whole. As stated, this will also be incorporated.

276. By way of comparison, the **German 10-year government bond**<sup>152</sup> will therefore also be included (as a risk-free investment). The spot yield of this bond as of 5 December 2022 is 1.883%. In this regard, the average yield over the last 2 years was 0.33%, while the average over the last year was 0.98%. The implied future yield is 1.90%.

<sup>151</sup> Via the formula: future yield 10-year OLO within 5 years =  $\left[ \frac{(1+r_{OLO15})^{t15}}{(1+r_{OLO5})^{t5}} \right]^{\frac{1}{t15-t5}} - 1$

<sup>152</sup> TMBMKDE-10Y.

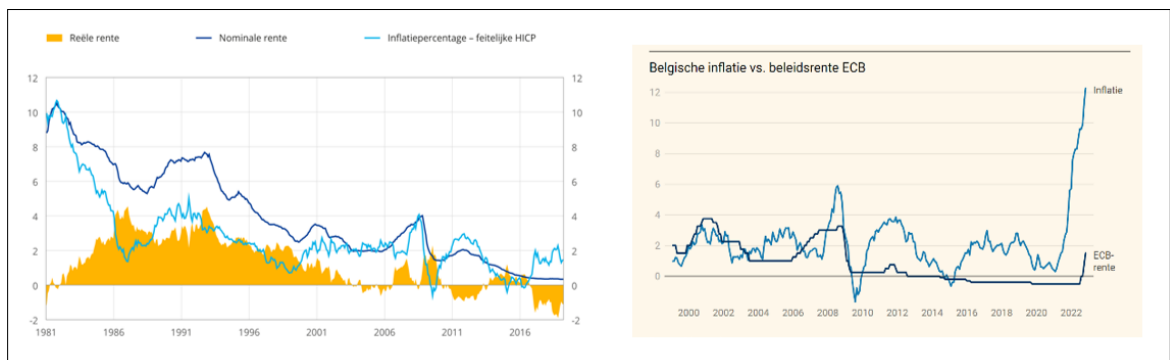
**Figure 3: nominal interest rate of the 10-year German (vs. Belgian) government bond**



Source: Bloomberg

277. As already indicated, to calculate the real RFR, it is important to adjust the yield with **expected inflation** (according to the *Fisher equation*) - where there is a strong interaction between the yield and inflation. As indicated above, but also by IATA, a rising CPI leads to rising bond yields (cf. central bank and financial market policies). In this regard, the figures below show the relationship between the European average nominal interest rates and European inflation, as well as the European Central Bank's policy rate and Belgian inflation, where it can be seen that even after the applied interest rate rises, real interest rates currently remain negative, with differences between Belgium and Europe.

**Figure 4: average nominal interest rate vs inflation in Eurozone & ECB policy rate vs inflation in Belgium**



Source: ECB and Bloomberg, dated 31 October 2022

278. In theory, inflation should be determined based on expectations for the same period as the maturity of the OLO, during the same reference period. However, since these dates do not exist, alternatives must be looked at. The inflation expectations can therefore be derived from financial instruments quoted on the bond market and the derivatives market. Inflation-linked bonds and inflation swaps discount market expectations - of all investors combined - regarding future inflation trends. For example, the 'break-even inflation rate' can be used via the difference between long-term nominal bond yields and the actual yields on inflation-linked bonds of the same maturity<sup>153</sup> or expected inflation rates via the prices of 'zero coupon inflation swaps'. The disadvantage of this method is that the expected inflation rate is influenced by biases and risk premiums, which can drive a wedge between this inflation rate and market expectations for inflation - with the break-even inflation rate also being affected by country-specific risk premiums.<sup>154</sup> Therefore, we also look at expected inflation that comes from ECB surveys and/or the Federal Planning Bureau, which then of course give a less timely indication of the evolving inflation expectations.

279. In this regard, the Regulatory Body also does not fully agree with BAC's argument that European inflation can be taken on Belgian interest rates. It may indeed be the case that (some) Belgian investors attach more importance to euro area inflation than to Belgian inflation specifically, however, the strong correlation between EU and Belgian inflation rates, for which BAC refers to ECB research for the period 2001 - 2021, is clearly less accurate in current market conditions. The Regulatory Body notes that there is currently a large difference between European and Belgian inflation rates<sup>155</sup> (see figure below). The complainants' argument can therefore be partially upheld here.

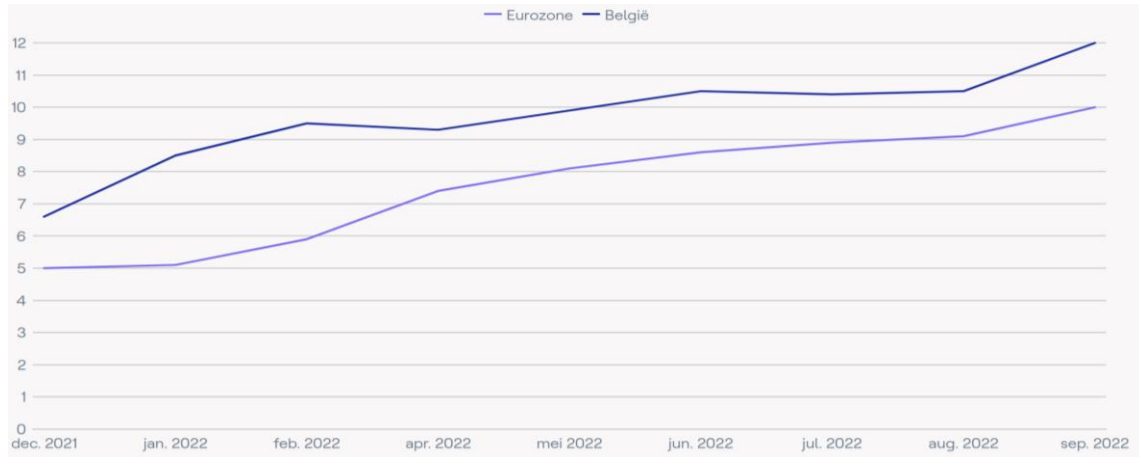
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<sup>153</sup> Via the Fisher Equation:  $\pi^e = \frac{1+i_n}{1+i_r} - 1$ , with  $\pi^e = \text{expected inflation (10Y)}$ ;  $i_n = \text{nominal RFR (10Y)}$ ;  $i_r = \text{real RFR (10Y)}$

<sup>154</sup> Where e.g. at certain moments there was a lot of pessimism in the stock market, whereby the fall in inflation expectations was seen as too optimistic, so inflation-linked bonds were purchased as insurance.

<sup>155</sup> Due to the difference in approach to the current energy crisis and e.g. automatic wage indexation in Belgium.

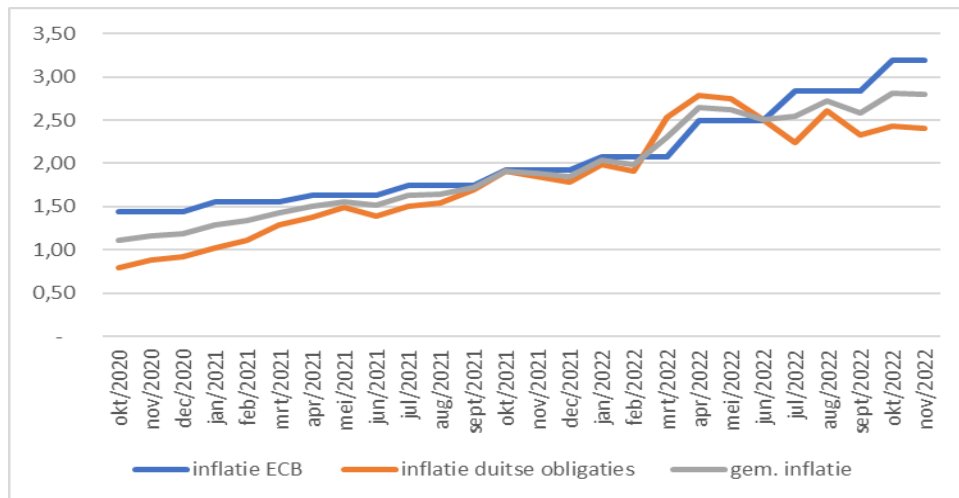
**Figure 5: Monthly inflation Belgium vs Eurozone, based on European HICP**



Source: Eurostat, figures to September 2022

280. For Germany, the break-even inflation rate from inflation-linked German government bonds was therefore looked into, as well as the expected inflation ascertained from ECB surveys<sup>156</sup>, and the average from both methods is retained (see figure below). For Belgium, this is adjusted based on the differences between Belgian and European inflation.<sup>157</sup>

**Figure 6: Expected annual German/European inflation over the next 10 years**



Source: ECB-surveys professional forecasters (10 year); Deutsche Finanzagentur<sup>158</sup>

<sup>156</sup> Whereby German inflation is generally similar to inflation in the EU-27.

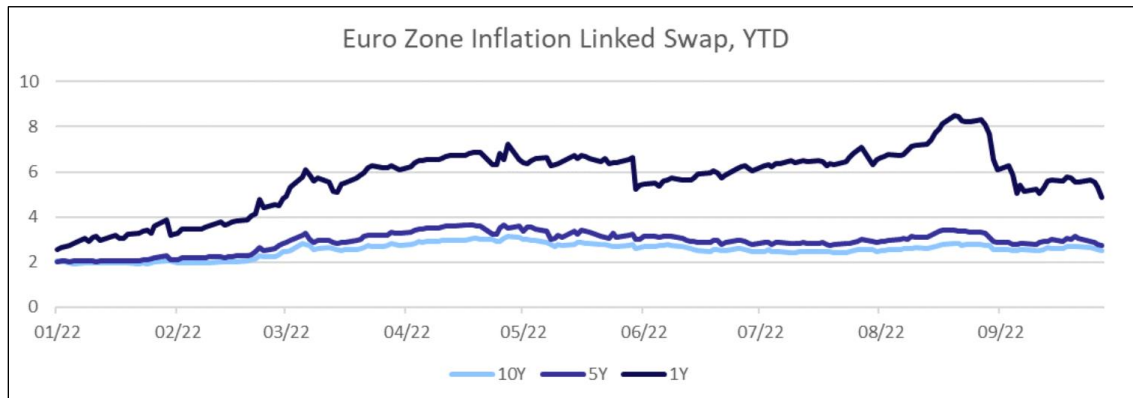
<sup>157</sup> Mostly observable in 2022.

<sup>158</sup> Inflation-linked federal securities (DE0001030559 – 0.50% inflation-linked Federal bond 2014 (2030) + DE0001030583 – 0.10% inflation-linked Federal bond 2021 (2033) + DE0001030542 – 0.10% inflation-linked Federal bond 2012 (2023)).



281. As a control, we also looked at the Eurozone inflation-linked swap, which is linked to the HICP index excluding tobacco (HICPxT). The figure below shows that the 10-year inflation swap leads to similar inflation expectations as above.

**Figure 7: Expected inflation based on the Euro Zone Inflation Linked Swap**



Source: Bocconi University, dated October 2022

282. Based on these results, the average real yields of Belgian and German government bonds with 10-year maturities are shown in the table below.

**Table 7: average real yields\***

Bond	Average over 2 years	Average over 1 year
10 year OLO	-1.31%	-1.02%
German 10 year bond	-1.64%	-1.43%

\* Calculated as:  $\frac{(1+r)}{(1+i)} - 1$

283. For the implied future yield, the spot market data can again be used to take the future yields of inflation-linked government bonds. For this, we can look at a German inflation-linked bond or other bonds in the euro area with an AAA rating (cf. "risk-free" investment).

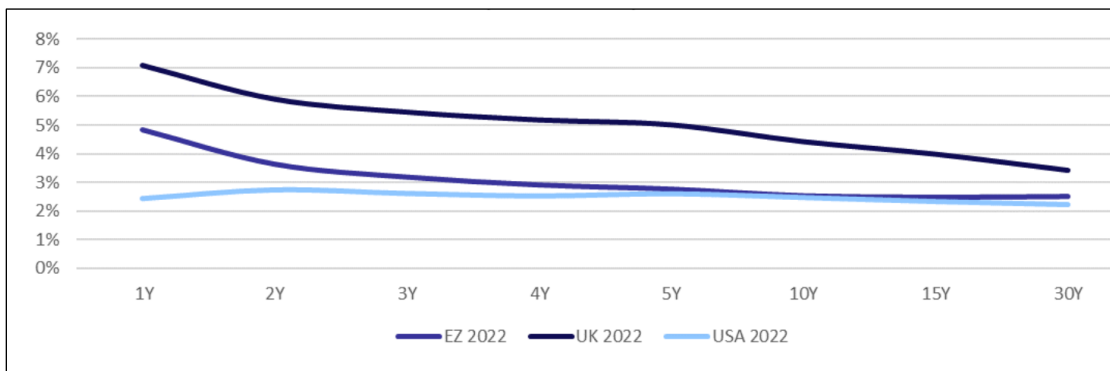
**Figure 8: Real yields of German inflation-linked government bonds**



Source: Bundesrepublik Deutschland Finanzagentur

284. Another possibility, e.g. for Belgium, is to compare the forward rates from the OLO with the forward rates from inflation swaps (as shown in the figure below).

**Figure 9: Expected average inflation over different time frames, based on inflation-linked swap**



Source: Bocconi University, dated October 2022

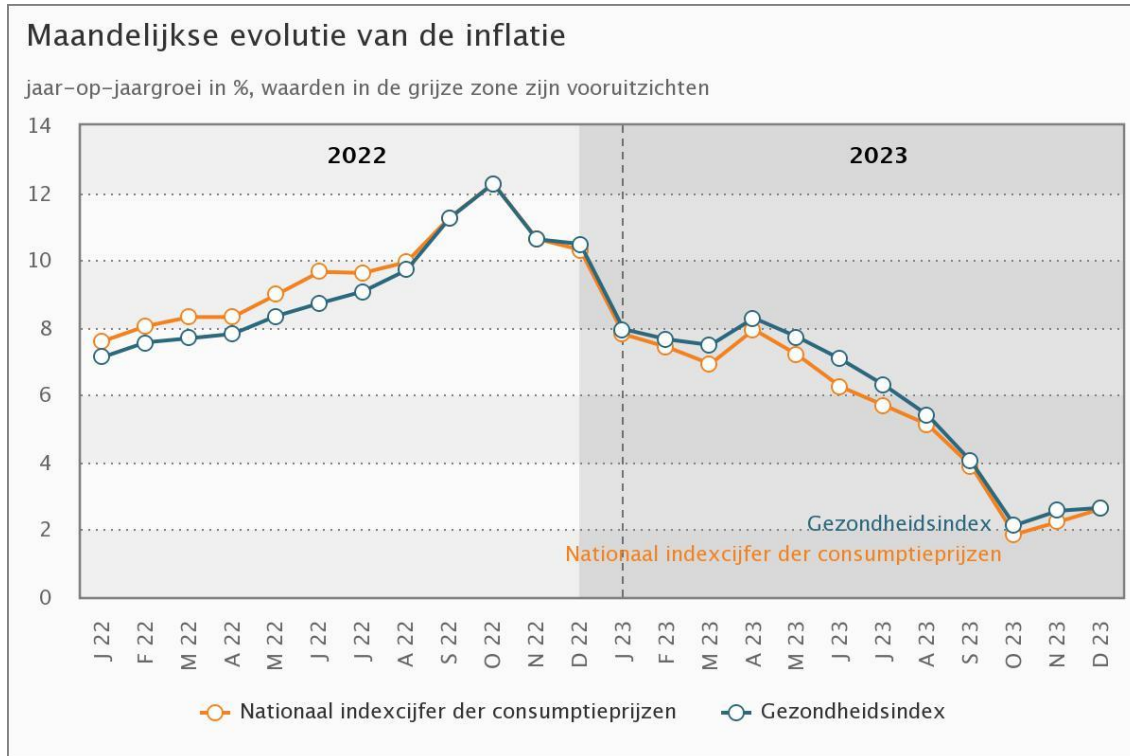
285. As a verification, the expectations of the Federal Planning Bureau for Belgium are also examined. This would take average inflation for 2022 to 9.6%, before falling to 5.3% in 2023<sup>159</sup>, from 2.44% in 2021 and 0.74% in 2020. Similar expectations can also be seen through the European Commission<sup>160</sup>, which states that passing on higher costs into the components of core inflation, including through higher wages, will keep inflation high in Belgium. Total inflation in 2023 is expected to be 6.2%, before slowing to 3.3%<sup>161</sup> in 2024 thanks to the gradual drop in energy prices.

<sup>159</sup> In September, expectations for 2023 were still 6.5%.

<sup>160</sup> European Commission, Economic forecast for Belgium, last update autumn 2022.

<sup>161</sup> Where other sources, including the NBB, predict lower inflation of around 2%.

**Figure 10: Inflation (outlook) Federal Planning Bureau, data until November 2022**



286. In this regard, the expected real future yields are expected to remain (slightly) negative. The real yields on 10-year German government bonds were expected to average -0.59%<sup>162</sup> in QQ4, the real yield on the 10-year OLO -0.18%<sup>163</sup>.

### Conclusion

287. Based on the evolution of both nominal and real yields, which was particularly evident in the last (half) year, as a result of the specific market conditions, and based on the (more positive) expectations of real yields, the Regulatory Body believes that the methodology for QQ3 should be adjusted, to take into account the changed circumstances and expectations within QQ4 itself.

288. Specifically, the Regulatory Body still believes that the methodology from QQ3 is useful, in which past figures are examined. This limits the volatility of the parameters, whereby there was a substantial difference in the RFR of now and 6 months ago, and even

<sup>162</sup>  $\frac{(1+1.90\%)}{(1+2.50\%)} - 1$

<sup>163</sup>  $\frac{(1+2.62\%)}{(1+2.80\%)} - 1$

between the RFR from now and 1 month ago. On the other hand, there is still a strong link between inflation and interest rates, whereby it is not unlikely, for example, that inflation will remain high for longer than anticipated and/or that, for example, a recession will cause yields to crash again, as has always been observed in the past (often with a time lag of > 1 year).

The Regulatory Body believes that it is necessary to update these based on the latest market conditions. On the one hand, the methodology will be updated based on last year's data, whereby there was a clearer view of the ECB's adapted policy to address the changed market situation - including skyrocketing inflation. On the other hand, the expectations for QQ4 itself will also be taken into account, as due to the changed market conditions a less strong correlation is expected between the yield (nominal as well as real) of the (recent) past and the (expected) returns in QQ4.

Furthermore, in addition to the 10-year OLO, the Regulatory Body will also take the German bonds into account, as stated. The table below provides an overview of the result obtained.

**Table 8: Estimate of the RFR by the Regulatory Body**

Bond	Avg. 2 years	Avg. 1 year	Expectations QQ4	Estimate RFR QQ4
10 year OLO	-1.31%	-1.02%	-0.18%	-0.84%
German 10-year government bonds	-1.64%	-1.43%	-0.59%	-1.22%
Average	-1.47%	-1.23%	-0.38%	-1.03%

289. **Based on the above analysis, the Regulatory Body sets the real Risk-Free Rate at -1.03%.**

### **Asset Beta calculation**

290. BAC uses an asset beta value of 0.77.<sup>164</sup> However, the complainants consider this value too high, and believe that the reference period used is too short - giving too much weight to the pandemic as a black swan event - and comparisons were made with airports with a different risk profile, when the value was calculated. Moreover, it is asserted that BAC does not experience more competition than (certain) other airports.
291. As already stated in decision D-2015-12-LA of 3 November 2015, estimating the beta for an unlisted airport such as Brussels Airport must necessarily be done on the basis of betas of other companies and/or regulated betas used by regulators in sectors and/or countries deemed comparable. Since there is no company with a perfectly similar risk profile to BAC, the best possible alternatives must be sought to this end.
292. In this regard, the Regulatory Body wishes to note that the applied till structure, as indicated by the complainants, may effectively impact the risk profile of the regulated activities (which should not be exposed to the risks of the non-regulated activities). In principle, a comparison only with airports that are also regulated through a dual-till system would be relevant. However, this would result in too small a sample, where the estimate of the risk could be distorted by the specific risks of these airports.<sup>165</sup>
293. The obtained sample should therefore achieve a balance between the number of selected companies (cf. reduction of the influence of one specific firm) and the level of transferability between the risk profiles of the selected companies and BAC's risk profile. The TF recommends including all European listed airports in the sample, as long as they meet a certain level of statistical reliability.<sup>166</sup>
294. In line with decision D-2015-12-LA of 3 November 2015, the reference airports of Brussels Airport will be examined. Five of these are listed, of which Frankfurt and Vienna are also dual till. However, other airports will also be considered. Indeed, the reference airports in the License Decree are defined as surrounding airports with a similar profile. For calculating the beta, "additional" airports may also be considered, provided they have similar risk profiles. Reference is also made to the opinion of the TF in this regard<sup>167</sup>: "*The*

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<sup>164</sup> Closing consultation meeting QQ4, Brussels, 11 May 2022, slide 58.

<sup>165</sup> Currently, only Vienna, Frankfurt and Madrid airports are listed, dual till airports.

<sup>166</sup> Reliability tests, particularly based on the liquidity of a share, are typically used to check the risk of bias in the estimates made.

<sup>167</sup> Recommendations for the Setting and the Estimation of the WACC of Airport Managing Bodies (p. 5), Thessaloniki Forum of Airport Charges Regulators, December 2016.

*geographical area of the peer group used for the estimation may preferentially be restricted to the European Economic Area and Switzerland (EEA); but in the case of a too limited number of comparable peers in the EEA, the geographical area may be extended to countries with a comparable general economy and/or the peer group may be extended to other relevant sectors, such as the transport infrastructure sector.”*

295. It was therefore assessed whether the shares of the companies in the sample were reasonably liquid and/or had not recently been involved in M&A transactions. Indeed, insufficient liquidity of shares can negatively affect the reliability of estimates. For these reasons, the airports of e.g. Copenhagen and Bologna were excluded from the sample.<sup>168</sup>
296. Specifically, the Regulatory Body considers the following European airports to be sufficiently representative and robust, with similar risk profiles: Frankfurt and Vienna (as dual till airports), Charles de Gaulle (cf. Aéroports de Paris), Zurich, and Spanish airports including Barcelona and Madrid (cf. Aena). Besides European airports, Auckland International Airport is also included. This airport was also included by other regulators of similar airports<sup>169</sup> for calculating beta.
297. For the estimate of the beta, daily data will be used and - in line with the proposals of the TF - regression analysis with regard to the national reference stock market index for the country where the airport is located.
298. As regards the reference periods, the majority of regulators typically work with data covering a period of 2 or 5 years.
299. The Regulatory Body believes that a 5-year reference period provides a good estimate. The complainants' argument that the 2-year period is too short and gives too much importance to the COVID period can be upheld. The Regulatory Body does however agree with BAC's assertion that the COVID crisis did actually raise the *asset beta* permanently. Indeed, it was found that the betas of airports were significantly increased, stabilising at a level that was actually higher than before the crisis. Systemic risk (especially risk linked to pandemic-like situations) has been underestimated in the past, but it does appear to be lasting. A 5-year reference period takes sufficient account of these increases, while a 2-year period would potentially be influenced too much by the volatility of equity during the crisis.

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<sup>168</sup> But also e.g. Belgrade, Florence and Malta cannot be included for the same reason.

<sup>169</sup> Both Copenhagen, Dublin and Heathrow airports are included in the beta estimate. Sydney airport was also included. However, this airport has not been listed since early 2022.

300. The table below provides an overview of the calculated betas.

**Table 9: Equity and asset betas of the sample, based on daily data over a 5-year period.**

<b>Airport</b>	<b>Estimated equity beta</b>	<b>Gearing</b>	<b>Asset beta</b>
Aéroports de Paris	1.11	30%	0.99
Aena SME SA	1.04	24%	0.84
Flughafen Wien AG	0.83	9%	0.77
Flughafen Zurich AG	0.89	16%	0.77
Fraport AG Frankfurt Airport Services Worldwide	1.00	49%	0.58
Auckland International Airport	1.21	16%	1.06

*Source: regression analysis based on national indices, based on data from Bloomberg dated 24 August 2022*

301. To complement this, the Regulatory Body will also look at precedents in other airports to enhance the beta positioning. As such, several airports are not listed, but a beta value was calculated via regulators, which can serve as an anchor. Specifically, Rome, Heathrow and Dublin airports are included.

**Table 10: Asset beta calculated by other regulators**

<b>Airport</b>	<b>Asset beta regulator</b>	<b>Gearing</b>	<b>Comment</b>
Aeroporti di Roma	0.83	68%	Period 2022-2026
Heathrow Airport	0.53	60%	Period 2022-2026 0.82 = beta requested by airport
Dublin Airport	0.56	50%	Period 2023-2026 0.74 = beta requested by airport

*Source: CAA, Economic regulation of Heathrow Airport: H7 Final Proposals & Economic regulation of Heathrow Airport: Heathrow response; CAR, Draft Decision on an Interim Review of the 2019 Determination; ADR, Proposta tariffario 2022-2026; NERA, Cost of Capital for Dublin Airport for 2023-2026 Regulatory Period*

302. If it is assumed that the sample is sufficiently representative for BAC, the Regulatory Body believes that the median of the betas should be taken, given that the values of the asset betas of the sample are not normally distributed, and less weight is therefore given to extreme values. In this way, the beta is not erroneously impacted by an outlier of the asset beta of one company within the sample. Specifically, the beta would then be estimated at 0.77.

303. However, since BAC and the complainants disagreed on the airport's risk profile compared to that of certain competitors, the table below provides an overview of the regulatory risk profile of the comparable airports, as well as passenger volatility, which ultimately also provides insight into the volatility of revenue. Finally, the geographical diversification of airports (cf. business structure) is also looked at, for which it can be assumed that for international airports the systematic risk will indeed be lower.



**Table 11: Comparison of risk profile of airports from the sample (asset bêta)**

<b>Airport</b>	<b>Period</b>	<b>Powers of regulator</b>	<b>Till</b>	<b>Possibility of adjustments</b>	<b>Passenger Volatility*</b>	<b>Int.</b>
Aéroports de Paris	annually (previously 5 years)	Approval of tariffs	Hybrid till	n.a.	Lower	Yes
Aena SME SA	5 years	Approval of tariffs	Dual till	n.a.	Lower	Yes
Flughafen Wien AG	Annually	Regulator sets tariffs	Dual till	Adjustments possible if it does not result in additional revenues	Similar	Yes
Flughafen Zurich AG	Max. 4 years	If no agreement, regulator sets tariffs	Hybrid till	In exceptional circumstances	Lower	Yes
Fraport AG Frankfurt Airport Services Worldwide	5 years	Approval of tariffs	Dual till	Tariff consultations always possible, even in case of lower passenger numbers (rather limited in practice)	Similar	Yes
Auckland International Airport	5 years	Monitoring	Dual till	In unforeseen circumstances or at the request of airlines	Similar	No
Aeroporti di Roma	5 years	Approval of tariffs	Dual till	Annual review based on evolution of CAPEX plan	Lower	No

Heathrow Airport	5 years	Regulator sets tariffs	Single till	Only increases security	with in	Lower	No
Dublin Airport	5 years	Regulator sets tariffs	Single till	Only increases security	with in	Similar	No

\* Examined based on volatility during the financial crisis and the COVID crisis

304. In this regard, the Regulatory Body considers it useful to give greater weight to airports with a similar regulatory framework and similar passenger volatility, which are not internationally diversified. The result of this weighting leads to a similar *asset beta* to the median.

305. ***The Regulatory Body calculates the value of the asset beta for Brussels Airport at 0.77.***

### **Gearing**

306. BAC has determined a gearing of 65%<sup>170</sup> based on market valuation.<sup>171</sup> A valuation based on accounting data would lead to a significant undervaluation (due to net losses over the past two years and lower expectations of airport profitability). Conversely, IATA believes that the actual gearing should be used for QQ4, since this was also the case in QQ3 and otherwise too much importance is attached to the pandemic years, which only have a temporary effect.

307. The Regulatory Body recognises that there are several ways to determine gearing. In this regard, an effective approach based on accounting values is a transparent, simple method, but effectively has the disadvantage that it does not (necessarily) reflect the true economic value of the company.

308. As such, BAC has indicated that the accounting values are probably an underestimate of actual gearing. In this regard, the Regulatory Body has actually observed that the market value of the equity of the listed airports fell as a result of the COVID crisis, while debt increased. On the other hand, the Regulatory Body wishes to emphasise that the accounting values here are also affected by net losses, while it is not expected that these will persist. The (provisional) positive industry-wide results for 2022 show that

<sup>170</sup> Closing consultation meeting QQ4, Brussels, 11 May 2022, slides 44 and 58.

<sup>171</sup> More specifically based on the increase in gearing of other listed airports.

future airport profitability will not necessarily fall to a significant extent, as claimed by BAC.

309. Therefore, an approach based on market valuation leads to a better estimate at this moment, but has the major disadvantage that they depend on various market factors, can be highly volatile, depend on investor expectations and speculation, and can therefore be subject to serious fluctuations, which in turn negatively affects market stability.

310. Moreover, the Regulatory Body believes that a prescription approach is also possible for calculating gearing. A purely prescriptive approach would preserve the financing structure of an efficient operator (or one deemed efficient), where an effective approach is thus based on the actual link between debt and equity. The TF also considers that various options are possible, which is explained by a certain neutrality of the gearing in the calculation of the WACC. Although higher gearing would increase the share of the costs of debt in the WACC, it would also increase the beta of the equity. Both effects offset each other and the overall tariff will change only marginally.

311. In line with a prescriptive approach to positioning returns as a whole, normative gearing could be determined based on the gearing levels observed for the comparable airlines in the beta estimation sample. For listed companies, gearing corresponds to the ratio of net debt to the sum of net debt and market capitalisation (cf. market capitalisation). It therefore automatically takes into account the evolution of market values due to the corona crisis.

312. The gearing of the listed airports in the sample averaged 24%, but thereby increased from the previous regulated period (which was set at 46.5% for BAC). The gearing of the comparable unlisted airports was calculated at 59% on average, which remained fairly stable compared to the previous regulated periods.

313. Taking into account these values, as well as the actual approach - which has historically been used - performed as a consistency check<sup>172</sup>, the Regulatory Body believes that the gearing should be between 50% and 60%.

314. ***The Regulatory Body sets the gearing at 55%.***

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<sup>172</sup> Whereby the value of 54% in 2020 has effectively increased.

## Equity-Risk-Premium (ERP)

315. BAC applies a value of 6.71%.<sup>173</sup> IATA believes that BAC's new approach (replacing that of Damodaran) to arrive at this value does not take into account short- and long-term economic events, and that the most current available data, from e.g. Damodaran or Dimson, Marsh and Staunton (DMS) was not used.
316. BAC states that the Damodaran ERP estimates have been highly volatile over the past 7 years, due to the specific evolution of the U.S. stock market, meaning that these could not be used. Because other sources (including Bloomberg) show that the ERP increased or at least remained stable compared to 2015, BAC argues that the 2015 value is still relevant (and even conservative).
317. The Regulatory Body, in line with the guidance of the TF and several other regulators, actually believes that the ERP is best estimated based on very long-term historical data which, to the extent possible, only cover risk within a particular geographic region (e.g., Belgium). This approach makes it possible to smooth the impact of short-term volatility observed in markets (and more consistent with an approach for estimating prescriptive financing costs).
318. In this regard, it can be asserted that Damodaran's estimates (cf. 4.84% in 2022) offer less stability than, e.g., DMS's estimates. Damodaran's approach is based on a dividend growth model, whereby the value of equity is represented by the net present value of future income streams earned by shareholders. This therefore requires data on expectations of future dividends, which are often characterised by high volatility over time and may be distorted by short-term trends. In this regard, Damodaran makes its estimates first for U.S. S&P 500 stocks and then adds the country risk premium measured on the credit default swaps that cover debt issued by the country in question (e.g., Belgium). On the other hand, the estimates of e.g. DMS are made for the shares and bonds of the country in question, which already reduces the risk of distortion due to the additional assumption regarding the difference in risk between the U.S. market and the country in question. The estimates are made for around 20 different countries based on stock market returns from each country, observed from 1900 to the present.
319. For that reason, DMS is often seen as the key reference for positioning market risk in the regulated aviation and other infrastructure sectors. The Regulatory Body

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<sup>173</sup> Closing consultation meeting QQ4, Brussels, 11 May 2022, slides 45 and 58.

acknowledges that there are other sources than DMS, but gives stronger weight to the DMS study. The Regulatory Body therefore upholds IATA's argument.

320. In this regard, the Regulatory Body believes that DMS' actual values should be used, despite differences with the previous value from QQ3 as calculated by Damodaran. BAC's argument to maintain a stable level of ERP compared to QQ3 cannot be withheld, as the difference with reality would then be too great, also in terms of stability in terms of future periods.

321. The table below shows the values for Belgium and the Eurozone.<sup>174</sup> The ERPs were estimated by DMS based on data from 1900 to 2021. For the Eurozone, each country's ERP was weighted based on the current market capitalisation of the main equity market in that country as of 31 December 2021, consistent with the approach of a typical European investor to place more weight in a portfolio on equities in countries with larger equity markets. In line with the calculation of the RFR, the Regulatory Body will primarily focus on Belgium and Germany, with the average of the two countries being generally similar to the Eurozone itself.

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<sup>174</sup> Whereby a Belgian investor - outside of Belgium - is likely to turn to the Eurozone to avoid currency risks.

**Table 12: Equity Risk Premium DMS - Eurozone**

<b>Country</b>	<b>Geometric mean</b>	<b>Arithmetic mean</b>	<b>Average</b>	<b>Current market capitalisation (2021, €m)</b>
Austria	2.80%	21.00%	11.90%	178,642
<b>Belgium</b>	<b>2.20%</b>	<b>4.30%</b>	<b>3.25%</b>	<b>424,650</b>
Finland	5.40%	9.00%	7.20%	351,754
France	3.20%	5.40%	4.30%	3,464,305
<b>Germany</b>	<b>4.90%</b>	<b>8.20%</b>	<b>6.55%</b>	<b>2,763,953</b>
Ireland	2.70%	4.70%	3.70%	129,865
Italy	3.00%	6.30%	4.65%	736,545
The Netherlands	3.40%	5.70%	4.55%	1,249,391
Portugal	5.10%	9.20%	7.15%	88,210
Spain	1.60%	3.50%	2.55%	713,692
<b>Weighted average Eurozone</b>	<b>3.60%</b>	<b>6.51%</b>	<b>5.06%</b>	

Source: DMS, Credit Suisse Global Investment Returns Yearbook 2022

322. In this regard, a lot of research has been conducted into the use of the geometric mean and/or the arithmetic mean, without any clear conclusions. In practice, both the geometric mean, the arithmetic mean and an average of both are used by different regulators to calculate the final ERP value. IATA believes that the geometric mean should be used, or at least the average of both geometric and arithmetic. On the other hand, BAC states that using the geometric mean will always underestimate the expected return.

323. The Regulatory Body will therefore use the average of the geometric and arithmetic mean ERP value here, where the average of Belgium and Germany can be compared to the weighted average of the Eurozone (cf. 5.06%).

324. Another - indirect - way to obtain the estimate of the equity risk premium is to take the difference between the total market return and the RFR. This second approach - also used by several regulators - will be used in this analysis as an additional consistency check. This approach also makes it possible to avoid the pitfalls of any inconsistency between the short and medium term used to determine the RFR, and the very long term used to estimate the ERP (based on historical returns), assuming a stable (over time) total market return.

325. The table below gives an overview of the total market returns of Belgium and Europe, where the stability of the market return for Europe can be confirmed.<sup>175</sup>

**Table 13: Average total market return over the period 1900-2021**

	<b>Geometric mean</b>	<b>Arithmetic mean</b>	<b>Average</b>
Belgium	2.8%	5.4%	4.1%
<b>Europe</b>	<b>4.3%</b>	<b>6.1%</b>	<b>5.2%</b>

Source: DMS 2022 (Credit Suisse Global Investment Returns Yearbook 2022)

326. If the RFR (cf. 1.03%) is deducted, this gives an ERP value of 6.23% for Europe, more or less equivalent to the average of Belgium and Germany.

327. The Regulatory Body therefore believes that the ERP value should be between 5.09% and 6.23%.

328. **The Regulatory Body sets the ERP value at 5.64%, i.e. the average of 5.09% and 6.23%.**

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<sup>175</sup> The (European) average value is 5.81% over the last 5 years, 6.01% over the last 2 years and 5.70% over the last year.

## Cost of debt

329. BAC uses a value of 1.67%<sup>176</sup>, determined as "RFR + spread<sup>177</sup>." However, according to IATA, the debt risk premium should not be calculated based on future interest rates, and they request the Regulatory Body to calculate the real cost of debt by using the re-calculated RFR and the actual debt structure (cf. existing approach QQ3). Nevertheless, BAC asserts that it is relevant to consider BAC's most recent debt issues for "debt to be refinanced."
330. The Regulatory Body believes there are two possible alternatives for estimating the cost of debt: through an estimate of **actual** versus **normative** financing costs. With actual costs, the costs are reflected in the return based on the operator's current debt portfolio. In contrast, the estimate of the normative cost of debt is based on financial market data to calculate a reasonable and efficient level of expected cost of debt for an asset with the same risk profile (including credit rating) as that of the operator.
331. In line with the TF's guidelines, many operators therefore use a combination of both approaches, using prescriptive market references, while a consistency check is performed starting from the actual airport costs (so that existing debts are also taken into account).
332. As regards the methodology used from QQ3, in which the debt risk premium was calculated based on BAC's actual cost at issuance, the Regulatory Body agrees with BAC that the methodology should be expanded to better reflect the actual time periods until repayment, when BAC's debt is issued. Unlike in QQ3, BAC's debts in QQ4 are not as recent.
333. Indeed, the Regulatory Body acknowledges that new debt is issued and that both historical and current returns are important.
334. The Regulatory Body agrees with BAC's calculation to arrive at the spread of 2.45%.
335. To verify this, prescriptive market references are looked at, whereby comparable companies or bond indices with the same credit rating as BAC can be used to determine the cost of debt. For example, iBoxx indices are widely used in a regulated context, as they contain information on returns for a wide range of credit ratings, company sectors

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<sup>176</sup> Closing consultation meeting QQ4, Brussels, 11 May 2022, slide 58.

<sup>177</sup> In the formula above: RFR + D



and maturities. In particular, the index iBoxx EUR Non-Financials BBB makes it possible to reflect the performance of bonds with the same credit rating as BAC.<sup>178</sup>

336. For the reference period, the Regulatory Body believes that the approach should be consistent with the methodology used for estimating the RFR. The same applies to the maturity of the analysed bonds, which should be consistent with the RFR.

**Table 14:** Average yields at maturity through iBoxx EUR Non-Financials BBB

	7-10 years		7-10 years	
	remaining term	annual return (%)	remaining term	annual return (%)
average period	8.25	1.29	13.58	1.59

Source: iBoxx, data to 24/08/2022 via Frontier Economics

337. Based on these iBoxx returns, the cost of debt can be estimated at 1.44%, in line with the calculation above (cf. RFR + spread = -1.03% + 2.45% =1.42%).

338. **The Regulatory Body sets the cost of debt at 1.42%.**

#### WACC

339. Based on the above considerations, the Regulatory Body is of the opinion that the WACC proposed by BAC violates Article 42, 2° and Article 50, §2 of the License Decree, since the profit margin that BAC would gain from it cannot be considered fair.

340. IATA's argument pertaining to a "Fair Margin ("WACC")" is admissible and partially justified. The argument that "BAC's proposed WACC is excessively high and will lead to BAC receiving an excessive profit margin", put forward by Ryanair, is also admissible and partially justified.

341. In view of the foregoing assessment of the parameters of the WACC formula used by BAC, in order to assess the fairness of the remuneration of invested capital, the Regulatory Body sets the value of the WACC at 3.87% for the period 2023-2028.

<sup>178</sup> At the time of drafting this decision, BAC was listed Baa1 (stable) by Moody's and BBB+ by Fitch.

342. The specific calculation of this WACC using the formula can be found under section 6.1.2. of this decision. The Regulatory Body believes that this WACC is fair within the meaning of Article 50, §2 of the License Decree, taking into account the current economic climate, which is different compared to the conditions of the two previous regulated periods. In accordance with Article 42, 2° of the License Decree, this level of WACC also offers sufficient stability with a view to the further long-term development of Brussels Airport.

#### D. Investments/CAPEX

##### **D1. No consultation regarding investments**

343. Ryanair objects to the Pier B-Replacement Boarding Bridges project in its petition, claiming that the licensee had already entered into contracts to implement the project prior to the consultation. This would be in breach of the principle in Article 25, §4 of the License Decree. According to BAC, there were consultations on the boarding bridges several times in QQ3.

344. Article 25, §4 of the License Decree states the following (freely translated):

*"The licensee shall consult users before finalising any plans for new infrastructure projects."*

345. Article 1, 29° of the License Decree defines "infrastructure projects" as (freely translated) "major, exclusively airport-related construction projects that have a significant impact on the tariff system or tariff levels."

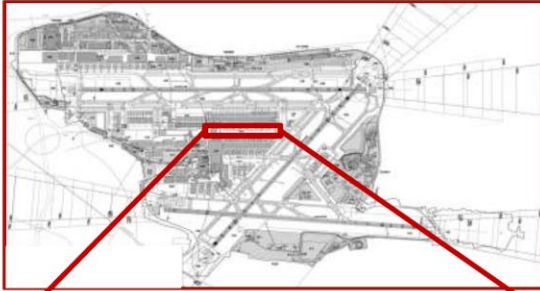
346. The question that must first be asked to ascertain whether there could indeed be a violation of Article 25, §4 of the License Decree is whether the "Pier B- Replacement Boarding Bridges" project presented during the QQ4 consultation is in fact a "new" infrastructure project, as understood by this provision. Indeed, BAC explained at the second general meeting that the project in question had already been started in 2015:

- The replacement of the Boarding bridges pier B project has been consulted in 2015 during the QQ3 consultation
- Users have asked BAC to assess the possibility of placing double boarding bridges.
- BAC presented scope changes regarding walkways, new passenger staircase buildings, airco, 2 additional Stands and glass boarding bridges end of 2016 / mid 2017 during the capex update sessions
- BAC had an ad hoc consultation regarding a scope change on the 11/10/2017 regarding the shift from single to dual boarding bridges for 14 gates, leading to an impact of timing (+ 1 or 2 years) & budget impacts (+€15.7mio in QQ3). This ad hoc consultation was needed to ensure consultation with the airlines prior to take the decision regarding this.

*SOURCE: 2nd General Meeting 07/03/2022, slide 105.*

347. The Regulatory Body notes that the project was indeed first proposed during the five-year tariff consultation for QQ3. During this consultation, the question of glass boarding bridges was already raised by the users:

## New boarding bridges Pier B Gates & Boarding Bridges



### Benefits for users

Safe operations, improve quality perception for passenger, ensure high up-times to achieve docking satisfaction, as such reducing delays and thus improving punctuality.

### Description

Replacement of Pier B boarding bridges,

### Motivation

Business Continuity

Boarding bridges normal live expectance (15 years) was extended with 5 years with the investments in 2012-2013. To ensure high availability of bridges required to maintain quality levels (e.g.. Docking satisfaction). It will also improve cleanliness perception the bridges currently have.

### Total regulated CAPEX [mio EUR]



### Pct. Regulated

90%

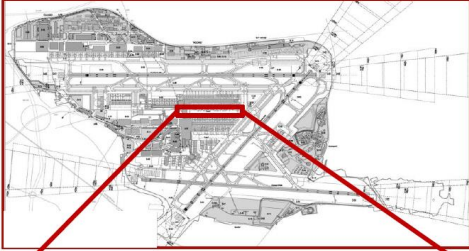

SOURCE: " Consultation QQ3 - Technical Meeting Capex" 05/03/2015, slide 53.

- Users propose to include the option to provide glaze bridges and consult the users on what they want.  
⇒ BAC will consider this suggestion.

SOURCE: Meeting Minutes 5 March 2015 on capex and depreciation, p. 9.

348. The project then came up again during the 2016 annual information session, with an anticipated cost increase:

## New boarding bridges Pier B Gates & Boarding Bridges

Benefits for users	
Safe operations, improve quality perception for passenger, ensure high up-times to achieve docking satisfaction, as such reducing delays and thus improving punctuality.	
Description	
Replacement of Pier B boarding bridges.	
Motivation	Business Continuity
Boarding bridges normal live expectance (15 years) was extended with 5 years with the investments in 2012-2013. To ensure high availability of bridges required to maintain quality levels (e.g.. Docking satisfaction). It will also improve cleanliness perception the bridges currently have.	
Total regulated CAPEX [mio EUR]	
<ul style="list-style-type: none"> <li>• Planned start : 2017</li> <li>• Expected spent 2017 : 0.1</li> <li>• DP total budget : 12.6      -      Total Fcst: 21.7</li> </ul>	
Pct. Regulated	90%

Changes vs.  
Last update:  
Yes

Fcst vs DP:  
+

Timing vs. DP:  
=

*SOURCE: Yearly information session, 01/12/2016, slide 18.*

349. BAC explained the higher anticipated cost as follows:

- Boarding bridges pier B: Increase in budget linked to scope increase. Enhanced quality of boarding bridges and optimization of pier infrastructure to optimize passenger flow is now foreseen in the project

*SOURCE: Meeting minutes - Yearly information session 2016, p. 3.*

350. A scope extension to glass boarding bridges was discussed at the mid-year CAPEX meeting of 14 July 2017:

- Replacement boarding bridges pier B: Scope and budget extension has been presented during last capex update. Scope extension linked to adaptation in accessibility to boarding bridges in terminal and the shift to glass boarding bridges.
  - Airlines ask how many boarding bridges are in scope
    - After verification 22 boarding bridges are in scope of this replacement
  - Airlines confirm the strong need for replacing current boarding bridges and ask if airline requirements have been taken into account
    - BAC answers that workshops to collect airline requirements have already been organized.
    - BAC will include Sandrine Dhont in upcoming workshops and provide the meeting minutes of the above mentioned workshop to her

*SOURCE: "Meeting minutes of the mid-year capex update meeting," 14/07/2017, p. 3.*

351. In 2017, users were invited by BAC in an email to a meeting on 11 October 2017, to discuss the further expansion of the project to dual boarding bridges. This e-mail already contained the presentation on the scope extension.

This project was part of the Development Plan and originally only included the replacement of the Single Personal Boarding Bridges (SPBB). Brussels Airport has initiated an impact assessment of implementing Dual Personal Boarding Bridges (DPBB) on request of airlines. This assessment has been finalized recently and based on this, Brussels Airport is convinced of the necessity to place up to 14 DPBB.



We would like to consult the airlines further on the DPBB based on the attached presentation. This scope extension will also be covered in detail during the next capex update session but as the tender requirement will have to be defined and finalized in the meanwhile, we would like to provide the airlines with the opportunity to provide their feedback on the DPBB and the related operational requirements beforehand. We therefore will present and discuss during the second part of the meeting planned to discuss the update of the quality charters with the representative airlines association on the 11<sup>th</sup> of October at 14h. Airlines are welcome to join or provide their feedback.

*SOURCE: Email BAC "Scope extension capex renewal boarding bridges pier B," 6 October 2017.*



352. At the CAPEX update in 2018, the status of the project was as follows:

### New boarding bridges Pier B Gates & Boarding Bridges

**Benefits for users**

Safe operations, improve quality perception for passengers, ensure high up-times to achieve docking satisfaction, as such reducing delays and thus improving punctuality.

**Description**

Replacement of Pier B boarding bridges.

**Motivation**

Boarding bridges normal life expectancy (15 years) was extended with 5 years with the investments in 2012-2013. To ensure high availability of bridges required to maintain quality levels (e.g. docking satisfaction). It will also improve cleanliness perception the bridges currently have.

**Business Continuity**

**Pct. Regulated** 90%

**Status**

- The project scope has been extended. Initially a like for like replacement of the PBB mobile part, it now includes the replacement of fixed walkways, an upgrade of the passenger staircase building and the fit-out of 11 Code E stands with dual boarding bridges. The higher spend is linked to this significant scope change.
- Apron lay-out and Passenger Staircase Building design have been completed.
- Tender procedure for the purchase of PBB is ongoing. Technical specifications will be distributed to candidates June 2018.
- Tender procedure for related civil works has been launched.

**Timing update**

- DP Start: 2018
- Actual/planned start: 2019
- Expected End: 2022

**budget update**

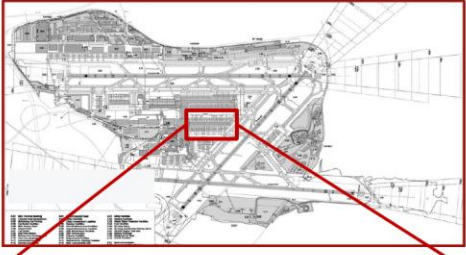

- DP budget: €12.6mio
- Last total fcst QQ3: €27.2mio

SOURCE: "Mid-year update session" 04/07/2018, slide 41.

353. During the QQ4 consultation, the following information regarding the project was presented:

6

### Pier B - Replacement Boarding Bridges

**Motivation**

The replacement is required as the current Boarding Bridges at Pier B are getting close to end of life thus increasing the risk of breakdown, creating delays and customer dissatisfaction, generating additional inspection and upgrading costs to keep them in service. The replacement will guarantee BAC to meet customer needs with a high level of services, ensuring continuity, safe operations and upgrade the infrastructure to the forecasted fleet mix.

**Description**

The replacement of the Boarding Bridges of Pier B, including the placement of dual boarding bridges, the renovation of the staircase and the improvement of the look & feel (glass bridges). The project was initiated in 2019.

**Benefits for users**

The replacement will guarantee BAC to meet passenger needs with a high level of services by ensuring continuity, and safe operations.

**Total regulated CAPEX QQ4 €21.6mio** **Pct. Regulated** **90%**

2023	2024	2025	2026	2027
12.3	8.5	0.7	0	0

SOURCE: Capex Technical Session 01/02/2022, slide 69.

354. Ryanair suggests in its petition that the project in question consists of three phases, each with a specific cost (original scope QQ3 consultation - update to glass and double boarding bridges - QQ4 consultation). The first two phases are said to have involved consultation, but not the last:

BAC erklärte in der 2. General Meeting, dass:

- 12,6 Mio. € waren der ursprüngliche Betrag, der in QQ3 für die Fluggastbrücken des Flugsteigs B geplant worden.
- 15,7 Mio. € waren der zusätzliche Betrag, der in QQ3 angesichts des aktualisierten Umfangs erforderlich war.
- 21,6 Mio. € sind die neu vorgeschlagene QQ4-Investition die Fluggastbrücken des Flugsteigs B.

BAC erklärte, dass die 12,6 Mio. € als Teil der QQ3-Konsultation konsultiert wurden. Die zusätzlichen 15,7 Mio. € wurden in einer Ad-hoc-Konsultation im Oktober 2017 konsultiert. BAC behauptete, die Flughafennutzer seien mit beiden Investitionen einverstanden.

Für den QQ4-Investitionsvorschlag in Höhe von 21,6 Mio. € ist es nicht relevant, dass BAC zuvor zu den 12,6 Mio. € und den zusätzlichen 15,7 Mio. € konsultiert wurde. Die Flughafennutzer wurden zu einem festen Betrag von 12,6 Mio. € und den zusätzlichen 15,7 Mio. € für Fluggastbrücken in QQ3 konsultiert. Die Flughafennutzer wurden nicht konsultiert, ob BAC unbegrenzte Beträge für Fluggastbrücken im folgenden Quinquennium (QQ4) auszugeben!

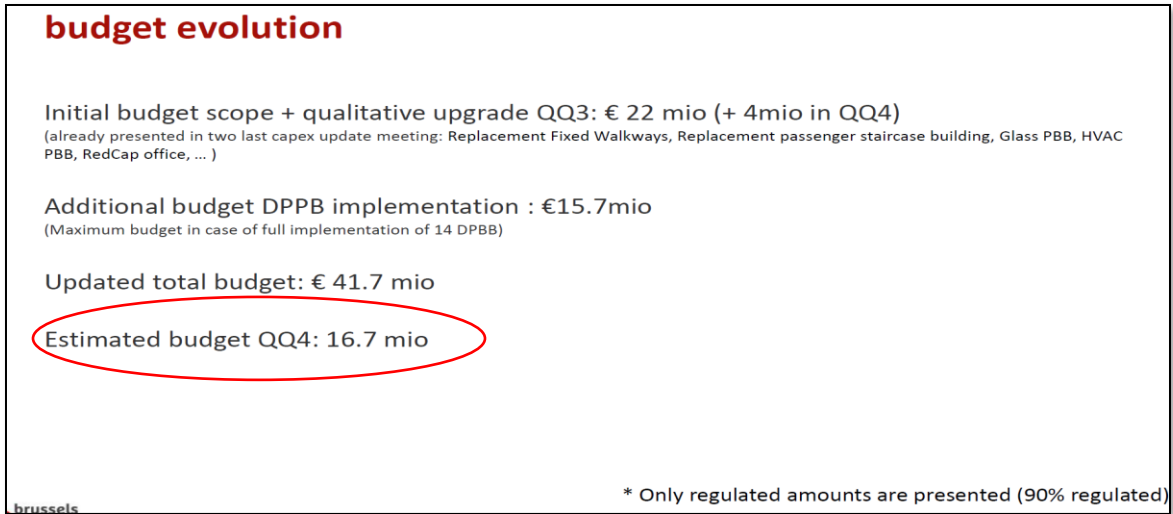
*SOURCE: Ryanair Petition, p. 6.*

355. In this regard, the operator rightly states that users are consulted on projects, the scope thereof, and an estimation of their cost, but not fixed amounts.<sup>179</sup> In fact, as can be seen in the slide above from the technical session of 1 February 2022, the costs anticipated for QQ4 are not additional costs associated with a further scope extension; rather, they are still costs linked to the replacement of the original boarding bridges by glass double boarding bridges, a project that was initiated during QQ3 and would continue in QQ4. Moreover, the fact that further costs for the project would be budgeted during QQ4 was already communicated in 2017:

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<sup>179</sup> Initial remarks BAC/Ryanair, p. 25.





*SOURCE: "Replacement Passenger Boarding Bridges pier B," 06/10/2017, slide 9.*

356. The obligation under Article 25, §4 of the License Decree is distinct from the multi-year consultation referred to in Article 51, §1 of the License Decree. This means that the operator can also consult users on new CAPEX during annual consultations, during mid-year CAPEX updates, during interim consultations or during *ad hoc* meetings. Furthermore, the licensee is only obliged to resubmit to users the CAPEX already consulted on, through one of the above-mentioned channels during the next multi-year consultation, if costs associated with the project are still incorporated into the tariffs in the next regulated period. Indeed, in such cases the operator is obliged to consult users under Article 53, §1, c) of the License Decree. This is therefore the reason why the boarding bridges project came up again during the QQ4 tariff consultation. Nevertheless, this does not change the fact that the integral project was already consulted in QQ3.

357. In the Regulatory Body's view, the "Pier B - Replacement Boarding Bridges" project is therefore not a "new" project within the meaning of Article 25, §4 of the License Decree, since it is the same project as the one the licensee had already consulted on in QQ3, specifically:

- As regards the initial scope of the project, i.e. the replacement of the boarding bridges: during the five-year tariff consultation on 5 March 2015;
- As regards the first upgrade of the project pertaining to continuity and quality: during the annual information session on 1 December 2016;

- As regards the upgrade of the project to glass boarding bridges: during the CAPEX update of 14 July 2017;
- As regards the upgrade to dual boarding bridges: during the *ad hoc* consultation of 17 October 2017.

358. As such, contrary to what the complainant asserts, the licensee was indeed entitled to finalise the plans related to the infrastructure project before the QQ4 consultation; specifically, it had this right since the *ad hoc* consultation of 17 October 2017.

359. Ryanair also asks the regulator to investigate whether the licensee has not finalised plans of other investments without these having been the subject of consultation. IATA also believes that by regarding the CAPEX plan as an envelope, BAC is initiating new investments without having consulted on them beforehand.

360. As long as BAC only charges, via the airport charges, the costs of investments on which there has been consultation with users, the Regulatory Body sees no need to check for all investments whether any plans were finalised before they were consulted on. Moreover, such an investigation would require a general inspection authority which the Regulatory Body does not currently have in the context of its ex-post competencies.

361. **The Regulatory Body believes that no violation of Article 25, §4 of the License Decree has occurred. The argument “CAPEX – BAC did not consult with Airport Users before finalising investment plans” is admissible but unfounded.**

## D2. Double payment of investments

362. The complainants argue that projects that were not (fully) implemented under QQ3, including the Pier B boarding bridges, would be paid for twice if they were reincorporated into the QQ4 cost base. BAC's claims in its defence that it did not earn sufficient funds in QQ3 to recover all its investments and costs (which was only exacerbated by the extension of QQ3), so it clearly would not have received double payments for certain projects.

363. Based on the clarifications and the quantified example from the conclusions of the licensee of the operating licence, the Regulatory Body believes the latter is correct in this regard.<sup>180</sup> The Regulatory Body notes, based on BAC's figures, that the amount of projects planned but not implemented was also lower than the total unfunded projects (cf. loss BAC). In this sense, it can be asserted that BAC has clearly not already used (or set aside) the amount received to already finance the Pier B boarding bridges or other deferred projects (which would have meant a double payment of these investments). Therefore, the complainants' argument on this point cannot be withheld.

364. Moreover, the fact is that the tariffs for a regulated period are calculated based on the existing asset base, which does not include any non-implemented investment from the previous period.

365. As IATA asserts, a further question is whether the budgeted investment plan can be regarded as a total envelope or whether all projects (incl. new ones) should be considered separately.

366. In this regard, the Regulatory Body agrees with the operator that it is very difficult to correctly budget and schedule large infrastructure projects and that unforeseen circumstances and/or new priorities can also have an impact. Possible changes in the investment plan are necessary in such cases, and can be envisaged during the annual consultations, if necessary with an adjustment of the formula for tariff control. Article 53bis of the License Decree states the following (freely translated):

*"§1. Unless otherwise expressly agreed [...] during the multi-year consultation, the licensee shall organise, within the periodic consultation between the licensee and the users, an annual consultation with the users."*

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<sup>180</sup> Initial remarks BAC/IATA, p. 6-9; Initial remarks BAC/Ryanair, p. 6-9.

*During this annual consultation, information shall be exchanged and consultations held regarding:*

*a) changes to the investment plan and changes to the timeline of its implementation, as well as the possible impact on the formula for tariff control;*

*[...]*

*§2. If the annual consultation addresses the elements described in Article 53bis, §1, second paragraph, a), the licensee can formulate a proposal to change the formula for tariff control. There is agreement on the amendment proposed by the licensee if there is no disagreement thereon between the parties involved in the consultation, as referred to in Article 55, §1. [...]"*

367. It can be concluded from this that changes in the investment plan in accordance with Article 53bis of the License Decree are possible and no new formula for tariff control is needed if the overall investment plan remains the same. This therefore implies that the CAPEX plan can be considered an envelope in a sense, contrary to what IATA asserts. Of course, BAC must comply with its other obligations if changes are made to the investment portfolio, including, for example, the principle of prior consultation under Article 25, §4 of the License Decree.

368. While this gives BAC some margin of manoeuvre, it is also necessary to meet its licence obligations, including the obligation to ensure quality in accordance with national and international standards and practices and to act in the interests of passengers and users. As the operator explains, in the context of these obligations, it must indeed act with due care and diligence, whereby shifts in investments are sometimes unavoidable.

369. Nevertheless, the Regulatory Body can uphold the complainant's assertion, in that BAC can effectively derive a benefit from the (overall) shifting of (and between) projects from the beginning of the period to the end or vice versa (e.g. via the WACC, but also a (changing) CPI can have an impact).<sup>181</sup> However, this is a consequence of the current regulatory framework. Partly for this reason, it is crucial to fulfil the development plan as much as possible (and clearly in terms of total amounts per year).

If there are (significant) changes that are discussed during the CAPEX meetings, they should also lead to an upward or downward revision of the formula for tariff control, in accordance with Article 53bis of the License Decree. However, any modification of the formula is entirely the responsibility of BAC.

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<sup>181</sup> Shifts between years outside the first and last year of the QQ period make little difference, given the tariff formula and associated calculation method used by BAC.

370. Since the envisaged amounts per year during QQ3 were exceeded, the Regulatory Body is of the opinion that BAC did not benefit from the prevailing formula for tariff control, while it had to fulfil all its licence obligations.

### **Airport management**

371. According to Ryanair, BAC violates Article 46, §2 of the License Decree in this regard, which states (freely translated):

*"The licensee shall bear in the same way the risks resulting from a deterioration of the management or a decrease in traffic, compared to the expectations created when setting the tariffs of a regulated activity for a regulated period."*

372. Ryanair sees the postponement of a project, and more specifically the Pier B boarding bridges project, as a reflection of poor management, for which BAC itself must bear the cost. The licensee reiterates that the development plan is only a reference framework in which the investment portfolio can be adapted, which is explained at the mid-year CAPEX meetings.

373. As cited above, the development plan, and its associated investment portfolio, can actually be modified, as provided for in Article 53bis, §1 of the License Decree.

374. The Regulatory Body notes that BAC justified the shifting of the project in question by initiating an additional study into dual boarding bridges, which was moreover requested by the users. The Regulatory Body is therefore of the opinion that this cannot be regarded as poor management, as referred to in Article 46, §2 of the License Decree. The complainant's argument cannot be upheld here.

375. **The Regulatory Body believes that there is no violation of Article 46, §2 of the License Decree in this case. The argument "Airlines are obliged to pay double for projects that are (partially) deferred to a subsequent regulated period" is admissible but unfounded. IATA's arguments pertaining to the "Investments" are also admissible but unfounded.**

### E. Operational expenses (OPEX)

376. BAC believes that the argument pertaining to OPEX cannot be handled by the regulator, because, in its opinion, it does not have the authority to adjust operating expenses anyway, and cites the regulator's 2015 decision in this regard, where reference was made to the restriction included in Article 55, § 4, 3rd paragraph of the License Decree. However, this provision assumes that the Regulatory Body uses an ABC model that is different from the ABC model used by BAC. Under the assumption that the Regulatory Body adjusts the OPEX, a different ABC model is not necessarily used. Instead, it would be the input data of this model that would be changed. It should be noted that Article 55, § 4, 3rd paragraph of the License Decree does not prevent the Regulatory Body from adjusting the input data within an ABC model which is the same as that used by BAC. The licensee's defence that under this provision of the License Decree, the Regulatory Body cannot in any case revise the OPEX, can therefore be rejected.
377. Article 43 of the License Decree requires that the tariff system and formula for tariff control be established (freely translated) "taking into account the outlook regarding traffic, the revenues of these activities for the licensee and the operational expenses, investment costs and financing costs borne by the licensee for these activities." Pursuant to Article 55, §2, b) of the License Decree, the Regulatory Body is authorised to record violations of this Decree or the Transformation Decree in a complaint procedure. Applying these two provisions together, it follows that the Regulatory Body is authorised to assess how accurate the OPEX estimate is.
378. Nevertheless, the licensee is correct in stating that the Regulatory Body cannot conduct an independent audit of the OPEX, since the legislature did not grant it the authority to do so. The complainant's question must therefore be rejected on this point.
379. In its argument that the OPEX is inaccurate, the complainant repeatedly refers to the fact that these costs are underestimated for the QQ3 period, asserting that the licensee's forecasts are unreliable in any case. The Regulatory Body understands the complainant's critical view on this point, but, like the operator, believes that this does not constitute a sufficient argument to call into question the full cost forecast for QQ4. If the cost forecast for QQ3 was significantly different from reality, this does not mean the same thing will happen in the next regulated period. Indeed, various factors, including unforeseen factors, were behind this difference. Moreover, it is also true that the Regulatory Body, in its 2015 decision, did not find that the OPEX base was fundamentally misstated.

380. Furthermore, it should be noted that outside of staffing for the new asset management tool, the complainant does not contest any specific expenses, either in its petition or in its closing remarks. Regarding these staff levels, moreover, it says at the same time that it cannot dispute them, because it does not have sufficient knowledge of them.<sup>182</sup> The Regulatory Body reiterates the fact that personnel costs are entirely the responsibility of the operator, who sets its short- and medium-term objectives and defends its position to users under its own responsibility.<sup>183</sup> Therefore, in the absence of any clear counterarguments on the part of the complainant, the Regulatory Body sees no reason to reduce any of the cost items within personnel costs.

381. IATA also finds it unreasonable that the OPEX is rising faster than air traffic. It asserts that the OPEX would still be too high even under the assumption that the Regulatory Body adjusts the traffic forecast, which the complainant claims is due to the bottom-up calculation of costs.<sup>184</sup>

382. However, the Regulatory Body agrees with the reasons given by the licensee to justify the disproportionate increase in OPEX with air traffic, including the fact that the airport needs to catch up in order to regain adequate staffing levels following the Covid crisis, and the fact that it will be taking over the fuel & oil operations from the previous operator.<sup>185</sup> In its response to the regulator's questions on this matter, further explains that the evolution of staff numbers is therefore only to a limited extent directly driven by passenger growth. Most of the personnel cost is driven by the tasks and organisation necessary in this regard; therefore, no linear correlation can be made between personnel costs and the number of passengers. Moreover, for the airport, investments are needed in areas where there was already a structural staff shortage before the Covid crisis.<sup>186</sup>

383. The Regulatory Body cannot uphold the criticism of the bottom-up method to calculate the OPEX base either. Indeed, it is at the explicit request of the regulator that the licensee calculates its costs in this way.<sup>187</sup>

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<sup>182</sup> IATA's petition, p.14.

<sup>183</sup> Decision D-2015-12-LA of 3 November 2015 on the adjustment of the tariff system and formula for tariff control for the regulated period from 1 April 2016 to 31 March 2021, as per the final proposal of Brussels Airport Company, p. 85.

<sup>184</sup> Concluding remarks IATA, p. 14.

<sup>185</sup> Initial remarks BAC/IATA, p. 33-34.

<sup>186</sup> Letter from BAC to the Regulatory Body dated 20 September 2022, pp. 17-18.

<sup>187</sup> In this regard, see Decision D-2010-02-LA of 14 December 2010 on the tariff system and formula for tariff control for the regulated period April 2011 - March 2016 communicated by The Brussels Airport Company, p. 22-23 and Decision D-2015-12-LA of 3 November 2015 on the adjustment of the tariff system and formula for tariff control for

384. IATA also still opposes the top-down savings targets set by the licensee, asserting that they are not defined and could simply be pushed aside by individual departments within BAC.

385. However, as rightly pointed out in BAC's final conclusion, the risk of not meeting these targets does not lie with the users, but with the operator, pursuant to Article 46, §2 of the License Decree. The complainant's interests are therefore not harmed by the fact that not all savings measures are already fleshed out at the start of the regulated period. Moreover, like BAC, the Regulatory Body concludes that the "efficiency factor" requested from the regulator by the complainant is also undefined and is also intended to reduce the OPEX. On this point, the Regulatory Body therefore sees no difference with the savings measures envisioned by the licensee.

In addition, the complainant wants this efficiency factor to be linked to the recovery of traffic. In the Regulatory Body's view, this is not possible. Indeed, firstly, as explained above, there is no direct link between OPEX and traffic. Secondly, the recovery of traffic is only an estimate. The Regulatory Body therefore sees no reason to reject the licensee's proposed top-down savings targets.

386. Finally, IATA asks more generally for the 2022 OPEX base to be evaluated in line with the traffic forecast, and calls into question the use of the CPI. For example, it believes that not all airport costs are CPI-related, and where they are, the airport would typically have significant purchasing power through its procurement department. Accordingly, IATA requests a negative recalculation at the start of QQ4, supplemented by a negative X-factor.

387. First, the Regulatory Body wishes to emphasise the fact that BAC has sufficiently explained the various elements to arrive at the 2022 OPEX base, including any links to the traffic forecast, as already explained in this decision.

388. Furthermore, the Regulatory Body does not dispute that some of BAC's costs will not (fully) follow the evolution of the CPI, but believes that this index provides a good estimate of the price evolution of OPEX and other costs (cf. goods and services). The Regulatory Body therefore cannot consider the request for a negative recalculation and/or negative X-factor, for the simple reason that the CPI was used.

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the regulated period from 1 April 2016 - 31 March 2021, as per the final proposal of Brussels Airport Company, p. 85.



389. It is nevertheless the case that the CPI used in the formula for tariff control, in accordance with Article 43 of the License Decree, must be calculated (freely translated) "taking into account the forecasts for [...] operating expenses [...] borne by the licensee for those activities." The CPI in the formula is therefore used as an indication of expected inflation, meaning that it has to be examined whether the CPI to be applied (cf. from September) is in line with actual (expected) inflation over the entire regulated period.

390. In this regard, IATA's assertion calling into question the use of the CPI, as this can lead to too-high operating expenses, will be further examined.

391. It can therefore be stated, as BAC also indicated, that due to "atypical inflation," there is a discrepancy between the CPI of September 2022 - applied to the April 2023 rates - and the CPI of 2023 itself (which is relevant to the costs for 2023). This was addressed more specifically by BAC during the closing consultation meeting, leading to a adjustment, equivalent to a rebase of -3.8%:

### Final update/check (atypical trend CPI)

Based on an unchanged (QQ3) tariff structure

- A final check however is needed regarding CPI
  - The regulatory model and tariff formula are expressed in real terms. The tariff formula includes CPI
  - The tariff formula of year(N), uses the CPI of year (N-1), whereas the cost base is impacted by CPI year (N)
  - In a standard context, in which CPI is expected to be stable, no correction is necessary (CPI tariff formula year(N-1) is equivalent to CPI cost base year(N))
- In 2023 however, this is not the case
  - Revenues will be inflated by CPI of 9/2022 (estimated at 6.9%)
  - forecasted CPI 2023 (QQ4 overall 2.5%/y, of which 2.8% in 2023)
  - CPI Revenues > CPI cost base
  - This is a-typical an needs to be corrected

A downward correction of the initial rebase is needed

*Source: Closing consultation meeting - Final Proposal, dated 11.05.2022*

392. In this regard, BAC has demonstrated that the ROCE based on this rebase in 2023 remains the same as the WACC, with the 2023 tariffs - based on expected inflation - linked to projected costs for 2023. Therefore, no discrepancy between costs and tariffs is expected in 2023. A recalculation based on the current figures only has a very limited impact on the total rebase (initial rebase + rebase adjustment), also considering the link with the 2022 OPEX base<sup>188</sup> that also had to be adjusted (in the same direction).

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<sup>188</sup> Which goes beyond just adjusting the OPEX. Changes in expected inflation also have an impact on the RAB, on the WACC through the RFR, etc.

393. The Regulatory Body agrees with BAC that the calculated rebase provides a fairly accurate estimate of the tariffs at the start of QQ4.<sup>189</sup> The OPEX base was fully adjusted based on the (expected) costs for 2022, and the costs and revenues for 2023 were aligned based on the (expected) CPI for 2023. The Regulatory Body believes that the formula for tariff control, in accordance with Article 43 of the License Decree, **for 2023**, must "take into account the forecasts for [...] operating expenses [...] borne by the licensee for those activities", more specifically due to the rebase linked to the CPI for September 2022.
394. In addition, BAC indicates in its conclusions that further adjustments within QQ4 are irrelevant.<sup>190</sup> However, the Regulatory Body believes that BAC is wrong here not to take into account the impact of expected (a-typical) inflation within QQ4 **for the tariffs for 2024 and beyond**. Indeed, inflation is expected to continue falling during the QQ4 period, as also indicated by BAC in the calculation of the RFR in the WACC formula. Because the CPI for September is used for the tariffs, while costs are assumed by BAC to correspond to the CPI of the following year, there will again be a discrepancy between the two at this expected (a-typical) inflation rate. As a result, contrary to Article 43 of the License Decree, the formula for tariff control does not take into account the outlook as regards OPEX for the period after 2023.
395. Indeed, assuming that BAC's hypotheses are correct, the rebase ensures that both costs and tariffs for 2023 correspond to the actual costs and revenues (cf. based on estimated WACC). Inflation is subsequently expected to fall further. Suppose the CPI subsequently evolves to, e.g., 2.5% (on average) in 2024 (vs. 2023), while it is still 3.9% in September 2023 (cf. prognosis of the Federal Planning Bureau dated 6 December 2022), this would mean that the OPEX base for 2024 would have increased by 2.5% compared to 2023, while tariffs will increase by 3.9% compared to 2023.
396. The fact that, in reality, this may also go in the other direction - depending on the evolution of the CPI and the differences between the two specific CPIs - is irrelevant in this regard, since, in accordance with Article 43 of the License Decree, the formula for tariff control must take into account the **outlook** in terms of (inter alia) OPEX. The Regulatory Body believes that the expectations for the CPI should at least correspond to the expectations for inflation in the calculation of the RFR<sup>191</sup> in the WACC formula.

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<sup>189</sup> Although the tariffs do not start in January 2023, but in April 2023.

<sup>190</sup> Initial remarks BAC/IATA, p. 11-12.

<sup>191</sup> Especially in the case of forward-looking expectations.

397. Furthermore, it could be asserted by the licensee that the actual evolution of the CPI is at the expense or benefit of BAC, in accordance with Article 46 of the License Decree. However, the Regulatory Body believes that this provision is not applicable in this context. Indeed, it only pertains to the results relating to the management of the airport and/or an increase or decrease in traffic compared to the expectations drawn up when setting the regulated tariffs for the next regulated period. Applying a CPI, and whether or not it differs from the CPI of the full (rolling) year, has nothing to do with good or poor management of the airport or the increase or decrease in air traffic.

398. **The Regulatory Body concludes that BAC's proposed OPEX is overestimated because no adjustment of expected inflation from the CPI used was applied for the full duration of QQ4. This violates Article 43 of the License Decree. The argument pertaining to "OPEX" is admissible and partially justified.**

399. The recalculation of the adjustment in this regard is shown in section 6.1.5. of this decision.

#### F. Asset allocation

400. IATA calls into question the ABC model used by BAC for cost allocation. It believes a different model should be used now that the airport is dual till.

401. Article 42, 1° of the License Decree stipulates that the formula for tariff control and the tariff system must be established so that the total regulated costs are reflected based on the results of the ABC cost model. Article 1, 32° of the License Decree defines this cost model as (freely translated) "the Activity Based Costing (ABC) principles and model used by the licensee in the first regulated period to establish the formula for tariff control."

402. From these provisions it can be inferred that the ABC model and its principles used during the QQ4 consultation period should be the same as during the first regulated period. The complainant's argument cannot be upheld, namely that the licensee, now being in dual till, should use a different model because the current approach violates the above-mentioned regulations.

403. Since the Regulatory Body has no regulatory authority either itself or through an auditor appointed by it to verify the conformity of the ABC model currently used, as

requested by IATA, it cannot comment on this point.<sup>192</sup> The part of the argument pertaining to this aspect is therefore inadmissible.

The Regulatory Body cannot form an opinion on the audit by Ernst & Young either.

The ruling of the Market Court of 27 June 2018, to which BAC refers in its conclusions<sup>193</sup>, also does not confirm, in the Regulatory Body's view, that BAC uses the same ABC model for QQ4 as that used in the first regulated period. On the one hand, the Market Court never substantively tested the ABC model for its consistency. On the other hand, the ruling predates the QQ4 consultation period, so no ruling could have been made on the model that served as the basis during the recent tariff discussions.

404. IATA also asserts that there should be compensation for users for the revenue the operator earns from advertising on regulated infrastructure, following the "user pays" principle. Nevertheless, BAC asserts that the ABC model works based on cost causality, where costs are allocated to activities that generate them. In this case, the commercial activities would not be cost generators and therefore should not have to contribute to the infrastructure.

405. The Regulatory Body notes that the Market Court upheld in general terms the methodology of the cost model used by BAC, including the principle of cost causality.<sup>194</sup> The licensee's position can therefore be upheld, namely that part of the costs associated with the infrastructure should not be allocated to commercial activities, since the cost of the infrastructure to users is the same, with or without advertising.

406. Furthermore, it must still be examined whether it is then possible for users to participate in the advertising revenue generated by the licensee through the infrastructure paid for by them. The question then comes down to whether commercial revenues can be used to subsidise the regulated activities (so-called "cross-subsidisation").

407. According to Article 1, 4° of the License Decree, subsidising activities are considered for a partial subsidisation of regulated activities under the "adjusted single

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<sup>192</sup> In the same sense: Decision D-2015-12-LA of 3 November 2015 on the adjustment of the tariff system and formula for tariff control for the regulated period from 1 April 2016 to 31 March 2021, as per the final proposal of Brussels Airport Company, p. 84, [www.regul.be](http://www.regul.be).

<sup>193</sup> First conclusion BAC/IATA, p. 37.

<sup>194</sup> Brussels Court of Appeal, Market Court Section, 19<sup>th</sup> Chamber A, Market Chamber, BAC/Regulatory Body, 27 June 2018, unpublished, pp. 6-7.

till" revenue control mechanism. Cross-subsidisation is therefore only possible under a system of adjusted single till.

408. Article 49, §3 of the License Decree further states that (freely translated) "*Subsidisation is zero during any regulated period in a dual till mechanism*". Article 1, 11° of the License Decree defines the dual till as (freely translated) "*the revenue control mechanism for revenue that the licensee can earn from regulated activities, in a situation where the regulated activities themselves must ensure a fair profit margin, at market conditions, in return for the capital invested and which must therefore suffice on its own. This profit margin is obtained without subsidisation in a dual till*".

409. Since BAC is currently in dual till and there are no elements to indicate that this would be different for the QQ4 period, Article 49, §3 of the License Decree prohibits the transfer of part of the revenues from advertising on aviation infrastructure to regulated activities. The complainant's arguments cannot therefore be entertained.

410. Finally, regarding IATA's criticism of the new Ria money exchange, the Regulatory Body notes that this is indeed a commercial activity.<sup>195</sup> IATA therefore incorrectly claims that the operator has to consult with users on this project.

411. **The Regulatory Body is of the opinion that the argument pertaining to "Asset Allocation" is partly admissible but unfounded.**

412. As regards cost allocation, Ryanair does not oppose the ABC model per se, but it does object to the specific cost allocation of the engine run up location and the Intermodal Hub, which would be in breach of Article 42, 1° of the License Decree.

413. Article 42, 1° of the License Decree states the following (freely translated):

*"The formula for the tariff control referred to in Article 30, 7°, of the Royal Decree of 27 May 2004 on the conversion of BIAC into a public limited company (NV/SA) under private law and on the airport facilities and the tariff system are established in such a way that": 1° the total regulated costs are reflected based on the results of the ABC cost model; (...)"*

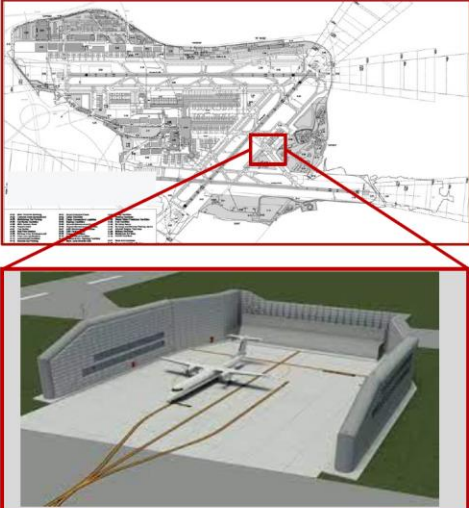
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<sup>195</sup> <https://www.brusselsairport.be/brusselsairportnews/nl/juni-2022/new-exchange-office-ria>.

**Engine run up location**

414. In its tariff proposal, BAC allocates the full cost of the engine run up location to users:

## New engine run up location



**Motivation**

The project is important for two reasons:

- Reduction of ground noise is one of the key priorities in the Sustainable Development Strategy.
- Operational constraint : non availability of current location in case of de-icing activities on W-platform.

**Description**

- Construction of a new engine run-up area in the East zone of the airport including noise mitigating measures.
- Technical and compliance studies.
- Excavating of the terrain.
- Construction of pavement, sewage, lighting and markings.

**Benefits for users**

Enable airlines to test the aircraft engines, if necessary, on the Brussels Airport premises. New facilities are needed to do this on a more sustainable way, ensuring our license to operate (neighboring)

**Total regulated CAPEX QQ4 €8.9mio** Pct. Regulated 100%

2023	2024	2025	2026	2027
0.4	8.6	0	0	0

SOURCE: BAC "CAPEX Technical session" presentation 01/02/2022, p. 81.

415. BAC justifies this by referring to obligations under the License Decree and European regulations to set up the engine run up location, and the fact that it is centralised infrastructure. It infers that it would actually be regulated infrastructure:

*"BAC plans to set up a centralised engine run up location, and according to BAC, this is centralised infrastructure and therefore part of the regulated cost base. BAC's licence stipulates that BAC must provide airport facilities. The definition of airport facilities refers to aircraft maintenance."*<sup>196</sup>

416. It is correct that in accordance with the regulations, the operator is required to set up an engine run up location. However, the fact that there is a legal obligation to do so does not automatically mean that the infrastructure in question is also *regulated* infrastructure. This is only the case if the infrastructure is set up in the context of a regulated activity. Indeed, under Article 1, 10° of the Transformation Decree, airport

<sup>196</sup> BAC's response to questions of the Regulatory Body dated 20 September 2022, pp. 8-9.

charges can only be charged by the operator to users or passengers "if they pertain to regulated activities." Article 48, §1 of the License Decree states in the same sense that the formula for tariff control and the tariff system establishes the individual level of each tariff that the licensee can charge *for the regulated activities* for the next regulated period.

417. It follows from these provisions that it must be established that the engine run up location is set up according to a regulated activity referred to in Article 1, 3° of the License Decree, in order to be included in the regulated cost base. The fact that the run up location is set up pursuant to a licence obligation is not a sufficient justification in this case. A comparison can be made with the licence obligation imposed on the licensee pursuant to Article 15, §2 of the License Decree to ensure there is a pharmacy at the airport. This pharmacy falls within the commercial activities referred to in Article 1, 4°, c) of the License Decree and, on this basis, is not part of the regulated asset base. Therefore, the licensee does not integrate the cost of this infrastructure into the tariffs, even if the infrastructure was set up under a licence obligation.

418. By letter dated 28 July 2022, the Regulatory Body therefore asked the operator what purpose the engine run up location would be used for, in terms of regulated activity. In its response dated 20 September 2022, it explained the following:

Een piloot kan immers te allen tijde zelf beslissen om, alvorens op te stijgen, proef te draaien. De proefdraailocatie is hiervoor de centrale infrastructuur die hiervoor wordt voorzien. Deze moet ontwikkeld worden in lijn met andere reglementeringen. BAC beschouwt een centrale proefdraaiplaats als (gecentraliseerde) infrastructuur ter ondersteuning van de gereguleerde activiteit 'landen en opstijgen van vliegtuigen' overeenkomstig art. 1 van het licentie-KB. Dit is een activiteit die wordt uitgevoerd op vraag van de piloot en maakt geen deel uit van de grondafhandelingscategorie 'lijnonderhoud'. De activiteit wordt weliswaar uitgevoerd door een personeelslid van een grondafhandelaar, dit in aanwezigheid van de luchthaveninspectie van BAC. Het feit echter dat een grondafhandelaar betrokken is betekent niet dat de infrastructuur op zich grondafhandeling is. Het

*SOURCE: Letter from BAC to the Regulatory Body dated 20/09/2022*

419. It also refers to the regulated activity of landing and take-off in its conclusions:

*"In the case of aircraft maintenance, an airline is required to test run its aircraft engines. Without this test run, an aircraft cannot take off."<sup>197</sup>*

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<sup>197</sup> Initial remarks BAC/Ryanair, p. 27.



420. The Regulatory Body, as explained above, believes that the fact that the run up location is centralised infrastructure does not in itself justify including its costs in the airport charges. Indeed, it is only possible to levy airport charges for costs associated with regulated activities. The crux of the matter is therefore whether the test run indeed falls within the "landing and take-off of aircraft" as referred to in Article 1, 3°, a) of the License Decree, for which the licensee can levy a landing and take-off charge.

421. Article 40 of the License Decree stipulates that the licensee must comply with national and international standards and norms regarding the tariff policy for the regulated activities, unless otherwise stipulated. Article 1, 19° of the License Decree defines the "national and international standards and practices" as (freely translated) "*all regulations in force in the aviation sector, issued at the international level (by bodies such as ICAO, the ECB or the European Council) and at the national level (Directorate General for Aviation), as well as the special regulations and practices applicable in the reference airports.*"

422. The Regulatory Body notes that ICAO defines landing charges as:  
*"A single charge (...) for costs of as many as possible of airport-provided facilities and services **for normal landing and take-off of aircraft** (generally excluding hangars and certain terminal building and other facilities as are normally handled by leases or other usual commercial practices)".*<sup>198</sup> [emphasis added]

423. The Regulatory Body notes that neither the regulations nor ICAO provide a definition of the "landing and take-off of aircraft" referred to in Article 1, 3°, a) of the License Decree.

424. As there is no definition of landing and take-off, various indications are used below to give meaning to the concept in question.

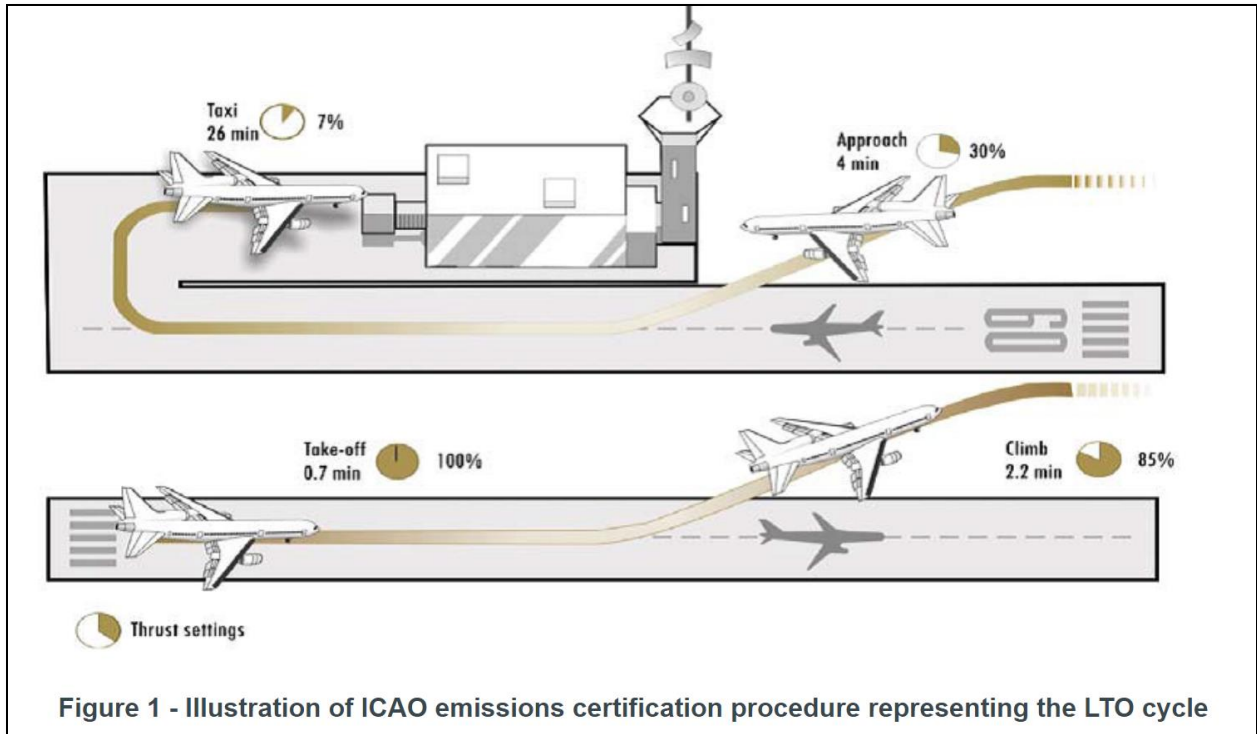
425. According to ICAO, landing and take-off includes the following four phases: the take-off, the climb, the approach and the taxiing phase.<sup>199</sup> This so-called "LTO cycle" does not include engine testing in a separate enclosed infrastructure:

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<sup>198</sup> ICAO's Policies on Charges for Airports and Air Navigation Services, doc. 9082, p. 11.

<sup>199</sup> [https://www.icao.int/environmental-protection/Pages/LAQ\\_TechnologyStandards.aspx](https://www.icao.int/environmental-protection/Pages/LAQ_TechnologyStandards.aspx).





426. According to information from the Directorate General of Aviation (DGLV), the test running of aircraft engines is carried out by mechanics from the maintenance station, following maintenance carried out on the engine of the aircraft. Specifically, an engine run up is performed when a specific maintenance task requires a thorough engine check to be performed, such as after serious engine breakdowns, when replacing an engine, or when specific error messages occur.<sup>200</sup>

427. Indeed, the common international description of "ground running" means that this activity is connected to the aircraft maintenance process:

*"The term Aircraft Ground Running is usually used to describe the operation of some or all of the engines of an aircraft, whilst on the ground, for the purpose of functionally checking the operation of either engines or aircraft systems. **This usually takes place prior to the Release to Service of an aircraft from maintenance. Ground running may be carried out either prior to, during or after the rectification of a defect or scheduled work on an engine or an aircraft system, when this requires engines to be operating in order to assess its function.** Although the aircraft may need to be taxied or towed to an approved ground running position under a clearance from ATC, **most operators and maintenance***

<sup>200</sup> Email DGLV to the Regulatory Body dated 1 August 2022.

***organisations do not require pilots to be on board because aircraft technicians can be trained and approved for these duties.***<sup>201</sup> [emphasis added]

428. According to the DGLV<sup>202</sup>, it is only in exceptional cases that engine testing is performed in the context of a ground handling activity, more specifically within the "line maintenance" referred to in paragraph 8 of the Annex of the RD Ground Handling<sup>203</sup>. But even in this situation, the engine run up would therefore be linked to the non-regulated activity of "providing ground handling services" referred to in Article 1, 4°, a) of the License Decree.

429. No evidence could be found that the engine run up in this facility is a standard action performed by a pilot with a take-off-ready aircraft, i.e., an aircraft that has been serviced and with passengers and/or cargo embarked. It is not even certain that an aircraft can take off at all, after an engine run up has been performed. Indeed, if the engine run up fails, it will have to be brought back for maintenance.

Performing an engine run up in the engine run up location is also not an intrinsic part of the standard landing process of an aircraft on the tarmac.

The Regulatory Body therefore believes that there is nothing to indicate that using the infrastructure of the engine run up location is part of an aircraft's landing or take-off process.

430. The Regulatory Body is also of the opinion that the engine run up in the infrastructure made available by BAC is not related to any *other* regulated activity referred to in Article 1, 3° of the License Decree. The licensee also offers no arguments to this effect.

431. In its ruling of 27 June 2018, the Market Court held that if an activity does not fall into the category of "regulated activities," it is, by definition, an unregulated commercial activity.<sup>204</sup>

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<sup>201</sup> <https://www.skybrary.aero/articles/aircraft-ground-running> (SKYbrary was set up by EUROCONTROL in collaboration with the International Civil Aviation Organisation (ICAO), The Flight Safety Foundation, The UK Flight Safety Committee and The European Strategic Safety Initiative).

<sup>202</sup> Email DGLV to the Regulatory Body dated 1 August 2022.

<sup>203</sup> Royal Decree of 6 November 2010 on access to the ground handling market at Brussels Airport, *Belgian Official Gazette* 17 November 2010.

<sup>204</sup> Brussels Court of Appeal, Market Court Section, 19th Chamber A, Market Chamber, BAC/Regulatory Body, 27 June 2018, unpublished, p. 5.

432. Based on the above elements, the Regulatory Body concludes that the costs associated with the engine run up location cannot be passed on via airport charges, as the project does not fall within a regulated activity. The fact that the costs of the location are nevertheless allocated to a regulated activity within the ABC model violates the methodology:

**Regulated charges can only reflect costs which are triggered by the regulated activities**

This **Activity Based Costing model** has been developed by Deloitte in 2004-2005 for this purpose. The objective of the model is to assess the existing and future cost base and to identify the relevant costs necessary to enable the correct execution of a regulated activity.

*SOURCE: Cost allocation - Technical Meeting dated 02/02/2022, slide 6.*



433. As a result, the total regulated costs are not reflected based on the results of the ABC model, which violates Article 42, 1° of the License Decree, as the complainant rightly claims. Within the ABC model, BAC wrongly allocated the cost of the engine run up location to the "landing and take-off" cost object within the regulated activities. The allocation in this case should have been to an unregulated activity.

434. **The Regulatory Body rules that the engine run up location project must be removed from the regulated asset base. Indeed, since the licensee wishes to integrate the costs associated with this unregulated infrastructure into the airport charges, it is in violation of Article 48, §1 *juncto* Article 1, 13° and Article 1, 24° of the License Decree, as well as Article 42, 1° of the License Decree. The arguments relating to the engine run up location and that "ABC Principles were not adhered to when calculating the regulated proportion of CAPEX costs" are admissible and well-founded.**

## Intermodal Hub

435. In its tariff proposal, BAC also integrates 84.4% of Intermodal Hub costs into the airport charges:

### Intermodal Hub

**Motivation**

The goal is to connect all current and future landside transport modes within a centralized area, which directly serves the airport terminal. This will improve the modal split and the connectivity of Brussels airport, hereby bringing added value to the entire airport community (pax and staff)

**Description**

Multi-level transport hub to connect all current and future landside transport modes (car, train, tram, bus, taxi, airport shuttle, bike) within the heart of the airport.

**Benefits for users**

Accessibility and connectivity

**Total regulated CAPEX QQ4 €19.8mio**
**Pct. Regulated**
**84.4%**

2023	2024	2025	2026	2027
0.5	1.7	5.7	6.0	6.0

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01/02/2022
85

*SOURCE: BAC "CAPEX Technical session" presentation 01/02/2022, p. 85.*

436. The operator believes that this allocation key is correct, as it was calculated based on available data<sup>205</sup> and is applicable to all landside mobility investments. According to the operator, the project should not have a higher proportion of non-airport related travellers attached to it, as Ryanair asserts, as this would primarily target airport users at the present time.

437. The Regulatory Body notes that the operator described the purpose of the Intermodal Hub in its Vision2040 as follows (freely translated):

<sup>205</sup> In February 2020, an analysis was made of the average number of people in the airport on any given day, broken down by regulated or unregulated actors: Deep Dive Session ABC of 2 February 2022, pp. 52-54.

*"Many people already travel to the airport by public transport, not to take the plane, but to easily transfer to another mode of transport. **We want to build on this role in the future, thereby helping to solve our region's mobility problems.**"*

*"The airport wants the different means of transport such as train, tram and bus to be even better connected, integrated into the terminal. Passengers are immediately in the departure hall, **commuters can transfer even more easily from one means of public transport to another.**"*

*"The intermodal hub at Brussels Airport can be expanded, with more trains and buses, as well as a tram and cycle network. This will provide passengers and workers with more options for coming to the airport or transferring at the airport on their way to their final destination, and it will make a significant contribution to improving mobility **for all commuters and other travellers throughout the region.**" <sup>206</sup>[emphasis added]*

438. Since the description from the Vision2040 does not seem to match the description of the project during the tariff consultation<sup>207</sup>, the Regulatory Body requested clarification from the operator on 28 July 2022.

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<sup>206</sup> <https://www.brusselsairport2040.be/nl/visie-2040/50/intermodale-hub>.

<sup>207</sup> "The focus of this infrastructure is to bring passengers to the airport. With this project, BAC is aiming to attract passengers, not to create a platform towards other regions. BAC is not aiming to bring people to the airport who can take a bus to other regions in Belgium, so therefore BAC believes the percentage is correct.", Meeting Minutes of the 2nd General Meetings of the QQ4 consultation period, p. 4.

439. In its response to the Regulatory Body, BAC offers the following explanation:

Om het maatschappelijk draagvlak van de luchthaven te ondersteunen was het voor BAC belangrijk om proactief en op een positieve manier deze realiteit te communiceren. De mogelijkheid diende ook opgenomen te worden om de verschillende mobiliteitsoplossingen die worden uitgewerkt voor passagier en personeel ook aan te bieden aan personen die de luchthaven niet als eindbestemming hebben (hierna pendelaars). Vandaag is dit echter in realiteit maar in beperkte mate aanwezig.

Of er effectief op lange termijn, naar aanleiding van het ontwikkelen van de huidige scope van IMH meer “pendelaars” gebruik gaan maken van de multimodale mobiliteitsoplossingen is nog niet bekend. De inschatting is dat dit vooral zal gebeuren door een verbetering van treinconnecties en HST. Dit staat voorlopig niet op de planning, zeker niet voor 2027. De huidige Diabolo taks is ook een duidelijke remmende factor voor het niet luchthaven-gebonden publiek om de trein van en naar de luchthaven te gebruiken. Een eventuele uitbreiding richting ‘pendelaars’ zal gemonitord worden gedurende de volgende jaren. Indien in de volgende QQ’s zou blijken dat er effectief een verbreding is van het gebruik van deze infrastructuur zal dit leiden tot een aanpassing van het gereguleerd % voor de activabasis die valt onder de noemer ‘accessibility’. Dit zal dan gebeuren, conform de methodiek van het ABC model.

*SOURCE: Letter from BAC to the Regulatory Body dated 20/09/2022*

440. The Regulatory Body agrees with the operator's prediction that the project will initially generate effects primarily for airport users.

Firstly, the Intermodal Hub will tackle the capacity problem of the Diamond, where traffic flows of arriving and departing passengers intersect, and it will do this by removing a not insignificant portion of the vertical circulation from this area and absorbing it within the Intermodal Hub. It is clear that this aspect of the investment is solely for the benefit of airport users:

*The Intermodal Hub is a **critical mobility related infrastructure**. The goal of this multi-level transport hub is to **connect all current and future landside transport modes** (car, train, tram, bus, taxi, airport shuttle, bike) within in a **centralized area**, which directly **serves the passengers and the entire airport community regarding modal split**, and could provide an alternative to short distance flights (feeder network)*

*It also provides an answer to the saturation of the Diamant building in peak*

*SOURCE: 2nd General Meeting dated 07/03/2022, slide 60.*

Tot slot is er nog bijkomende praktisch argument voor het ontwikkelen van de IMH, met name de noodzakelijke verhoging van capaciteit van de verticale circulatie. De capaciteit van de zogenaamde Diamant (liftekern en roltrappen aan check in rij 3-4) is reeds verzadigd op piekmomenten.

*SOURCE: Letter from BAC to the Regulatory Body dated 20/09/2022*

Secondly, the airport is not currently used as a transfer platform for commuters, or barely. It is therefore highly questionable whether an expansion of bus, train or tram services will change this situation.

Ryanair refers in its petition to Flixbus, which uses Cologne airport as a transfer platform for its bus passengers. However, it is not known whether this transport company intends to develop a similar service at Brussels Airport, and whether it would be successful. Nor is it certain whether the new tram connection will attract a clientele that will switch to another mode of transport at the airport. The website for the tram project does mention the possibility of this<sup>208</sup>, but it should indeed be taken into account that there is currently no high-speed connection and train tickets to and from the airport are subject to a separate diablo tax.

441. For this reason, the Regulatory Body believes that the 84.4% allocation key used by BAC for the Intermodal Hub is correct. Moreover, during the consultation, the licensee adequately explained how this percentage was calculated.

442. Even if the Regulatory Body were to consider that the proportion of non-regulated actors within the allocation key was indeed too low, this would not justify removing the entire project from the regulated asset base, as requested by the complainant in its petition. Indeed, the project is based on the licence obligation in Article 4, 5° of the License Decree, and is being implemented for the benefit of a regulated activity, namely the one referred to in Article 1, 3°, c) in conjunction with Article 1, 16° of the License Decree. The licensee is therefore entitled to recover certain costs associated with this project from users through airport charges. The complainant's demand to exclude the project from the regulated asset base must therefore be rejected.

In addition, the fact is that the Regulatory Body does not have any authority to revise an allocation key, as proposed by the licensee, upwards or downwards. Indeed, this would be inconsistent with what the regulator provided in Article 55, §4, last paragraph of the License Decree.

443. **The Regulatory Body rules that the argument that "ABC Principles were not adhered to when calculating the regulated proportion of CAPEX costs", as regards to the Intermodal Hub, is admissible but unfounded.**

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<sup>208</sup> The railway line Brussels–Leuven/Airport is the backbone of public transport in the region around the airport. The station below Brussels Airport is the most important railway station. From there, there are direct connections to all the provincial capitals. It is also the terminus of the Airport Tram, so you can easily switch from the tram to one of these train services.", <https://www.werkenaandering.be/en/faq-airport-tram>.



## G. Tariff structure

### **G1. Gradual rebalancing in violation with the principle of cost-relatedness**

444. Ryanair claims BAC's tariff proposal is not in line with Articles 40 and 43 of the License Decree, as regards the cost-relatedness of regulated activities in themselves.
445. In its defence, BAC refers to Article 42 of the License Decree, concluding that the relationship between the (regulated) costs and revenues should not be viewed at the granular level, but in its totality.
446. Pursuant to Article 55, §2, b) of the License Decree, the Regulatory Body is authorised to verify whether these three provisions were complied with.
447. Article 43 of the License Decree stipulates that the formula for tariff control, the tariff system and their evolution during the regulated period established by the licensee, after consultation with users, must be in accordance with international standards and practices. In the Regulatory Body's view, this article does not mean that it must be verified whether the tariffs for all regulated activities must individually comply with international standards and practices. Indeed, Article 1, 24° of the License Decree specifically defines the tariff system as (freely translated) "all coherently structured tariffs for regulated activities."
448. Article 40 of the License Decree stipulates that (freely translated): "*the licensee must comply with national and international standards and norms regarding the tariff policy for the regulated activities, unless otherwise stipulated*". According to the Regulatory Body, "tariff policy" includes the tariffs of the various regulated activities themselves. Consequently, this means that BAC must comply with national and international standards and practices.
449. Ryanair specifically refers to ICAO's principle of cost-relatedness in this context, citing "Document 9082: ICAO's Policies on Charges for Airports and Air Navigation Services". This refers to "the principles of cost-relatedness of charges," without giving further explanation.<sup>209</sup>

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<sup>209</sup> ICAO "Policies on Charges for Airports and Air Navigation Services", Doc 9082, p. 10.



450. ICAO's "Document 9562: Airport Economics Manual" goes a further into the broader meaning of the principle, stating in Appendix 4, paragraph 12: *"Charges should not be set at levels that would, based on reasonable and prudent projections, generate revenues that exceed cost-based funding requirements"*.

451. ICAO's policies therefore state that charges must comply with the principle of cost-relatedness, without specifically requiring that this be the case for all (regulated) charges individually. For example, ICAO document 9082 does not mention cost-relatedness in the principles to be applied for landing charges and passenger service charges, while it does specifically mention it for security charges: *"Any charges or transfers of security costs should be directly related to the costs of providing the security services concerned and should be designed to recover no more than the relevant costs involved."*<sup>210</sup>

452. Reference is also made to the cost basis to be used for noise-related charges and emissions-related aircraft charges separately.<sup>211</sup>

453. The Regulatory Body is therefore of the opinion that BAC complies with the general principle of cost-relatedness of its charges and that it is not in violation of the ICAO guidelines regarding LTO and passenger charges. Ryanair's assertion that the tariffs are not in line with Articles 40 and 43 of the License Decree is unjustified on this point and therefore cannot be upheld.

454. Moreover, Article 42 of the License Decree states the following (freely translated):

*"The formula for the tariff control referred to in Article 30, 7°, of the Royal Decree of 27 May 2004 on the conversion of BIAC into a public limited company (NV/SA) under private law and on the airport facilities and the tariff system are established in such a way that":*

*1° the total regulated costs are reflected based on the results of the ABC cost model; (...)"*.

Indeed, Article 1, 24° of the License Decree specifically defines the tariff system as (freely translated) "all coherently structured tariffs for regulated activities."

455. In this regard, the Regulatory Body agrees with BAC's view that for the tariffs for the regulated activities, the total regulated costs should be reflected. Indeed, according

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<sup>210</sup> *Idem*, p. 12.

<sup>211</sup> *Idem*, p. 13.

to Article 42 of the License Decree, in conjunction with Article 1, 24° of the License Decree, it is not necessary that all regulated activities are also individually related to the regulated costs.

456. The same applies to the formula for tariff control. Taking into account the forecasts made in terms of traffic, revenues and the cost of regulated activities to the licensee, BAC proposed a formula for tariff control, demonstrating during the consultations that it reflected the total regulated costs.

457. BAC's proposed tariff system and formula for tariff control therefore comply with Article 42 of the License Decree.

458. The Regulatory Body would also like to point out that this article does not preclude the possibility of a rebalancing of the tariffs (gradual or otherwise). This would result in a different formula for the tariff control (cf. higher/lower rebase and/or x-factor) and different tariffs for regulated activities, which is possible as long as the total regulated costs are equal to the total regulated revenues, taking into account the outlook for traffic.

459. Finally, the Regulatory Body would like to emphasise the fact that if the principle of cost-relatedness were to be applied to all regulated activities individually, this could lead to a violation of Article 42, 3° of the License Decree, which stipulates that the tariffs of airport charges for regulated activities must be aligned with the tariff levels of the reference airports based on the results of the tariff benchmarking model. Indeed, if there were abnormally high investment in a given regulated activity (e.g., LTO) in a given regulated period, this could result in charges (for e.g., LTO) for that period that are much higher than the charges (for e.g., LTO) at the reference airports, while they could, for example, fall very sharply in the regulated period thereafter.

460. **The Regulatory Body therefore believes that BAC's proposed rebalancing does not violate Articles 40, 42 and 43 of the License Decree. The argument that the "Gradual rebalancing of tariff structure breaks cost-relatedness principle" is admissible but unfounded.**

## **G2. Tariff structure is not aligned with reference airports**

461. According to Ryanair, the balance between the regulated activities LTO (the landing and take-off of aircraft) and passenger services (passengers' use of the facilities at their disposal) is not aligned at the reference airports, which Ryanair claims is in breach of Article 42, 3° of the License Decree. In this regard, BAC's reference airports should also not be limited to the exhaustive list in the License Decree.

462. Article 42, 3° of the License Decree states the following (freely translated):  
*"The formula for the tariff control referred to in Article 30, 7°, of the Royal Decree of 27 May 2004 on the conversion of BIAC into a public limited company (NV/SA) under private law and on the airport facilities and the tariff system are established in such a way that":*  
*(...)*  
*3° the airport charges for regulated activities are aligned with the tariff levels of the reference airports based on the results of the tariff benchmarking model."*

The "tariff benchmark model" is thereby further defined in Article 1, 33° of the License Decree as (freely translated) *"the methodology used by the licensee in the first regulated period to compare the airport charges of the reference airports for the regulated activities."*

463. Pursuant to Article 55, §2, b) of the License Decree, the Regulatory Body is authorised to verify whether this provision was complied with.

464. To that end, the sections below will first examine whether and how the tariffs were aligned. It will then be examined whether this alignment can be gradual, as proposed by BAC.

### Alignment of tariffs

465. The Regulatory Body believes that the alignment pursuant to Article 42, 3° of the License Decree is necessary, on the one hand, to see if the tariffs are not too high, and on the other hand, to ascertain if the correct tariffs are being applied. The underlying practices must therefore be considered<sup>212</sup> and specifically included in the tariff benchmark model referred to in Article 42, 3° of the License Decree.

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<sup>212</sup> For this, BAC itself refers to its own practice of modulation to promote, among other things, the environment, which is permitted under Article 3 of the Airport Charges Directive and transposed in Article 32 of the License Decree.

466. Given the different profiles of the reference airports, and more specifically the different structure of charges in different reference airports, the alignment according to international practice need not necessarily be 1 to 1. For example, noise-related charges differ, and do not necessarily have to be levied but can be added to LTO tariffs.<sup>213</sup>
467. Specifically, during the consultation sessions, BAC demonstrated that it had conducted a comprehensive benchmarking, in which it also clearly indicated the different practices between the different (reference) airports and - to the extent possible - included a like for like analysis.<sup>214</sup> The Regulatory Body agrees with BAC that this like-for-like analysis is the appropriate measure for comparisons with reference airports. In addition to the 7 reference airports from the regulations, 22 other airports were included in the benchmark.
468. One of the conclusions of the benchmark was that - although the (total) tariff level at Brussels Airport is in line with the comparable airports listed by BAC - there is an imbalance between the passenger related charges and the airfield related charges compared to other airports.
469. BAC therefore rebalanced its tariff structure following this benchmark. In slide 102 of the first General Meeting on 17 January 2022, BAC communicated that one of the reasons for rebalancing the tariff structure is the following: "*1. Rebalancing from pax charges to pax Landing and Take Off (LTO) charges to bring ratio of pax LTO charge vs. pax charge in line with benchmark airports, and to increase impact of environment related differentiation (progressive 100% increase of pax LTO)*". Slide 27 of the "Tariff Structure" consultation session of 4 February 2022 shows this in more detail:

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<sup>213</sup> ICAO "Policies on Charges for Airports and Air Navigation Services", Doc 9082, p. 13: "*Noise-related charges should be levied only at airports experiencing noise problems and should be designed to recover no more than the costs applied to their alleviation or prevention*".

<sup>214</sup> 1st General Meeting of 17 January 2022, Appendix Benchmarking, slides 10 and 24.

## 6. Rebalancing

Further shift from Pax fee to pax LTO fee is needed to be more in line with market practice

**Context:**

- LTO revenues versus total aero revenues is too low and not in line with market practice
  - LTO charges increase versus
  - Pax charges decrease

**Objective:**

- Market conformity
- Promote an efficient usage of the infrastructure
- Increase impact of sustainability related tariff differentiation

**Way forward:**

- Introduce a progressive rebalancing over the QQ4 period from PAX fee to PAX LTO fee.
- The level of rebalancing is to be equivalent to a doubling of PAX LTO contribution

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470. Following the benchmark performed by BAC, it can be observed that - at the end of QQ3 - the share of LTO in the 7 reference airports of Brussels Airport is on average 24% (and median 19.5%) and 28% (and median 26%) for all comparable airports included by BAC, while Brussels Airport itself has a share of 12%.

471. BAC indicated in the above slide that it intends to double PAX LTO by the end of QQ4. Slide 37 shows the final outcome of the proposed adjustments (including rebalancing) with the tariffs for the various regulated activities (*Pax charges, Parking charges, Security charges, LTO charges*). These were still slightly adjusted in the final tariff proposal, following the latest update (of atypical inflation, among others) and as also reflected under Section 5.2 of this decision ("The rejected tariff proposal").

472. BAC clarified during the consultations<sup>215</sup> how the unit rate for PAX LTO evolves in real terms through the introduced year on year rebalancing over the 5 years. In this regard, the annual rebalancing was confirmed with a view to doubling the reference unit tariff for PAX LTO, in real terms, by the end of QQ4.

473. If a similar traffic mix were to be used in 2027 as in 2022<sup>216</sup>, the LTO PAX share in 2027 - according to calculations by the Regulatory Body - will be about 24%, thereby doubling the share. Of course, the result of this calculation depends on the assumptions

<sup>215</sup> Consultation session "Tariff structure," slide 27, dated 4 February 2022 and via Excel model "QQ4\_Regulated model for new tariffs," dated 3 March 2022

<sup>216</sup> Cfr. 1st General Meeting dated 17 January 2022, Appendix Benchmarking, slide 9.

made and the scenarios applied. For example, the share of (inter alia) LTO in total revenues from regulated activities will depend on various factors, including the flights operated and the aircraft used (with associated noise and emission levels) and aircraft utilisation rates. If the unit rate, together with the proposed tariff formula, is applied to the traffic volumes (passengers and movements<sup>217</sup>) as projected by BAC for 2027, the share of LTO revenues (including share of NOx) in 2027 will be equivalent to about 20% of aeronautical revenues.

474. The Regulatory Body notes that this share corresponds to the (current) share of the 7 reference airports listed in Article 1, 6° of the License Decree, namely Frankfurt, Paris-Charles de Gaulle, London-Heathrow, Amsterdam-Schiphol, Copenhagen, Vienna and Zurich. The Regulatory Body notes in this regard that, pursuant to Article 42, 3° of the License Decree, an alignment of the tariffs for regulated activities to the tariff levels of these 7 reference airports must be made based on the results of the tariff benchmarking model. As previously stated, this means the methodology used by the licensee in the first regulated period to compare the airport charges of the reference airports for the regulated activities.<sup>218</sup> Therefore, the fact that the complainant calculates a different proportion based on its own benchmark model is irrelevant here.

475. Moreover, the complainant correctly points out in this regard that Article 1, 6° of the License Decree refers to reference airports "such as" those listed by name, suggesting that this list is not exhaustive. However, the Regulatory Body believes that an alignment with the 7 reference airports mentioned above is sufficient, since it is certain that these airports are considered by the legislator to be "surrounding airports with a similar profile to Brussels National Airport."

476. Moreover, in connection with this, the Regulatory Body notes that the share is also aligned - albeit to a lesser extent - with that of the other (non-reference) airports as used in BAC's benchmark. This share comes out to 28% on average, but already drops directly to 26% if the two airports with the largest share of LTO charges are omitted.

477. **The Regulatory Body is of the opinion that during QQ4, BAC aligns the airport charges for the regulated activities with the tariff levels of the reference airports based on the results of the tariff benchmarking model, in accordance with Article 42, 3° of the License Decree.**

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<sup>217</sup> Including the evolution of LMTOW for passenger and cargo flights.

<sup>218</sup> Article 1, 33° of the License Decree.

## Gradual introduction

478. Ryanair also states that the tariffs for the various regulated activities are not aligned with the reference airports and that consequently the (correct) rebalancing should be applied immediately - i.e. at the beginning of QQ4.

479. ICAO states the following in this regard in light of Article 40 of the License Decree: *“The Council recommends that charging systems at international airports be chosen in accordance with the following principles:*

(...)

*vi) To avoid undue disruption to users, increases in charges should be introduced on a gradual basis; however, it is recognized that in some circumstances a departure from this approach may be necessary.”<sup>219</sup>*

However, the Regulatory Body upholds BAC's assertion and believes that the alignment can be gradual.

480. According to this principle, increases in charges should therefore indeed be gradual, unless it is necessary to adjust the tariffs immediately.

The Regulatory Body agrees with the licensee that it is not necessary in this case to depart from the principle of a gradual adjustment of tariffs. Indeed, an immediate rebalancing would only lead to an increase in tariffs, and not to achieving the goal of adjusting the tariff. Aligning (LTO) tariffs with the reference airports and the modulation proposed by BAC is of course intended to address specific environmental issues. As BAC indicated in the consultation sessions and in its conclusions, the rebalancing is more specifically intended to renew the fleet at Brussels Airport, to the benefit of the overall ecosystem.<sup>220</sup> Since users should be able to take the necessary initiatives to this end, the Regulatory Body believes that introducing a gradual tariff adjustment, while minimising the negative impact on the various stakeholders, is actually the right approach. Moreover, this would also have no negative impact on the traffic forecast made by BAC.

**481. The Regulatory Body is of the opinion that BAC can gradually align the airport charges for the regulated activities with the tariff levels of the reference airports.**

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<sup>219</sup> ICAO “Policies on Charges for Airports and Air Navigation Services”, Doc 9082, p. 9.

<sup>220</sup> Deep Dive Tariff Structure dated 4 February 2022, slide 18 and initial remarks BAC/Ryanair, p. 32.

482. **Consequently, the argument that the "Tariff structure is out of line with reference airports" is admissible but unfounded. The gradual alignment of the tariffs of the various regulated activities applied by BAC does not violate Article 42, 3° of the License Decree.**

#### H. Benchmarking

483. IATA claims that the total level of tariffs at Brussels Airport in QQ4 is not in line with that at comparable airports. According to IATA, BAC's proposed benchmark is based on 2019 data and does not take into account the total increase in tariffs, including the CPI, for the regulated period QQ4.

484. BAC refutes this and states that the data for the benchmark was collected in Q2 2021. BAC also believes that the benchmark should reflect the situation at that time. It also asserts that it is relevant to look at the tariffs in the context of the regulated model and to factor in the differences between tariff practices (between reference airports, but also between 2 regulated periods).

485. In the context of a tariff comparison, two licence obligations are important here. Article 42, 3° of the License Decree stipulates how the tariffs must be aligned. Article 53, §1, e) of the License Decree specifies the information that the licensee must provide to allow a comparison of tariffs. Pursuant to Article 55, §2, b) of the License Decree, the Regulatory Body is authorised to verify whether these provisions were complied with.

#### Benchmark model

486. Article 42, 3° of the License Decree states the following (freely translated):

*"The formula for tariff control referred to in Article 30, 7°, of the Royal Decree of 27 May 2004 on the conversion of BIAC into a public limited company (NV/SA) under private law and on airport facilities and the tariff system shall be established so that:  
(...)*

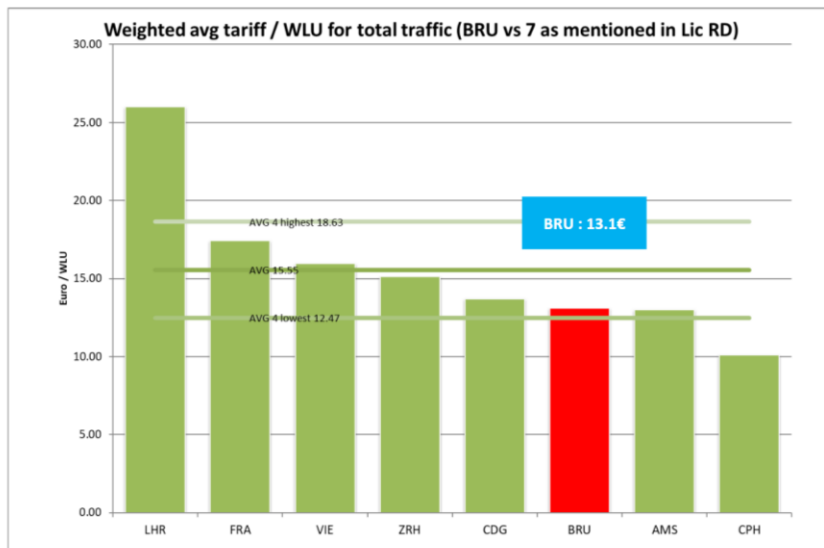
*3° the airport charges for regulated activities are aligned with the tariff levels of the reference airports based on the results of the tariff benchmarking model."*



The "tariff benchmark model" is further defined in Article 1, 33° of the License Decree as (freely translated) "*the methodology used by the licensee in the first regulated period to compare the airport charges of the reference airports for the regulated activities.*"

487. During the consultation, BAC provided further clarifications regarding the tariff benchmarking model used - whereby the methodology remained the same as during previous regulated periods - and its results.<sup>221</sup> It is actually the case that the data used for the benchmark were collected in Q2 2021, reflecting the situation at that time. Since it can be established that the benchmark was conducted according to the tariff benchmark model referred to in Article 1, 33° of the License Decree, the Regulatory Body believes that the complainant's arguments cannot be upheld as regards the timing of the data. The benchmark does need to reflect the results that are valid at the time it is carried out.

488. The graph below shows the proposed result of the tariff benchmark model for all the tariffs for BAC's regulated activities compared to the 7 reference airports, as specified in Art. 1, 6° of the License Decree:



Source: Slide 11, Appendix Benchmarking (1<sup>st</sup> General meeting), dated 17/01/2022

489. Thus, the tariffs for regulated activities at the time of drafting (i.e. 2021) are aligned with the tariff levels of the reference airports.

490. **The Regulatory Body is of the opinion that BAC therefore complies with Article 42, 3° of the License Decree, as based on the results of the tariff benchmarking model,**

<sup>221</sup> 1st General Meeting dated 17 January 2022, Appendix Benchmarking, slides 5-10 and 11-13.

**airport charges for regulated activities are aligned with the tariff levels of the reference airports. BAC does not have to include in the benchmark model any increases (at BAC or other reference airports) for the next regulated period (QQ4). IATA's argument that the future tariffs should be aligned with future tariffs at the reference airports cannot be upheld.**

Mandatory information allowing a comparison of the tariffs with reference airports

491. Article 53, §1, e) of the License Decree imposes the following information obligation on the operator in this context (freely translated):

*"§ 1. During the multi-year consultation, the licensee shall make the following data, extracts from the five-year plan referred to in Article 18, exclusively available to the users of Brussels National Airport or their agents, as well as to the economic regulatory authority:*

*(...)*

*e) information that makes it possible to compare the tariffs of regulated activities at Brussels Airport and the tariffs for similar activities at the reference airports"*

492. Article 18 of the License Decree does not elaborate on the actual comparison of tariffs with the reference airports and only addresses the strategic environment and the main airports of neighbouring countries.<sup>222</sup>

493. Unlike the other information that the licensee must make available during the multi-year consultation, Article 53 §1 e) of the License Decree does not specify that this information must refer to the regulated period covered by the consultation. Regardless of which regulated period is being referred to (the current one or the one to which the consultation pertains), the licensee is in any case not required by this article to effectively benchmark itself; it only needs to provide *information* that allows a comparison of the tariffs for the regulated activities of Brussels Airport with the tariffs at the reference airports. The fact that, as IATA suggests, a benchmark should be made based on future (QQ4) tariffs therefore cannot be required of the licensee under this provision.

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<sup>222</sup> "§ 1. The licensee shall draw up a five-year development plan every five years (at least three months before the start of a consultation regarding the revision of the tariff control formula for the regulated activities); this development plan will be updated annually during the regulatory period.

§ 2. This plan shall include, inter alia : 1° an analysis of the company's strategic environment, including the evolution of the main airports of neighbouring countries [...]."

494. However, it can be assumed that - since it pertains to "data, extracts from the five-year plan" - this information must actually pertain to the regulated period QQ4. BAC may not have compared the regulated tariffs itself with the tariffs applicable during QQ4 at the reference airports, but the Regulatory Body believes that this is not the intention either. Indeed, it is not possible to compare these tariffs directly, in part because some reference airports, for example, have a different regulated period and may add other assumptions (e.g. additional fees). BAC did conduct a benchmark based on the 2021 tariffs, which included the specifics of each reference airport.<sup>223</sup> The Regulatory Body believes that the comparison between the reference airports can be based on these tariffs.

495. **In the light of its marginal jurisdiction, the Regulatory Body believes that BAC has provided sufficient information within the meaning of Article 53, §1, e) of the License Decree to allow a comparison of the tariffs at Brussels Airport with those at the reference airports.**

496. Finally, the licensee is correct in its assertion that its relative position no longer has a direct impact on tariffs, as BAC has been in dual till since the start of QQ3. This is confirmed as follows in Article 50, §2 of the License Decree (freely translated): "*The profitability of the regulated activities following the introduction of the dual till mechanism shall be maintained at a level that makes it possible to ensure a fair profit margin for the capital invested.*"

497. **The argument pertaining to the "Benchmarking" is admissible but unfounded. In accordance with Article 42, 3° of the License Decree, BAC aligns its tariffs with the tariff levels of the reference airports, based on the results of the tariff benchmarking model carried out.**

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<sup>223</sup> 1st General Meeting dated 17 January 2022, Appendix Benchmarking, slides 10 and 24.

## 6. Recalculation by the Regulatory Body

### 6.1. Adjustment of data

Based on the assessment of the parties' arguments under Section 5.4, the Regulatory Body has made the following adjustments to the data used by BAC to define the tariff system and the tariff control formula.

#### 6.1.1. Traffic forecasts

Based on the analysis made, BAC's traffic forecast was adjusted by 2% for 2024 and by another 3.5% for 2025<sup>224</sup>.

This adjustment can be found in Annex 2 of this decision.

More passengers also leads to additional costs. The cost of security services and Pax services will therefore increase directly proportional to the increased number of passengers. This results in the following adjustments:

**Table 15:** *adjustment of costs for Security services and 'Pax services in line with the traffic forecast (figures in red are the adjusted costs)*

[...]

There are also a number of CAPEX projects directly related to the number of passengers. For this, the regulatory asset base will be adjusted directly proportional to the number of passengers. More specifically, the regulated capital employed is adjusted based on the anticipated CAPEX and the anticipated depreciation is adjusted. Since the averages of the regulated capital employed are used, the adjustment should also be cut in half. The various projects and their associated CAPEX/depreciation are shown below.

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<sup>224</sup> Of course, subsequent years will also be adjusted based on this modification.

**Table 16:** CAPEX projects with a direct link to the number of passengers – overview of CAPEX and depreciations

	CAPEX*				
	2023	2024	2025	2026	2027
<b>CAPEX projects linked to passengers</b>	<b>10.30</b>	<b>15.40</b>	<b>20.70</b>	<b>4.90</b>	<b>15.60</b>
Pier B border & screening extension	5.70	9.90	10.20	-	-
Outbound baggage system: make-up positions	-	-	-	3.70	7.70
Pier A baggage handling system extension	0.60	2.10	7.10	-	-
Transfer Platform Extension	0.10	3.40	3.40	-	-
Outbound baggage system: early bag storage	-	-	-	1.20	5.00
New baggage storage	3.90	-	-	-	-
Reclaim carousels connector	-	-	-	-	2.90

\* Depreciation in this period (in total for these projects) is 0.10; 0.40; 1.30; 1.90 and 2.30, respectively.

A directly proportional adjustment of these projects with the increased traffic forecast leads to subsequent adjustment of regulated capital employed and depreciation:

**Table 17:** CAPEX and depreciation adjustments, in line with traffic forecasts

QQ4	2023	2024	2025	2026	2027
+ CAPEX (average)	-	0.15	0.72	0.86	1.29
- depreciations (average)	-	0.00	0.04	0.09	0.16
<b>= Adjustment Cap. Empl.</b>	-	<b>0.15</b>	<b>0.68</b>	<b>0.77</b>	<b>1.13</b>
<b>Adjustment depreciations</b>	-	<b>0.01</b>	<b>0.08</b>	<b>0.18</b>	<b>0.31</b>

Personnel costs will not increase in direct proportion, but only in proportion to the increased number of projects/increased infrastructure<sup>225</sup>. This results in the following adjustment to personnel costs:

**Table 18:** adjustments total personnel costs in line with adjusted traffic forecast (figures in red are the adjusted costs)

[...]

<sup>225</sup> Where the share is calculated based on the share of the projects from **Table 16** in the total CAPEX.

The result of these adjustments can be found in Annex 2 of this decision.

### 6.1.2. WACC

Based on the adjusted parameters shown in the analysis in Section 5.3.3.C, the WACC for the regulated period 2023-2028 is calculated by the Regulatory Body as follows:

$$WACC = g \times (RFR + D) \times (1 - T) + (1-g) \times (RFR + (ERP \times Equity\ Beta))$$

Where :

- **g** : **Gearing** is the ratio of Debt on Debt and Equity;
- **RFR** : risk free rate is (OLO 10 year in Belgium);
- **D** : Debt premium is;
- **T** : **Corporate tax rate** (currently 25%);
- **ERP** : **Equity Risk Premium for Belgium as a country**;
- **Equity beta** = Asset Beta + (Asset Beta \*G/(1-G) \*(1-T))

with the following completion of the WACC parameters, after adjustment by the Regulatory Body:

Parameters	Values
Real Risk Free Rate (RFR)	-1.03%
Asset beta	0.77
Leverage ratio	1.22
Equity beta	1.48
Equity Risk Premium (ERP)	5.64%
<b>Post-tax cost of equity</b>	<b>7.30%</b>
Debt Risk Premium	2.45%
Cost of Debt	1.42%
<b>Cost of Debt net of tax shield</b>	<b>1.07%</b>
<i>Gearing</i>	55%
Tax rate	25%
<b>Real Post-tax WACC</b>	<b>3.87%</b>

### 6.1.3. Engine run up location

As indicated in the analysis under Section 5.3.3.F, the project should not be included in the regulated asset base for calculating tariffs for the regulated period from 1 April 2023 until 31 March 2028.

The amount of €8.9 million BAC had provided for this in its asset base will be deducted. More specifically, the regulated capital employed is adjusted based on the projected CAPEX of 0.4 in 2023 and 8.6 in 2024 and the projected depreciation of 0.1 in 2024 and 0.2 in 2025 to 2027. Since the averages of the regulated capital employed are used, the adjustment should also be cut in half here. Of course, the depreciations themselves must also be adjusted.

**Table 19: CAPEX and depreciation adjustments without engine run up**

QQ4	2023	2024	2025	2026	2027
Adjustment CAPEX engine run (average)	-0.2	-4.5	-4.5	-4.5	-4.5
Adjustment depreciation engine run up (average)	-	0.1	0.2	0.3	0.4
<b>= Adjustment Cap. Empl. engine run up</b>	<b>-0.2</b>	<b>-4.5</b>	<b>-4.3</b>	<b>-4.3</b>	<b>-4.2</b>
<b>Adjustment depreciation engine run up</b>	-	-0.10	-0.30	-0.50	-0.70

This adjustment can be found in Annex 2 of this decision.

### 6.1.5. Tariff formula adjustment due to expected atypical inflation in QQ4 and impact on OPEX and other costs

As indicated in the analysis under Section 5.3.3. E., expected atypical inflation within QQ4 should also be included in the calculation of the adjustment.

For the (rebase) adjustment, the Regulatory Body used the same method of calculation as BAC<sup>226</sup>, where the ROCE should be made equal to the WACC. To get the most accurate picture of the current situation, the Regulatory Body has updated BAC's figures to reflect the latest situation. In this regard, the CPI for September 2022 is 11.27%. The CPI for 2022 is estimated - by the Federal Planning Bureau dated November 2022 - at 9.6% (vs. 7.3% in BAC's final proposal, which

<sup>226</sup> Excel-model "QQ4\_Regulated model for new tariffs", tab 'Rebase correction'.

also required an adjustment here<sup>227</sup>). The projected CPI for 2023 is 5.3%, according to the Planning Bureau, and average inflation for the full QQ4 period is estimated at 2.80%.

To correctly account for (expected) inflation over the entire period, the (expected) CPI of September have to be adjusted each time by the following year's (expected) inflation. However, this would mean that the formula for tariff control would have to be adjusted. Therefore, the Regulatory Body has opted to first effectively apply the adjustment relative to 2023, which gives a correct picture for 2023, and then apply the additional adjustment through an additional compensation via the x-factor, which reflects an approximation of the (expected) reality in 2024-2027. This gives the following results:

**Table 20: Adjustment of rebase and x-factor following atypical inflation**

Adjustment of formula	
Rebase adjustment	-5.35%
Adjustment x-factor*	-0.68%

\* Via solution of formula: 'allowable revenues 2023' + 'allowable revenues 2024' x (1+CPI<sub>Sept 2023</sub>) x (1+x-factor) + ... + 'allowable revenues 2027' x (1+CPI<sub>Sept 2023</sub>) x [...] x (1+ CPI<sub>Sept 2026</sub>) x (1+x-factor)<sup>4</sup> = 'allowable revenues 2023' (= 'costs' 2023) + 'allowable revenues 2024 x CPI<sub>2024</sub> + ... + 'allowable revenues 2027' x (1+CPI<sub>2024</sub>) x [...] x (1+CPI<sub>2027</sub>)<sup>228</sup>, whereby the costs and revenues in 2023 are consistent with each other due to the applied rebase → x=-0.6766%

The result of this adjustment can be found in Annex 3 of this decision.

## 6.2. Adjustment of the tariff system and formula for tariff control

Given the adjustment of certain elements under the previous section 6.1, the Regulatory Body needs to adjust the tariff system and formula for tariff control as proposed by BAC.

On the one hand, certain elements in the tariff system have been adjusted: tariffs were adjusted due to adjusted traffic forecasts and adjustment of the CPI, as well as exclusion of costs and assets associated with the engine run up location. On the other hand, the fair remuneration for invested capitals for the upcoming regulated period 2023-2028 needs to start from the level of the WACC. This therefore means at 3.87%, rather than at 4.90%.

<sup>227</sup> The Regulatory Body has adjusted the OPEX, as well as BAC's asset base based on this latest evolution by  $(1+9.50\%)/(1+7.30\%)$ .

<sup>228</sup> Calculated based on current inflation forecasts, with the CPI of September 2023 at 3.9%, and further falls in inflation in 2024 to 2.5%, then 2% in 2025-2027 and 2.8% average over QQ4.



To achieve this, unit rates were adjusted with a rebase of 2.2%.<sup>229</sup>

The tariff control formula was also adjusted to CPI<sub>September</sub> - 1.2%.<sup>230</sup>

## 7. Decision

Having regard to the five-year tariff consultation for the regulated period from 1 April 2023 to 31 March 2028, which commenced on 17 January 2022 and ended on 11 May 2022;

Having regard to the publication by the operator of the final formula for the tariff control and tariff system on 13 May 2022;

Having regard to the two petitions filed with the Regulatory Body rejecting this tariff proposal;

Considering the analysis into the admissibility of the petitions submitted;

Having regard to the analysis made by the Regulatory Body of the arguments in these petitions;

Whereas the arguments of IATA and Ryanair regarding the traffic forecast proposed by BAC are well-founded given that this traffic forecast violates Article 43 of the License Decree;

Whereas the arguments of IATA and Ryanair regarding the WACC proposed by BAC are partly well-founded given that this WACC is inconsistent with Article 42, 2° of the License Decree and Article 50, §2 of the License Decree;

Whereas IATA's argument pertaining to the OPEX proposed by BAC is partly well-founded given that it violates Article 43 of the License Decree;

Considering that Ryanair's argument pertaining to the engine run up location is well-founded given the violation of Article 48, §1 of the License Decree in conjunction with Articles 1, 13° and 1, 24° of the License Decree, as well as Article 42, 1° of the License Decree;

Having regard to Article 55, § 4 of the License Decree which states the following (freely translated):

*"Where the economic regulatory authority identifies a disagreement, it may either:  
a) require a new consultation period with a view to obtaining the agreement of users on the formula for tariff control and the tariff system, if necessary after modifications;*

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<sup>229</sup> 7.56% rebase on the unit tariffs 2022 and -5,35% rebase to correct atypical inflation between 2022-2023.

<sup>230</sup> -0.55% rebase on the unit tariffs 2022 and -0,68% to correct atypical inflation between 2022-2027.

*b) require adjustments to the formula for tariff control or the tariff system, in compliance with the principles of the Royal Decree of 27 May 2004 on the conversion of BIAC into a limited liability company (NV) under private law and on airport facilities and in this decree, specifically in Section II of this chapter;*

*c) impose on the licensee a the formula for tariff control and a tariff system, in compliance with the principles of the Royal Decree of 27 May 2004 on the conversion of BIAC into a limited liability company (NV) under private law and on airport facilities and in this decree, and specifically in Section II of this chapter;*

*d) confirm the result of the consultation..".*

Having regard to Article 35, §2 of the Transformation Decree which states that (freely translated):

*"(...) the economic regulatory authority may require adjustments or changes to the tariff system, if the economic regulatory authority identifies that the tariff system:*

*(...)*

*5° constitutes a breach of the provisions of this Decree or of the operating licence."*

Having regard to the resulting adjustments made by the Regulatory Body under Chapter 6 of this decision;

Whereas the Regulatory Body has not identified any elements that enable it to demand a new consultation period, as referred to in Article 55, §4, a) of the License Decree;

Whereas the Regulatory Service has identified violations of the regulations in force that do not allow it to confirm the result of the conduct of consultations, as referred to in Article 55, §4, d) of the License Decree;

Whereas the Regulatory Body has no remarks regarding BAC's proposed principle of "CPI +/- X" as a formula for tariff control and on the rebalancing that BAC plans to implement in its tariff system, the Regulatory Body sees no basis for imposing an entirely different formula for tariff control and a tariff system, as referred to in Article 55, §4, c) of the License Decree;

**the Regulatory Body has decided the following:**

- 1. The petitions of the two parties are admissible;**
- 2. Based on the analysis conducted above, the arguments in these petitions are partly admissible and partly well-founded;**
- 3. Pursuant to Article 55, §4, b) of the License Decree, the Regulatory Body has decided that the tariff system and formula for tariff control, as proposed by Brussels Airport Company and as presented under section 5.2. of this decision, must be adjusted on the basis of the recalculations under section 6 of this decision as follows:**

**A. The tariff system communicated by Brussels Airport Company, namely:**

- the charge for landing and take-off as stipulated in Article 1 of the communicated tariff system and presented in section 5.2 of this decision**
- the parking charge as stipulated in Article 3 of the communicated tariff system and presented in section 5.2 of this decision**
- the passenger charge as stipulated in Article 4 of the communicated tariff system and presented in section 5.2 of this decision**
- the security charge as stipulated in Article 5 of the communicated tariff system and presented in section 5.2 of this decision**

**are adjusted by a rebase of 2.2%.**

**B. The charges in the tariff system, after adjustment as stated above under A, shall be adjusted annually using the formula for tariff control  $CPI - 1.2\%$  where CPI is the consumer price index published in the Belgian Official Gazette for the month of September preceding the year when the charges are adjusted. The first reference value is the CPI of September 2023. The adjusted amounts will be communicated to users before the end of each calendar year and will be applied from 1 April of the following year.**

C. The unit rates for 2023, after adjustment as indicated above under A and B, are as follows:

Tariffs in euros		2023*
<b>Pax charges</b>	od	25.15
(incl. bussing)	transfer	13.29
	transit	-
<b>Parking charges</b>	pax	0.91
	Cargo	0.26
<b>Security charges</b>	od	8.53
	transfer	8.53
	transit	8.53
<b>LTO charges</b>	pax	3.51
	Cargo	2.12
	Emission (N)	4.17

\* Incl. application of CPI of September 2022

## **8. Right of appeal**

Pursuant to Article 2 of the Act of 9 July 2004 containing various provisions, the parties concerned have the right to appeal against this decision to the Market Court. The appeal must be lodged at the latest 30 days after the notification of this decision, after which this right expires.

The appeal has no suspensive effect, except with regard to decisions by which the Regulatory Body has imposed an administrative fine on the licensee by application of Article 49 of the Royal Decree of 27 May 2004 concerning the conversion of Brussels International Airport (BIAC) into a public limited company under private law and concerning the airport facilities, or where the Market Court orders the suspension of the contested decision.

The Judicial Code is applicable as far as the procedure is concerned, whereby the Market Court rules as in summary proceedings.

Issued in Brussels, on 9 December 2022,

For the Regulatory Body for Railway Transport and Brussels Airport Operations,

**Serge Drugmand**

**Director**

## **ANNEXES**

**ANNEX 1: CAPEX - VERIFICATION OF INFORMATION REQUIREMENT ARTICLE 53, §1, G) LICENSE DECREE**

Project BAC	Information obligation Article 53, §1, g) of the License Decree fulfilled? (Information provided regarding the impact on airport capacity?)	How?
Access Roads to terminal	Not applicable: obligation art. 4, 5° License Decree (access road)	Not applicable
Access to the future	Not applicable: obligation art. 4, 4° License Decree (security)	Not applicable
Airport Operations Plan	Not applicable: obligation art. 5, 2° License Decree (quality)	Not applicable
Bag landside injection point	Not applicable: obligation art. 5, 2° License Decree (quality)	Not applicable
Bag technology pilots	Not applicable: obligation art. 5, 2° License Decree (quality)	Not applicable
Central energy building	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Drones Detection	Not applicable: obligation art. 4, 4° License Decree (security)	Not applicable
Drop-off	Not applicable: obligation art. 4, 5° License Decree (access road)	Not applicable
ERP Program	Not applicable: obligation art. 5, 2° License Decree (quality)	Not applicable
Exit on RWY 01 between E5 and E6.	Yes: information on capacity extension	Slide 33 Capex Technical Session 01/02/2022 + slide 47 2nd General Meeting 07/03/2022
Fire & emergency service vehicles	Not applicable: obligation art. 4, 4° License Decree (fire safety)	Not applicable

Project BAC	Information obligation Article 53, §1, g) of the License Decree fulfilled? (Information provided regarding the impact on airport capacity?)	How?
Fire safety & stability of structure of the Old Terminal	Not applicable: obligation art. 4, 4° License Decree (fire safety)	Not applicable
Fire Safety Management Plan (Remediation ASM).	Not applicable: obligation art. 4, 4° License Decree (fire safety)	Not applicable
Floodlighting - auxiliary power	Not applicable: obligation art. 4, 4° License Decree (security)	Not applicable
Fuel and oil fuel farming	Not applicable: centralised infrastructure art. 9, §1 RD on Ground handling	Not applicable
Fuel and oil fuel maintenance	Not applicable: centralised infrastructure art. 9, §1 RD on Ground handling	Not applicable
Gates of the future	Not applicable: obligation art. 5, 2° License Decree (quality)	Not applicable
Increase capacity flow PA to NT	Yes: information on capacity extension	Slide 54 Capex Technical Session 01/02/2022 + slide 74-76 2nd General Meeting 07/03/2022
Integrated OOG solution PA-NT	Yes: information on capacity extension	Slide 53 Capex Technical Session 01/02/2022 + slide 74-76 2nd General Meeting 07/03/2022
Integrated OOG solution NT-NT	Yes: information on capacity extension	Slide 52 Capex Technical Session 01/02/2022 + slide 74-76 2nd General Meeting 07/03/2022



Project BAC	Information obligation Article 53, §1, g) of the License Decree fulfilled? (Information provided regarding the impact on airport capacity?)	How?
Intermodal Hub	Obligation art. 4, 5° License Decree (access road) + capacity extension	Slide 85 Capex Technical Session 01/02/2022 + slide 59-64 2nd General Meeting 07/03/2022
Investments Infra Terminal	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Investments Technics Terminal	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Migration Hold baggage screening to STD3	Not applicable: obligation art. 4, 4° License Decree (security)	Not applicable
Mitigating measures ground noise	Not applicable: environmental obligation art. 31 License Decree	Not applicable
Net Zero Carbon Landside	Not applicable: obligation art. 4, 5° License Decree (maintenance and modernisation)	Not applicable
Network cabling upgrade Pier A	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
New baggage storage	Yes: information on capacity extension	Slide 51 Capex Technical Session 01/02/2022 + slide 77 2nd General Meeting 07/03/2022
New engine run up location	Not applicable: unregulated infrastructure	Not applicable
New wide body stand Apron 9	Yes: information on capacity extension	Slide 36 Capex Technical Session 01/02/2022

Project BAC	Information obligation Article 53, §1, g) of the License Decree fulfilled? (Information provided regarding the impact on airport capacity?)	How?
Optimization of Whiskey platform	Yes: information on capacity extension	Slide 27 Capex Technical Session 01/02/2022 + slide 39 2nd General Meeting 07/03/2022
Outbound baggage system: early bag storage	Yes: information on capacity extension	Slide 55 Capex Technical Session 01/02/2022 + slide 74-76 2nd General Meeting 07/03/2022
Outbound baggage system: make-up positions	Yes: information on capacity extension	Slide 56 Capex Technical Session 01/02/2022 + slide 74-76 2nd General Meeting 07/03/2022
Outdoor lighting renovation	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Pier A Baggage handling system extension	Yes: information on capacity extension	Slide 47 Capex Technical Session 01/02/2022
Pier B - Replacement Boarding Bridges	Not applicable: obligation art. 5, 2° License Decree (quality)	Not applicable
Pier B border & screening extension	Yes: information on capacity extension	Slide 64 Capex Technical Session 01/02/2022
PLC's Boarding Bridges Pier A	Yes: information on capacity enforcement	Slide 32 Capex Technical Session 01/02/2022 + slide 45 2nd General Meeting 07/03/2022
Presorter replacement	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable

Project BAC	Information obligation Article 53, §1, g) of the License Decree fulfilled? (Information provided regarding the impact on airport capacity?)	How?
Reclaim carousels connector	Yes: information on capacity extension	Slide 57 Capex Technical Session 01/02/2022
Recurring Aircraft Services	Not applicable: obligation art. 4, 1° License Decree	Not applicable
Recurring Connectivity services	Not applicable: obligation art. 7, 1° License Decree (ensuring business continuity)	Not applicable
Recurring Passenger Services.	Not applicable: obligation art. 5, 2° License Decree (quality)	Not applicable
Recurring Architecture and processes	Not applicable: obligation art. 7, 1° License Decree (ensuring business continuity)	Not applicable
Recurring Data and Analytics	Not applicable: obligation art. 7, 1° License Decree (ensuring business continuity)	Not applicable
Recurring Digital workplace & service desk services	Not applicable: obligation art. 7, 1° License Decree (ensuring business continuity)	Not applicable
Recurring ICT infrastructure services	Not applicable: obligation art. 7, 1° License Decree (ensuring business continuity)	Not applicable
Recurring ICT Security services	Not applicable: obligation art. 7, 1° License Decree (ensuring business continuity)	Not applicable
Recurring investment Infra upgrades	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable

Project BAC	Information obligation Article 53, §1, g) of the License Decree fulfilled? (Information provided regarding the impact on airport capacity?)	How?
Remote controlled boarding bridges	Not applicable: obligation art. 5, 2° License Decree (quality)	Not applicable
Renovation of touch down zones (TDZ RWY 01/19)	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Renovation of touch down zones (TDZ RWY 07R/25L)	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Renovation TWY C2/C3/F2/V/W1	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Renovation TWY F4 & W3	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Renovation TWY INN 2 & OUT 1/2	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Renovation TWY INN 3/4/5/6	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Renovation TWY INN 6/7 & OUT 6/7	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Renovation TWY OUT3, INN3, J + int. B7-OUT3-INN3-J-OUT2-INN2-B8	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Renovation TWY R3,J + int. R3-J	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Replacement baggage related materials	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Replacement fire detection & control system (A/B/NT)	Not applicable: obligation art. 4, 4° License Decree (fire safety)	Not applicable
Replacement of concrete slabs and overlay in asphalt	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable

Project BAC	Information obligation Article 53, §1, g) of the License Decree fulfilled? (Information provided regarding the impact on airport capacity?)	How?
Replacement of HVAC ventilation units	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Replacement sorter A and B	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Smart Screening Lanes	Yes: information on capacity extension	Slide 67 Capex Technical Session 01/02/2022 + slide 98-99 2nd General Meeting 07/03/2022
Speedgates Cargo	Not applicable: obligation art. 4, 4° License Decree (security)	Not applicable
Storage winter vehicles	Not applicable: obligation art. 4,1° (ensuring landing & take-off)	Not applicable
Stormwater Airside	Not applicable: environmental obligation art. 33 §§2-3 License Decree	Not applicable
Technical Expertise Asset Management project (TEAM).	Not applicable: obligation art. 7, 1° License Decree (ensuring business continuity)	Not applicable
Tier III Datacenter implementation	Not applicable: obligation art. 7, 1° License Decree (ensuring business continuity)	Not applicable
Transfer Platform Extension	Yes: information on capacity enforcement	Slide 65 Capex Technical Session 01/02/2022
Upgrade baggage IT installation	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable
Upgrade inbound belt	Not applicable: obligation art. 4, 5° License Decree (maintenance)	Not applicable

## **ANNEX 2: ADJUSTMENTS BY REGULATORY BODY OF (FINANCIAL) PARAMETERS**

This annex contains an overview of the adjustments to BAC's various (financial) parameters. In each case, the overview of BAC's figures, as proposed during the final proposal, is given first before the adjustments of the Regulatory Body are presented.

### **Traffic figures:**

The tables below provide an overview of the (adjustment of the) traffic forecast. The first table contains the traffic forecast as per BAC's final proposal. The second table contains the Regulatory Body's adjustments.

**Table 21:** *Traffic forecast from final proposal BAC*

	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
<b>Passengers (in thousands)</b>					
<b>Departing passengers</b>					
Originating tax passengers	9,434	10,138	10,518	10,756	11,004
Transfer tax passengers	1,925	2,208	2,387	2,529	2,632
Transit tax passengers	45	51	56	55	55
Tax passengers	11,404	12,397	12,962	13,340	13,691
Exempt passengers	128	136	140	144	147
<b>Total departing passengers</b>	<b>11,532</b>	<b>12,533</b>	<b>13,102</b>	<b>13,484</b>	<b>13,837</b>
<b>Total arriving passengers</b>	<b>11,509</b>	<b>12,509</b>	<b>13,079</b>	<b>13,466</b>	<b>13,820</b>
- transit elimination	-45	-51	-56	-55	-55
<b>Total passengers</b>	<b>22,996</b>	<b>24,991</b>	<b>26,125</b>	<b>26,895</b>	<b>27,602</b>

**Table 22:** Traffic forecast after adjustment by the Regulatory Body (figures in red are adjusted costs)

	2023	2024	2025	2026	2027
<b>Passengers (in thousands)</b>					
<b>Departing passengers</b>					
Originating tax passengers	9,434	10,341	11,104	11,355	11,617
Transfer tax passengers	1,925	2,252	2,520	2,670	2,778
Transit tax passengers	45	52	59	58	58
Tax passengers	11,404	12,645	13,684	14,083	14,453
Exempt passengers	128	139	148	152	155
<b>Total departing passengers</b>	11,532	12,784	13,832	14,235	14,608
<b>Total arriving passengers</b>	11,509	12,759	13,808	14,216	14,590
- transit elimination	-45	-52	-59	-58	-58
<b>Total passengers</b>	22,996	25,491	27,580	28,393	29,140

### Operating expenses

The tables below provide an overview of the (adjustment of the) OPEX. The first table is the OPEX as per the final proposal of BAC. The second table contains the Regulatory Body's adjustments.

**Table 23:** Operating expenses (OPEX) from final proposal BAC

<i>In €m, 2022 terms</i>	2023	2024	2025	2026	2027
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
<b>Total OPEX</b>	<b>227.6</b>	<b>246.1</b>	<b>261.5</b>	<b>269.0</b>	<b>275.7</b>
<b>Corrected for expected Subsidies</b>	<b>227.1</b>	<b>245.6</b>	<b>260.9</b>	<b>268.5</b>	<b>275.2</b>

**Table 24: Operating expenses (OPEX) after adjustment by the Regulatory Body (figures in red are adjusted costs)**

In €m, 2022 terms	2023	2024	2025	2026	2027
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]
<b>Total OPEX</b>	<b>227.6</b>	<b>247.3</b>	<b>265.0</b>	<b>272.7</b>	<b>279.5</b>
<b>Corrected for expected Subsidies</b>	<b>227.1</b>	<b>246.8</b>	<b>264.4</b>	<b>272.2</b>	<b>279.0</b>
<b>Corrected for adapted CPI 2022*</b>	<b>232.0</b>	<b>252.1</b>	<b>270.1</b>	<b>278.0</b>	<b>284.9</b>

\* estimate dated 6 December 2022 at 9.6% instead of 7.3% at the time of final proposal BAC

## Allowable revenues

An overview of the (adjusted) allowable revenues is provided below. The first table contains the allowable revenues as per BAC's final proposal. The second table contains the Regulatory Body's adjustments.

**Table 25: Allowable revenue definition final proposal BAC**

QQ4	2023	2024	2025	2026	2027
Target ROCE	4,90%	4,90%	4,90%	4,90%	4,90%
Capital employed (EOY)	1.467,5	1.514,5	1.555,2	1.571,5	1.578,3
EBIT post tax	71,9	74,2	76,2	77,0	77,3
Tax	- 24,0	- 24,7	- 25,4	- 25,7	- 25,8
Tax%	25%	25%	25%	25%	25%
EBIT	95,9	98,9	101,6	102,7	103,1
Depreciation (based on asset register and new capex)	- 84,3	- 86,5	- 95,0	- 95,1	- 98,3
Opex	- 227,2	- 245,6	- 260,9	- 268,5	- 275,2
Incentives	- 22,2	- 29,8	- 31,9	- 30,5	- 20,0
<b>Allowable revenue (aeronautical revenue regulated)</b>	<b>429,59</b>	<b>460,8</b>	<b>489,3</b>	<b>496,7</b>	<b>496,6</b>
<b>Corrected allowable revenues</b>	<b>421,9</b>				<b>496,6</b>
<b>Calculated revenues (without rebase)</b>	<b>391,2</b>				



**Table 26: Allowable revenues after adjustments by the Regulatory Body**

QQ4	2023	2024	2025	2026	2027
Target ROCE	3,87%	3,87%	3,87%	3,87%	3,87%
Capital employed (Average of Year)	1.498,8	1.542,6	1.584,8	1.601,6	1.609,0
EBIT post tax	58,0	59,7	61,3	62,0	62,3
Tax	- 19,3	- 19,9	- 20,4	- 20,7	- 20,8
Tax%	25%	25%	25%	25%	25%
EBIT	77,3	79,6	81,8	82,6	83,0
Depreciation (based on asset register and new capex)	- 86,1	- 88,2	- 96,8	- 96,8	- 100,0
Opex	- 232,1	- 252,1	- 270,2	- 278,0	- 284,9
Incentives	- 22,2	- 29,8	- 31,9	- 30,5	- 20,0
<b>Allowable revenue (aeronautical revenue regulated)</b>	<b>417,73</b>	<b>449,8</b>	<b>480,6</b>	<b>488,0</b>	<b>488,0</b>

Corrected allowable revenues	412,4
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Calculated revenues (without rebase)	391,2
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### ANNEX 3: UNIT TARIFFS QQ4

The first table provides an overview of the unit tariffs for QQ4, expressed in real terms 2022, based on QQ4 tariff structure, as per final proposal of BAC:

€		RY 2023	RY 2024	RY 2025	RY 2026	RY 2027	Rebalancing YOY QQ4
<b>Pax charges</b> <i>(incl. bussing)</i>	od	23.66	22.81	21.96	21.10	20.25	€ -0.90
	transfer	12.50	12.07	11.65	11.23	10.80	€ -0.45
	transit						
<b>Parking charges</b>	pax	0.86	0.86	0.86	0.86	0.86	
	cargo	0.24	0.24	0.24	0.24	0.24	
<b>Security charges</b>	od	8.01	8.03	8.05	8.07	8.09	
	transfer	8.01	8.03	8.05	8.07	8.09	
	transit	8.01	8.03	8.05	8.07	8.09	
<b>LTO charges</b>	pax	3.28	3.80	4.33	4.85	5.38	€ 0.52
	cargo	1.99	1.99	2.00	2.00	2.01	
	Emission (N)	3.92	3.93	3.94	3.95	3.96	

The second table provides an overview of the unit tariffs for QQ4, expressed in real terms 2022, based on QQ4 tariff structure, as adjusted by the Regulatory Body:

€		RY 2022	RY 2023	RY 2024	RY 2025	RY 2026	RY 2027	Rebalancing YOY QQ4
<b>Pax charges</b> <i>(incl. bussing)</i>	od	22,99	22,60	21,42	20,25	19,10	17,97	€ -0,90
	transfer	12,12	11,94	11,34	10,75	10,17	9,59	€ -0,45
	transit	0,63						
<b>Parking charges</b>	pax	0,80	0,82	0,81	0,80	0,79	0,78	
	cargo	0,23	0,23	0,23	0,22	0,22	0,22	
<b>Security charges</b>	od	7,50	7,67	7,57	7,48	7,39	7,30	
	transfer	7,50	7,67	7,57	7,48	7,39	7,30	
	transit	7,50	7,67	7,57	7,48	7,39	7,30	
<b>LTO charges</b>	pax	3,50	3,16	3,64	4,11	4,57	5,03	€ 0,52
	cargo	2,79	1,90	1,88	1,86	1,83	1,81	
	Emission (N)		3,75	3,71	3,66	3,61	3,57	