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Sirs,

**The Competition Commission's Inquiry into UK Airports**

I write with respect to the Competition Commission's Inquiry into UK Airports, in particular the activities of BAA, currently owned by Ferrovial of Spain.

1. It is clear that there are certain monopolistic aspects of BAA's operation, particularly for consumers and travellers living in the S.E of England, that demand such an Inquiry, and I leave it to the Commission et al. to opine on the issue.
2. However, there is also another important feature of this scenario which may be part of your remit, - or it may fall between the OFT, the CAA as regulator, and the Competition Commission. That is ownership and, in that context, control of UK airports assets.
3. Why is this important? To many, money is fungible wherever it comes from. True. However, the control of such money and the use it is put to is just as relevant, particularly in the context of regulated public services, as airports provide.
4. To my knowledge, the UK authorities impose no control over the ownership and control of public service utility assets through some form of 'fit and proper person' test, as do other countries. In the UK, any investor, - angel or crook, - (a) who has the money, and (b) wherever he may reside, - usually a tax-haven outside public scrutiny and operating under a liberal governance regime, - can own and control an airport, it seems. The only exception I am aware of is the 'probity' test required under OFWAT's licensing regime for UK private sector water utilities, but metaphorically this constraint may indeed not be leak-proof either\*\*!

*[\*\* from current analysis of the UK water sector and via discussions with OFWAT, I perceive that the UK water regulatory regime is, indeed, not leak-proof. Asset stripping, etc. prevails in some UK water utilities, particularly those recently taken-over by private equity investors, to the detriment of the public interest.]*

5. BAA is currently owned by Ferrovial, through a labyrinthine series of special purpose companies (viz. their May 2006 website presentation). This series of special purpose vehicles is primarily set up to:

(a) minimise UK tax exposure, albeit the ability of Ferrovial to write-down 'goodwill', as normally is allowed for in such acquisitions in Spain, has been reportedly thwarted;

(b) to limit liability of the shareholders, i.e. Ferrovial (parent); and

(c) to allow, most probably, the Ferrovial equity to be injected primarily as shareholder loans rather than pure equity to protect the future dividend stream to the parent and to minimise UK tax (again).

Item (b) is particularly important should there be an accident at one of BAA's airports, when negligence on the part of the airport operator may be the cause and normal insurance provisions are inadequate.

6. There is, nevertheless, one other disturbing aspect of the BAA scenario. Ferrovial is a quoted company on the Madrid Stock Exchange. It is, therefore, subject to certain governance criteria, albeit not as strictly as if it was quoted on the London Stock Exchange.
7. Ferrovial, however, is owned, - and therefore controlled, - 58% by the del Pino Y Moreno family interests, directly and indirectly (ref. the Ferrovial 2005 Annual Report). It is clear from BAA's 2006 Financial Reports that 'the family' control the Board and senior management decisions. One concludes, therefore, that Heathrow, Gatwick and Stansted are controlled by a family company, who do not necessarily have to follow the relatively transparent corporate practices that we might expect of a quoted UK plc., as was BAA previously.
8. My concerns do not end there. It has been suggested that the outcome of your Inquiry could see the break up of BAA. So be it. This may mean Ferrovial has to sell one or more of their UK London airports.

Let us assume that they sell Stansted for £3-4 billion, as some reports have forecast. Ferrovial can then use that cash to easily buy back, with no constraint other than market forces, the 42% outstanding Ferrovial shares they do not own on the Madrid Stock Exchange (value approx £3.5bn.), and take the company 100% private, probably offshore and domiciled in a tax-haven, and totally outside UK public scrutiny and governance. Furthermore and worryingly, the current UK financial regulations could not stop such a development.

9. One only has to look at the ownership interests of Bristol and Exeter Airport by the Macquarie European Infrastructure Fund, a 'brass plate' company domiciled in Luxemburg, to provide a precedent for such a move.
10. As a UK traveller and citizen, I would be worried for:-
  - the national strategic interest;
  - the future commercial and financial health of these BAA airports; and
  - the avoidance of public liability by such an airport operator.

The Chancellor of the Exchequer might also not be pleased by the reduction in tax revenues!!

11. Finally, I understand that your Inquiry may take some months to complete, by which time Ferrovial may well have changed its corporate structure so as to provide protection to its shareholders (i.e. the del Pino family) against any regulatory constraints, i.e. it will be too late for either yourselves, CAA, et al. to limit or control the impact of such a corporate restructuring.
12. There is, however, one measure that could be introduced to ensure proper corporate governance of UK's airports and ensure that any investor group are 'fit and proper persons'.
13. The genre of financial ownership that has rapidly developed in privatised UK public utilities in recent years, i.e. private equity in all its forms, has been driven by City practitioners and entrepreneurs. Let the City take the risk!!

Each privatised public service utility, unless it is a UK London Stock Exchange-quoted company, should be required under its licence issued by the relevant regulator to post an 'on-demand' probity bond, issued by 'blue-chip' financial institutions, to the amount of its regulated capital.

If probity is breached, the bond could be called potentially to its full amount, and it would be for the investors to claim unfair calling. As to cost of such bond, well, if the City perceive there to be no probity risk, then the cost will be minimal. If the City perceives the probity risk to be real, then the utility investors will have to fall into compliance or go elsewhere. QED!

I trust that you may take these comments into account in your deliberations.

Yours faithfully,

T.M.Blaiklock

Background: Martin Blaiklock has over 25 years experience of structuring, developing, evaluating and implementing the funding of public and private sector projects [i.e. PFI's, PPP's, BOOT's; PSP's, IPP's, etc.] in infrastructure, energy, and the process industries.

Uniquely, he has worked for extended periods in: (a) an investment bank; (b) a commercial bank; and (c) a development bank. For the last 12 years he has operated as an independent consultant, both in the UK and internationally.

He has been involved in many major UK PFI & PPP projects, and was Expert Witness for the Parliamentary Enquiry into the London Underground PPP. He has contributed to many Parliamentary and National Audit Office Enquiries.