

STANSTED ACC

Representing Stansted Airport Users

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Dear Estelle,

Thank you for your invitation to comment on the CAA's Q5 reference of Stansted Airport to the Competition Commission. We will of course develop our evidence further, but our initial comments follow:

The CAA

- We are disappointed that the CAA continues to promote the same market power arguments which were deployed in support of its recommendation for the de-designation of Stansted. Following extensive periods of consultation and analysis in 2007 by both the CAA and the Department for Transport, the Secretary of State maintained the designated status of Stansted. We do not understand why the CAA is continuing to pursue this issue, and in doing so why it has not developed any further evidence. We were particularly surprised to be asked for data over a month after the CAA's initial consultation on Stansted and over a year after it started working on this issue.

We were also surprised that the CAA made no mention of the Competition Commission's emerging thinking on its Airports Inquiry. While the CAA had limited time between the publication of the emerging finding and its publication of the Stansted reference, we imagined that there would be some reference to reflecting on the CC's view, particularly given the significant points made about BAA's approach to its customers; constructive engagement; and the potential for BAA's joint ownership of airports in the South East to limit competition.

- The CAA continues to use without question or corroboration data provided by BAA. While it has said this is only for indicative purposes, it is unclear why it always does this so unquestioningly. We do not think BAA has a track record of transparency or clarity in the information it has provided. A specific example at Stansted is that in August of last year BAA claimed to have over 800 security staff at Stansted; however, following the ACC's persistence in pursuing the disclosure security rosters, it transpired that the number was in fact 568. It is unclear to the ACC why the CAA cannot take the reasonable (and fairly rudimentary) steps required to validate the information provided by BAA, particularly given the significance of the regulatory judgements that the CAA is required to make.

- We are very disappointed that the CAA has made so little progress in developing its proposed regulatory options and in developing its evidence base for Stansted. Despite the price cap decision for Stansted being delayed for a year, and the CAA's acknowledgment of the complexity of the regulatory decision that needs to be taken, its process is less advanced than it was for Gatwick and Heathrow at a similar stage last year.

The CAA has for some time made known its view that it favours a "market led price cap", relying on its assertion that Stansted does not have (and will not develop) significant market power. However, despite floating this concept in December 2006, it does not appear to have carried out any detailed work to substantiate its indication of what the price cap should be under options 4 and 5, or even what the Long Run Incremental Cost might be at Stansted. We believe that this puts airlines, and the Competition Commission in particular, in a very difficult position, commenting on an undeveloped regulatory option, that the CAA clearly favours.

- We are also disappointed that the CAA has not done more to develop the other regulatory options it outlined; it appears to be relying on airlines and the Competition Commission to develop regulatory proposals.

We would draw your attention in particular to ACC letters of the 1st, 11th and 15th February 2008, to the CAA, which have previously been copied to the Competition Commission.

CAA's Proposed Regulatory Options

The ACC supports the development of a regulatory approach that provides a market test on new capacity; and introduces terminal competition to both reduce the scope of regulation to the lowest possible level and to improve the efficiency of terminal provision. We believe that the terminal tendering approach is the best way to achieve this. Under this approach the price cap that applies up until the introduction of new facilities would be based on a building block approach; and we believe it would be significantly lower than the current price cap. The CAA has set out its interpretation of terminal tendering, as well as its interpretation of other possible regulatory options. The ACC does not believe that we or the Competition Commission should be confined to the CAA's view on how different regulatory options could work.

1 Augmented Building Block:

This model is based on RAB-based regulation which, it is generally acknowledged, creates a perverse incentive to over specify capital and operational costs. The ACC considers that this effect is exacerbated by weak and ineffective regulation.

2 Legacy Price Cap:

While there may be some value in this approach as an interim measure, prior to the introduction of an effective regulatory structure. It would not manage the challenges of future expansion as the legacy price cap would be neutralised by the adoption of a "precautionary price cap" for new facilities.

3 Terminal Development Tendering

This model is supported by the ACC. The CAA has previously described this as a "novelty option" and at the same time as questioning legal aspects, the CAA

confirmed that it did not intend to seek legal advice, casting doubt on the sincerity of their approach to this option. The ACC considers that this is a viable option that will see the statutory objectives of the CAA met – and that the particular circumstances at Stansted make it the ideal location for the introduction of competition to the terminals market.

4 **Market Led Price Cap**

The ACC considers this to be ‘de-regulation by the back door’. Such an approach would expose users to increased costs with no guarantee that the development which the CAA says this would help bring forward will materialise. Conversely, the ACC considers that a constrained Stansted would be more likely to achieve such a price cap than one with spare capacity.

5 **Precautionary Price Cap**

This does not appear to be a truly differentiated option or approach to the previous option. The ACC notes that by including this in its reference, the CAA’s preferred option no longer sits at one extreme of its proposals – and as such, may appear less unreasonable.

6 **Default Price Cap**

The CAA has suggested that this option was proposed or outlined by the ACC. This is not the case. The ACC supports the terminal tendering approach. In the absence of such an approach we believe that a form of the building block approach should be used that does not allow BAA to be rewarded for unnecessary investment. Going forward, this approach would need to be expanded to manage any significant proposed investment; and we believe this would need to be subject to market tests.

Public Interest

The ACC considers that BAA’s ownership of the three main London Airports; the poor service quality at these airports; its significant market power at Stansted; and its refusal to address airline concerns works against the public interest as evidenced by the following examples of BAA’s behaviour:

- The lack of real consultation.
- The peremptory announcement of SG2 in the middle of discussions with users, which, if planning permission is granted, could lead to:
 - An unnecessary land grab of 800 acres
 - A further doubling of airport charges
 - A facility that does not meet the needs of airlines or passengers
- Misrepresentation of security data and failure to provide adequate staffing for available security units.
- Misrepresentation of comparative SG2 option costs.
- c.£50m. expenditure on consultancy from which BAA claims there are no reports.
- Poor service quality.

Combined with the weak regulatory regime this has led to poor service and outcomes for consumers. We have provided here only a sample of BAA's abuse, on which the ACC has previously provided a significant volume of correspondence.

Conclusions

- The ACC supports the use of a terminal tendering regulatory structure. A price cap of less than £4.00 should be applied to reflect over recovery and excessive profitability by the BAA Stansted until such time as competing terminals were established.
- The ACC will provide further analysis before 31st May.
- The ACC also calls for the replacement of the current regulatory regime; the break up of the BAA monopoly on the ownership of terminals; and its airports in the South East.

Yours sincerely

David O'Brien
Chairman - Stansted ACC