

Planning issues and competition in the airports market

Introduction

1. This appendix explores issues relating to airport capacity planning in order to assess whether any aspects of the planning system and government policy may be features having an adverse effect on competition in the supply or acquisition of any goods or services in the UK or a part of the UK. We also explore these issues in order to understand the relationship between the current shortage of capacity at, and the common ownership of, the largest airports in the South-East.
2. In order to do this, it has been necessary to examine evidence spanning the past 25 years as the planning and delivery of major infrastructure projects takes several years. In addition, the development of some of BAA's airports continues to be restricted by agreements entered into many years ago. Examining issues relating to planning solely based on current government policy and prospective planning applications would have resulted in an unduly speculative assessment and one uninformed by all the available contextual facts.
3. The impact of the planning system on competition was commented upon in the Barker Review of Land Use Planning—Interim Report (The Barker Interim Report).¹ We have not sought to re-examine the issues identified in this report, and have focused our enquiries on the arguments which have been put to us, primarily by BAA but also by the airlines, on the impact of the planning system and government policy on airport developments. These arguments are diverse. BAA told us that:
 - (a) The current shortage of airport capacity in the South-East of the UK had been caused by the deficiencies of the planning system and the absence of clear government policy towards airports during the 1990s.
 - (b) Its track record in securing planning permissions for major developments was 'unblemished', pointing us towards its 1970s and 1980s applications and the planning approval for T5 in 2001. It argued that a break-up of BAA would lead to higher costs of securing planning expertise from third party providers; a shortage of skills in the short to medium term; and delays to the delivery of major projects.
 - (c) Separate ownership of airports in the South-East would introduce the prospect of planning paralysis, as operators would use spoiling tactics to frustrate each other's proposals, pointing to examples of planning applications which had in the past been opposed by other airport operators.
 - (d) Current government policy, as expressed in the White Paper, precluded the possibility of a runway race, as it dictated where and when airport operators should bring forward new investments; it added that any attempt to reopen the White Paper process would lead to delay with the significant risk that the outcome would be less scope for expansion.

The airlines, on the other hand:

¹Section 5.

- (e) expressed concerns over BAA's conduct within the planning system, suggesting in particular that BAA had been slow to bring forward investment; had offered overly restrictive planning agreements, thus restricting capacity growth; and had had significant influence over government policy.
4. To reach our views, we examined in detail a number of planning inquiry reports on airport planning applications and statistics; and took evidence from airport operators and other interested third parties as well as the airlines and BAA. We also examined a large body of contemporaneous evidence provided to us by BAA, including BAA internal papers relating to its strategic policy as regards runway capacity and terminal development, ministerial statements, a selection of transcripts from the T5 inquiry, and correspondence between BAA and government departments.
 5. For the avoidance of doubt, no statement in this appendix should be construed as a comment by the CC on the merits of any past or future planning application. In so far as comments on the merits of a case have been included in this appendix, they only reproduce statements made to us by parties during our investigation or are direct quotations from publicly available documents, typically planning inspectors' reports and decisions by the Secretaries of State.

The planning system in practice

Introduction

6. In this section we set out our understanding of the approach taken during airports planning inquiries, in order to examine the following issues:
 - (a) the extent to which the planning system in itself has been a constraint on capacity expansion at BAA's airports;
 - (b) the approach of BAA within the constraints of the planning system and whether BAA's common ownership of the South-East and Scottish airports has led to a better handling of the planning system, as suggested by the company; and
 - (c) what role government policy has played in planning inquiries relating to airport capacity expansion projects.
7. The T5 inquiry, in particular its duration, has often been quoted as a prime example of the inadequacy of the UK planning system in dealing with major infrastructure projects, in particular energy and transport developments. This issue was highlighted by Kate Barker in her 2006 Review of Land Use Planning, Final Report (the Barker Report).
8. Table 1 illustrates this point.

TABLE 1 Case studies of major transport decision timings

	Years	Months taken				
		Application to inquiry	Length of inquiry	Close of inquiry to receipt of report	Receipt of report to decision	Total time
M6 Toll Road	1992–1997	28	16	17	4(+20*)	65(85)
Heathrow T5	1993–2001	27	46	21	11	86
London International Freight Exchange	1999–2002	13	7	6	15	41
West Coast Main Line upgrade	2000–2003	11	11	7	8	37
Dibden Bay Port	2000–2004	14	13	9	7	43
Camden Town tube rebuilding	2003–2005	11	5	5	6	27

Source: The Barker Report—Recommendations.

*The additional time was the result of a legal challenge.

9. The Barker Report stated that unnecessary delays had a number of hidden economic costs in addition to direct financial costs, including reducing competition within markets by delaying or deterring new entrants. Major infrastructure projects in particular were often subject to substantial delays, with harmful spill-over effects for the rest of the economy. It also commented that the particular delays affecting major infrastructure projects created considerable uncertainty for affected local communities and for business decisions, and delayed the benefits, both direct and indirect, expected to flow from these projects.
10. In addition, the Barker Report highlighted the large cost of major planning applications resulting from, for example, planning consultants' and lawyers' fees. Whilst recognizing that these fees were only a small proportion of the overall development cost of such projects, they were still very significant in absolute terms. For example, the planning costs (professional fees etc) of the Dibden Bay project were around £45 million.
11. Another issue identified in the Barker Report was the risk of refusal, which had been increasing in recent years, from 13 per cent of major applications in 1998/99 to 25 per cent in 2004/05. The proportion of minor application rejections (excluding householder consents) had also increased—from 15 to 24 per cent.
12. In order to understand: the nature of planning issues relating to airport development; the extent to which BAA faced significantly different planning constraints from other airport operators; and the impact of planning issues on competition in the airports sector and how this evolved over time, we have examined in detail a range of evidence:
 - (a) inquiry reports relating to three airport projects which were called in by the Secretary of State: T5, the second runway at Manchester Airport and the creation of London City Airport (London City);
 - (b) BAA internal papers relating to the development of T5 and relevant ministerial statements in the run-up to and during the T5 planning inquiry;
 - (c) documents related to the application by West Midlands International Airport Ltd (Coventry Airport) for the development of a new terminal and related appeal;
 - (d) statistics provided by the Planning Inspectorate on appeals; and
 - (e) statistics provided by BAA on all its planning applications and planning consents obtained under General Permitted Development Order (GPDO) rights since 1998.

13. We also discussed these issues with the airport operators involved in the above inquiries and a small number of other relevant parties. BAA commented that the evidence we had reviewed was not relevant to the planning issues facing its London airports, given the scale and complexity of the projects involved by comparison with those listed above. We accepted that there were limitations to a direct comparison between different planning inquiries, but did not agree with BAA that other airport planning inquiries were of no relevance to our consideration of planning issues for the following reasons:
 - (a) planning inquiries into airport capacity developments in principle examine the same issues, whether the development in question is large or small and whether the development is regional or in the London area;
 - (b) whilst the development of a second runway at Manchester Airport is undoubtedly a less complex project than the development of T5, it is nevertheless a major infrastructure project and Manchester is a large and busy airport (comparable in scale with Gatwick and Stansted); and
 - (c) whilst circumstances differ, developers of significant airport capacity projects are constrained by similar planning procedures and similar sources of opposition.
14. BAA further argued that the greater level of local opposition to the development of its airports weakened the validity of comparisons with other planning inquiries for airport developments. We examined the extent to which such opposition was intrinsic to the characteristics of BAA's airports (eg their location or size) as suggested by BAA, and the extent to which they may have been the result of other factors, such as BAA's approach to consultation or government policy.

The T5 project and planning inquiry²

15. As described above, the T5 inquiry has been mentioned on several occasions in relation to the reforms of the planning system and is therefore in itself an important source of evidence on the impact of the planning system on airport capacity expansion. Delays to capacity development can also be symptomatic of softened competitive pressures. For this reason, we sought to unravel the importance of potential causes of delay to the development of T5: in particular, the planning system itself, government policy, or BAA's approach.
16. BAA was very critical of our review of the T5 planning inquiry, stating in particular that our scrutiny of BAA's past approach had lost any proper connection with the issues which we were required to determine. It added that:
 - (a) given that T5 had now been built and was operational, it now had no continuing impact on the current capacity situation in the South-East, and was therefore irrelevant; and
 - (b) there was no 'spill-over' effect from BAA's conduct over T5 in relation to other aspects of capacity development in the South-East.
17. We disagree with both statements. It took 23 years to bring the T5 project to fruition and we are satisfied that the evidence shows that for the best part of this period BAA sought to postpone any government support for the building of a new runway

²Primary sources for this section are BAA, the T5 inquiry report produced by the planning inspector and views of the Secretary to the T5 inquiry (see: www.dft.gov.uk/foi/responses/2005/jan/terminalfive/).

anywhere in the South-East. For the reasons given in this appendix, we consider that the strategy adopted by BAA in relation to T5 and the length of the planning inquiry have contributed to today's shortage of runway capacity not only at Heathrow, but also at other London airports, particularly Gatwick. In other words, the evidence in this regard is informative about the impact of common ownership.

The pre-inquiry stages

18. The 1985 White Paper had as two of its key policy objectives: 'to foster a strong and competitive British airline industry by providing enough capacity where it is needed; and to support the leading position of Heathrow and Gatwick among the world's major international airports and interlining centres'.³
19. A proposal for a fifth terminal at Heathrow, put forward by Uttlesford District Council as part of its case for opposing BAA's application to develop Stansted Airport, had been the subject of a planning inquiry between 1981 and 1983 and had been refused. However, the planning inspector had expressed strong support for the growth of Heathrow and, recognizing that it would take over ten years for additional capacity to be commissioned, had recommended that 'there should be a resolute aim to commission additional terminal accommodation and other airport development at Heathrow by the mid 1990s' and that action should be taken to ensure that the Perry Oaks sludge treatment works was removed 'with the objective of providing a fifth passenger terminal complex and other important airport development with direct access to the motorway as soon as possible'.⁴
20. The 1985 White Paper also stated that the release of the Perry Oaks site (owned by Thames Water Authority) for airport-related development was highly desirable. The Government agreed with the inspector that there was a strong case for allowing traffic at Heathrow to develop to its full potential but believed that a fifth terminal could not yet be regarded as a real option until the feasibility of releasing the Perry Oaks site had been established. Due to the uncertainties of traffic forecasting, the Government decided to keep the question of a fifth terminal at Heathrow under review.
21. The 1985 White Paper recognized the difficulties in establishing at what point in the future lack of runway or terminal capacity would be a constraint on air traffic growth. It recognized that runway capacity was an important operational constraint at Gatwick and Heathrow and that there was likely to be a need for new terminal capacity at the London airports after the mid-1990s but that both the timing and the location of such further development remained unclear, noting uncertainties relating both to the rate of growth of demand after 1995 and changes in traffic and aircraft mix which would determine the capacity of the runways to handle that growth. Importantly, the Government concluded on this subject that:

Where and what scale of future capacity should be provided will have to be determined in good time on the best available information. For the longer term the need is to adopt a cautious and flexible approach which will enable the right pattern of capacity to be provided when it is required.⁵

³Paragraph 3.1.

⁴The Airport Inquiries 1981 to 1983.

⁵Paragraph 4.24(v) of the 1985 White Paper.

22. Shortly after the publication of the 1985 White Paper, BAA started the process leading up to its T5 planning application. Table 2 shows the activities undertaken by BAA in the following years.

TABLE 2 **BAA's development of the T5 application—timeline**

<i>Date</i>	<i>Activity</i>
June 1985	Publication of White Paper.
July 1985 to July 1986	Joint study with Thames Water Authority to consider the technical options for relocating the existing sewage works.
August 1985 to March 1986	Establishment of the Heathrow Surface Access Working Group to study the options to improve surface access to Heathrow. Subsumed in March 1986 into the Department for Transport's (DfT) own study.
1986 to 1987	Participation of BAA in the DfT's surface access studies, including proposals for the Heathrow Express.
1987 to 1988	Feasibility and research work continued on the removal of the sewage sludge plant from the site. Public consultation on options for different alignments for the Heathrow Express route.
From February 1988 onwards	Appointment of external consultants to carry out more detailed studies.
June 1988	Appointment of Leading Counsel.
June 1988	BAA began the detailed planning of alternative options for the development of a fifth terminal.
December 1988	BAA's board approves the expenditure required for the removal of sewage sludge from the Perry Oaks site.
July 1989	Appointment of the architects for the development.
February 1989 to October 1989	Thames Water Authority's detailed studies for a replacement facility for Perry Oaks (Mogden); removal of sewage sludge from the site at BAA's expense.
February 1990	Consideration by BAA's Board of alternative development options on the Perry Oaks site.
September 1990	Decision made to proceed with an investment in excess of £2 billion for both T5 and the refurbishment of the Central Terminal Area (CTA).
May 1991	Heathrow Express Railway Act received Royal Assent. Decision by the board to defer the announcement of BAA's intention to submit a planning application for T5, as it considered that additional time was required to work up lower cost proposals.
November 1991	Approval of the chosen outline scheme by the BAA board.
April 1992	BAA announces its intention to apply for planning permission.
May 1992 to January 1993	Public consultation with the local authorities on the environmental impacts of the development. The process was expected to take six months to complete but took longer than planned. Involved public exhibitions around Heathrow; presentations to the local and county planning authorities and meetings with local interest groups.
February 1993	Submission of the planning applications.

Source: BAA.

23. BAA told us that there was no evidence to suggest that any of these steps was unnecessary or could have been done more quickly. It added that there was no evidence that BAA had any incentive to delay the lodging of a planning application. It was notable that no-one criticized BAA for the timing of its T5 planning application at the time. It added that had this been a concern, it would have expected airlines to have raised this issue in the context of the MMC review in 1991 under the Act. But none had done so.

The planning inquiry—overview

24. The planning application for T5 (a terminal capable of handling up to 30 mppa) was submitted by BAA on 17 February 1993, some eight years after the publication of the 1985 White Paper and a year later than BAA itself had anticipated during the first MMC quinquennial review in 1991,⁶ because of additional work being carried out to develop lower cost proposals and slightly longer than expected public consultation.
25. The application was called in by the Secretaries of State for the Environment and Transport in March 1993, on the grounds that it was likely to be of more than regional importance and to give rise to significant controversy. The application comprised 35 Applications, Schemes and Orders, 20 of which were submitted under the Town and Country Planning Act 1990 (TCPA 1990). A number of applications were submitted by the Highways Agency (highways Orders relating to the M25 and M4), Thames Water Utilities Ltd (for the provision of the sewage sludge de-watering works), and London Underground Ltd and Heathrow Airport Ltd (in relation to the extension of the Piccadilly underground line). BAA told us that, in its opinion and that of its planning adviser, at the time this was the largest and most complex set of applications ever submitted in the UK, only surpassed since by the SG2 proposal—the proposed development of a second runway, associated terminal and other facilities at Stansted Airport. The inquiry opened on 16 May 1995 and closed on 17 March 1999. Over 700 witnesses gave evidence and 5,500 documents were produced by the inquiry. It became the longest planning inquiry ever held in the UK. It sat for 525 days, spanning 46 months, and is estimated to have cost over £80 million, approximately £64 million of which was borne by BAA. BAA told us that it had incurred a further £6 million in obtaining a decision from the Secretaries of State.
26. Table 3 shows how inquiry time was split between different topics. The main issues which occupied the inquiry related to the economic/aviation case for the proposal (23 per cent), surface access (22 per cent) and noise (14 per cent). It was noted by the Secretary to the inquiry that a significant proportion of the time spent on the economic/aviation case focused on updating the inquiry on policy developments that had arisen subsequent to the 1985 White Paper.

TABLE 3 Breakdown of T5 inquiry time by topic

Topic	Number of inquiry days	Proportion of time (%)
Economic aviation case	123	23
Development pressures/regional planning	37	7
Land use policy	35	7
Surface access	113	22
Noise	73	14
Air quality	22	4
Public safety	13	2
Fuel supply*	0	0
Construction	27	5
Associated applications (including Iver South)	14	3
Mitigation and conditions	13	2
Twin Rivers topic	3	1
Integrated Transport Policy White Paper	4	1
Local public sessions	8	2
Final submissions	40	8

Source: DfT website—response to Freedom of Information Act request.

*Objections to 'Fuel Farm' withdrawn.

⁶MMC June 1991 report to the CAA, paragraph 7.8, p112.

27. BAA told us that the principal reason for the length of the inquiry was the absence of up-to-date government policy; and more specifically that it was the lack of commitment by the Government on the question of a fifth terminal at Heathrow which had led to a significant part of the inquiry being occupied by an examination of government policy.
28. Other causes of the inquiry length referred to by BAA were:
 - (a) changes to the Government's roads programme during the inquiry;
 - (b) adjournments resulting from lack of funds for objectors; and
 - (c) the inspector's accommodating attitude towards both major objectors and smaller parties.
29. The Secretary to the inquiry identified the following factors contributing to the length of the inquiry:
 - (a) the scale and complexity of the issues under consideration;
 - (b) changes to applications being considered by the inquiry which caused adjournments to it (particularly changes made by the Highways Agency to highway Orders which took six to nine months to bring before the inquiry because of the need to comply with statutory procedures);
 - (c) the cancellation in the 1996 government budget of some major road schemes in the T5 traffic modelling area, previously assumed to be commitments;
 - (d) the need to clarify government policy on a number of important matters, such as aviation and transport policy, and the need to take into account the new Integrated Transport Policy White Paper ('A New Deal for Transport: Better for Everyone') issued in July 1998; and
 - (e) the level of opposition to the proposals and volume of evidence submitted. The Secretary to the inquiry commented that, under the inquiry rules, all had a statutory right to be heard and to challenge the views of others, and time had to be set aside to let them have their say.
30. We discuss below some of these issues.

Economic aviation case

31. BAA told us that those who opposed the T5 development had been able to exploit the fact that the 1985 White Paper did not provide sufficiently clear policy support for T5 and this had been the reason for the large amount of time devoted to the economic aviation case during the inquiry.
32. To support this view, BAA quoted the 1985 White Paper: 'the Government is therefore not prepared to make any commitments at this stage on the question of a fifth terminal at Heathrow' and the T5 planning inspector's reference to the same statement. It also referred us to the headings of the T5 inquiry report and the time taken by the inquiry on government issues, as additional supporting evidence.
33. The 1985 White Paper made the following statement:

The arguments in favour of a fifth terminal are that it would enable the fullest possible use to be made of Heathrow's runways and give resident airlines assured room for expansion. The Government agrees with the Inspector that there is a strong case for allowing traffic at Heathrow to develop to its full potential but it believes that a fifth terminal cannot yet be regarded as a real option until the feasibility of releasing the Perry Oaks site has been established. Bearing in mind the Government's wish to encourage competition there is some doubt about the rate of growth of average aircraft loads and therefore when sufficient runway capacity will be available to justify a fifth terminal. The Government is therefore not prepared to make any commitments at this stage on the question of a fifth terminal at Heathrow but will keep the matter under review.

34. The T5 planning inspector's comments on the above statement were that: 'what was quite clear was that the Government were no longer committed to the position that there should not be more than four terminals at Heathrow'.⁷ The inspector set out in some details his views on the nature of the debate during the inquiry on government policy:

The formal position of the White Paper is clear; it is the most recent comprehensive policy statement on the subject and as such I was told that it remains Government policy.⁸

Much of the debate on national aviation policy concerned the degree to which the policies of the 1985 White Paper on Airports Policy had been modified by a greater recognition of environmental impacts as exemplified by the emergence of the concept of sustainable development ... The 1985 White Paper is patently of some age. Even before the inquiry started the then Minister for Aviation, Lord Caithness, had described the White Paper as 'beginning to look a little yellow at the edges'. In the circumstances, and taken together with the development of the concept of sustainable development, it was not surprising that a number of parties challenged the efficacy of the White Paper.

35. In its evidence to the inquiry, the Department of the Environment, Transport and the Regions (DETR) had stated that it continued to recognize the importance of Heathrow and Gatwick although it would no longer be appropriate for national policy to 'support' their leading positions given that BAA was now in the private sector.⁹ It accepted that greater weight would now be attached to environmental consideration than had been the case at the time the 1985 White Paper was published. In the inspector's view, it was the relationship between the objective to provide the capacity needed and that which sought to minimize the impact of airports on the environment generally, which lay at the centre of the debate about T5.¹⁰ This is corroborated by the transcripts of the T5 inquiry made available to us by BAA.
36. Based on the evidence we have seen, it is therefore our view that policy uncertainties created by the age of the 1985 White Paper and, in particular, by the emergence of a government policy on environmental sustainability were a major reason for the length of the inquiry debates on government aviation policy. We consider that this was not

⁷Paragraph 2.1.9.

⁸Paragraph 3.8.1.

⁹Paragraph 3.1.11.

¹⁰Paragraph 3.1.14.

caused simply by any perceived lack of policy commitment in the 1985 White Paper to the T5 development.

Delayed applications

37. BAA told us that in its view it did everything that it needed to do and could have done as rigorously and as well as it could have done, in its handling of the planning process and the T5 inquiry application.
38. However, the Secretary to the inquiry said that around half of the applications making up the suite of planning applications needed for T5 were submitted after the inquiry had begun and that six new applications, including a scheme to divert two rivers which crossed the site (the Twin Rivers scheme), were submitted as late as spring 1998.¹¹
39. The Planning Inspectorate confirmed that part of the reason for the length of the T5 inquiry was that many essential applications had been submitted after the initial proposals by BAA. The planning inspector himself commented on this issue. In his introductory chapter, he described in some detail the changes made by the applicants to various aspects of application in the course of the inquiry, stating:

All of these changes added still further to the length and complexity of the inquiry. They often posed additional burdens on the parties and on one occasion required a significant adjournment in the inquiry. I would like to place on record my appreciation of all those who assisted in accommodating these changes throughout the inquiry. Without their flexibility and cooperation my task would have been more difficult and the inquiry even longer.¹²

Similarly, the Secretary of State stated on 20 November 2001 that the delay in reaching a decision since the report was received in December had arisen because, after receipt of the report, the applicant (BAA) had warned (in May) that it wished to revise the Twin Rivers scheme, which had been part of the original application. It had not put forward any details until August that it had put forward any details and the revision had required consultation, which was completed by the middle of October.

40. BAA disputed this and told us that the only applications which had been filed in the course of the inquiry were for detailed engineering works, which could not have been filed earlier. BAA added that these would have formed only a small part of the 27 days of the inquiry occupied by construction matters. Moreover, the submission of applications during an inquiry did not constitute a fault on the part of the applicant; it was normal practice during long, complex inquiries for promoters of major infrastructure projects to submit additional applications during them. BAA submitted that there was no evidence that it could have submitted these applications sooner or that the submission of these applications after the inquiry started had lengthened it in any material way. In relation to the Twin Rivers application, BAA told us that the late application replaced an earlier one, which had been disputed by the Environment Agency in 1994 but had not been questioned previously by the Environment Agency's predecessor, the National Rivers Authority. The 'new' revised application reflected the agreement BAA had negotiated with the previous objector. BAA also noted that the issue only took three days of the inquiry.

¹¹Paragraph 13.1.2 of the T5 inquiry report also describes how BAA withdrew its original planning application for the diversion of the twin rivers and replaced it with a new scheme in the course of the inquiry.

¹²Section 1.1 of the report.

41. BAA maintained that it had pushed forward the planning applications for T5 and the inquiry itself as quickly as possible in the circumstances so as to ensure a successful outcome. BAA added that there was no evidence to contradict this.
42. We accept that in a complex infrastructure project such as T5, it is not surprising that some applications were submitted after the initial proposals, and that it was not the fault of BAA that the Environment Agency did not wish to follow the approach of its predecessor, the NRA, regarding the Twin Rivers application. Nevertheless, the comments of the Secretary to the inquiry, of the planning inspector, and of the Secretary of State suggest to us that BAA's handling of the planning application did not expedite matters, and appears to have contributed significantly to the unusual length of the inquiry.

Relationship with the local authorities

43. BAA emphasized that obtaining planning permission for major developments was more difficult in the South-East than in other parts of the UK. For example, whilst local authorities understood the economic benefits of airport developments such as T5, they often treated the economic pressures that such developments create around the airport as a ground for objection. BAA considered that the economic pressures on the areas around its airports were the principal driver behind the opposition to its scheme.¹³ Thirty-seven days were spent at the T5 inquiry on the topic of 'development pressures/regional planning' and the economic benefits of T5.
44. We note that in the T5 inquiry all local authorities acknowledged that Heathrow contributed to the national and local economies. Some local authority representatives (LAHT5) were concerned that further development at Heathrow would put pressure on the labour market and housing, but all the other local authorities (Hillingdon, Spelthorne and Slough) welcomed the additional employment which T5 would bring.¹⁴ In addition, Strategic Guidance for London Planning Authorities (RPG3) noted that Heathrow was itself the major employment attraction in West London and identified the important contribution the airports in Greater London made to the competitiveness of the UK economy and its attractiveness to both domestic and foreign investment. The inspector was satisfied that growth at Heathrow was consistent with regional guidance.¹⁵
45. The T5 inspector's report offers another explanation for the extent of the concern of those who opposed the T5 proposal. The Government had announced in 1978 its decision to approve Terminal 4, stating unequivocally that a fifth terminal should not be provided, and as a result, as reported by the inspector, following the publication of the 1985 White Paper:

Many members of the public, as was made plain to me, were distressed and angry at what they saw as a cynical change in government policy towards the development of Heathrow and the protection that they believed had been afforded to them. Over time their concern was exacerbated by the fact that the number of ATMs which in 1982 was about 221,000 per annum had risen well above the level that the Government had been advised represented the runway capacity when they decided not to propose an ATM limit. By the time my Inquiry started this number had risen to approximately 419,000 ATMs (415,000

¹³3 June 2008 hearing with BAA, p37 of transcript.

¹⁴Paragraphs 9.2.21 and 10.1.1 of the T5 inquiry report.

¹⁵Paragraphs 4.3.16 and 4.3.17.

Passenger ATMs). Clearly the assessment upon which the decision not to impose an ATM limit was based had been proved to be mistaken ... The 1985 White Paper committed the Government to doing everything practicable 'to ensure that the noise climate improves' ... Many people do not believe that the noise climate has improved in recent years and they have been troubled by statements made on behalf of Government that it has ... I am satisfied that the circumstances that I have outlined above explain in part the extent of the concern of those who opposed the proposals before me and the belief of many of them that their interests had not been properly considered.¹⁶

46. BAA told us that it had engaged in consultation with the local authorities and other stakeholders in May 1992 and it had planned that this consultation exercise would take around six months to complete.¹⁷ We consider that to allow only six months' consultation, started some four years after BAA began its detailed preparations for T5, was wholly inadequate for a development of such a scale and complexity. It appears from the inspector's report that BAA did not manage to address the concerns expressed by the local authorities, although it appears to have made significant attempts to deal with the environmental effects of the scheme. The inspector also noted that several agreements had been reached by BAA and other parties. In particular, he commented that parties had worked hard outside the inquiry to minimize the disagreement between them and that those efforts had been particularly successful in the field of airport-related development.¹⁸ In fact, a number of objections were withdrawn during the course of the inquiry and there is evidence that BAA managed to deal with the Environment Agency's concerns.¹⁹
47. The inspector also commented that BAA had devoted a great deal of effort to negotiations aimed at overcoming the objections to the various Orders (compulsory purchase orders (CPOs) and applications under section 44 of the Civil Aviation Act 1982 (Civil Aviation Act) and that this effort had for the most part been successful.²⁰
48. BAA told us that it was not reasonable to suggest that it should have addressed the concerns of all objectors, particularly local authorities that had fundamental objections to the T5 project. There was no evidence to suggest that there were steps that it would have been reasonable to take in the circumstances which it had not taken. BAA added that this was supported by the efforts that it had taken to resolve the concerns of the objectors.
49. We recognize the efforts made by BAA to resolve objectors' concerns, but we nevertheless consider that, in the circumstances, BAA allocated an inadequate amount of time to public consultation.

Surface access

50. The debate on surface access was the second most time-consuming topic of the planning inquiry, after aviation policy: it took up 22 per cent of the inquiry's time.

¹⁶Paragraphs 2.1.1 to 2.1.13.

¹⁷BAA asserted that informal consultations with the local community had taken place. The numerous progress reports on the T5 planning application we have seen do not mention any of these consultations. They do, however, record informal interactions with other bodies.

¹⁸Paragraphs 10.2.10, 10.2.11, section 12.3 and paragraph 32.3.1 of the T5 inquiry report.

¹⁹Paragraphs 15.7.16, 15.7.12 and 15.7.13.

²⁰Paragraph 27.3.1.

51. It is clear from the report that issues here were complex and focused on whether the proposals put forward in relation to public transport were sufficient.
52. Although the inspector believed that BAA had demonstrated a commitment to improving public transport, he added that it would have been better if these improvements had been put in place earlier²¹ and concluded that 'the package of proposals put forward by BAA fails to meet the objectives of current government policy in that it depends too heavily on access by road'.²² BAA told us that it needed to be recognized that over the course of the inquiry government policy on public transport was evolving (notably through the change of Government and the publication of the Integrated Transport White Paper in 1998) in a way which could not have been anticipated at the outset of the inquiry. BAA added that this had no effect on the outcome of the inquiry. We note that the length of time that had elapsed between the 1985 White Paper and the start of the inquiry in 1995 gave an opportunity for policy in areas related to aviation policy (such as environment and public transport) to develop. We consider that it was reasonably foreseeable that consent for developments such as T5 would need to take these related policies into account also, thereby increasing the risk of delay in getting consent.

Other airport planning inquiries

53. BAA has argued that drawing any conclusion on its approach to planning based on comparisons with Manchester's second runway (R2) application and with the development of London City was inappropriate, as these were not comparable developments.
54. BAA told us²³ that there were clear differences in the circumstances of the Manchester R2 planning application and the situation which BAA had faced in the South-East in the same period. In particular, the company argued that Manchester enjoyed positive Government support for a second runway, which in its view was stronger than the support expressed in the 1985 White Paper for the T5 development. BAA added that the scheme was largely supported by local stakeholders. It contrasted this with the situation in the South-East: the 1985 White Paper meant that BAA could not have argued that proposals for new runways at any of its airports were supported by or consistent with prevailing government policy. BAA cited the T5 inquiry and the prolonged debates that resulted from the lack of clear government policy as additional evidence of the difficulties. BAA believed that the Government had decided that the White Paper needed to go much further than simply stating general support in order to ensure the delivery of new runway capacity in the South-East, in the face of determined local opposition to such proposals.
55. BAA suggested that its position was supported by the evidence we received from the CAA, the Planning Inspectorate, the Government Office for the South East (GOSE) and MAG. In BAA's view, London City and MAG's developments highlighted the different factors which bore on the success or failure of planning applications: government policy; local impacts; and the level of government support and scale.

²¹Paragraph 15.4.19.

²²Paragraph 20.1.2.

²³BAA/CC2008/601.

Manchester's R2 inquiry

56. The 1985 White Paper supported development at regional airports to meet the 'maximum demand that they can attract'²⁴ and that it would encourage the development of Manchester as a regional hub airport. Support for the continued development of Manchester was also provided by the Regional Economic and Regional Transport Strategies and the airport's plans were cited as schemes of strategic significance to the region.²⁵
57. The 1985 White Paper was, however, silent on the possibility of a second runway at Manchester Airport, since no proposal for one had existed at the time. The Government was supportive of growth at Manchester, the UK's third busiest airport at the time, and expected to approve capital expenditure on a second terminal when this was justified by demand and return on capital.²⁶ The evidence of these statements and those in the 1985 White Paper relating to BAA's South-East airports and T5 (see paragraphs 20 and 21 above), appear to us to be broadly comparable and we do not agree with BAA's view that the development of second runway at Manchester Airport benefited from stronger policy support than T5.
58. Following rapid growth in the late 1980s and the appearance of capacity constraints at peak times, MAG identified the need for a second runway to be operational by 2005 and published its decision to proceed with the project in its August 1991 masterplan.
59. The project took nearly ten years to bring to fruition. Table 4 shows the key phases in this process.

TABLE 4 Manchester Airport R2 chronology of events

<i>Period</i>	<i>Activity</i>
August 1991	Draft development strategy published, identifying the need for a second runway.
September to December 1991	Informal consultation seeking views on broad 'areas of search' rather than runway layouts, followed by preliminary selection of the area and decision to build a close parallel runway.
October 1992 to January 1993	Preliminary assessment of alternative design, a non-parallel runway scheme, which the CAA suggested could now be acceptable.
January to March 1993	Public consultation on the non-parallel option and two close parallel runway alternatives. Selection of a close parallel runway to the south-west of existing runway.
16 July 1993	Planning application submitted to Macclesfield Borough Council, Cheshire County Council and Manchester City Council.
July to August 1993	Public exhibitions held at nine locations.
18 October 1993	Applications 'called in' by the Secretary of State.
21 June 1994 to 9 March 1995	Public inquiry.
July 1996	Inspector's report making unequivocal recommendation that consent to the applications should be granted.
15 January 1997	Planning permission granted.
Summer 1997 to November 2000	Construction. Sustained campaign of opposition resulting in a 12- to 18-month delay.
5 February 2001	First commercial flight.

Source: MAG.

²⁴Section 3.1.

²⁵Sections 6.1.10 to 6.1.14 of the inspector's report on R2. The regional strategy documents also supported growth at Liverpool and Liverpool's scheme, which failed to gain approval.

²⁶Paragraphs 6.28 to 6.33 of the 1985 White Paper.

60. The planning inquiry involved 180 witnesses, 1,800 documents and 101 sitting days. Like any major infrastructure planning application, there were several applications and orders linked to the main one. MAG told us that during the inquiry it had benefited from the fact that it had worked very hard on its relationships with stakeholders. It had succeeded, for example, in persuading an initially hostile Cheshire County Council first into a position of neutrality and then to a more positive stance. As a result, it had been able to present the inspector with a large degree of consensus on the details of the new runway, leaving him to focus on matters of principle and the overall impact of the scheme. Agreements under section 106 of TCPA 1990 had been offered to the local authorities early in the planning process. MAG noted that the inquiry itself did not throw up any new issue that might need resolving in this way, or through mitigation works, which the airport had not identified *before* the start of the inquiry, showing that the airport's pre-inquiry consultation had been very thorough. Although MAG had sought to involve the airlines, they had been reluctant to get involved in the detailed planning procedures; however, four of them had appeared at the public inquiry in support of the applications.
61. MAG did not consider that it had derived any benefit during the planning inquiry from the local authority ownership of the airport. An allegation that Manchester City Council's support of MAG's runway had emanated from its 55 per cent share of the company was made during the planning inquiry and was vehemently rejected by the city council, which stated that its work at the inquiry had been independent of MAG.²⁷ The operator of London Luton Airport (Luton) also told us that it did not derive any advantages in planning terms from the ownership of Luton by Luton Borough Council. MAG, however, thought that in contrast to the situation in the South-East, people in other regions tended to give greater weight to economic benefits and to be more favourably disposed to airport developments. Against this, the airport was situated in Manchester's 'stockbroker belt' and opposition from residents had been extremely articulate and vocal.
62. In relation to MAG's consultation process, we note the following comments made by the planning inspector: as to the question of the consultation process, it was clear that the Manchester City and Cheshire County councils had been fully involved. In November 1993, for example, Cheshire County Council had resolved to enter into discussions with the airport to see if its objections to R2 could be overcome by better proposals and environmental measures covered by a legal agreement. By the time of the second pre-inquiry meeting on 1 June 1994, Cheshire had changed from being an objector to being a supporter of the proposal (paragraph 26.9.5). Commenting on the nature of the section 106 agreement, the inspector added:
- I have no doubt that the Agreement provides a very comprehensive and wide-ranging group of Obligations. It is impressive in terms of its scope and size. It clarifies many details of the proposals, it gives confidence that numerous measures such as the many items included in the environmental mitigation package would be achieved and it constitutes both a very effective working document and the backcloth against which the applications can be considered (paragraph 26.9.10).
63. The CAA told us that a comparison of BAA's record on promoting capacity growth with Manchester's second runway experience would be misleading—apart from different types of ownership having an influence, there was much more receptiveness to airport developments in some parts of the country than in others; and the Stansted

²⁷Paragraphs 4.1.8 and 4.1.9.

runway was equivalent to a new airport in capacity terms while MAG's scheme was much more limited.

64. London City, however, considered that gaining planning consent in the regions was as difficult as in the South-East and added that MAG had encountered much opposition to its R2 scheme. The operator concluded that although it was a difficult and costly process, airport operators usually managed to get approval, albeit sometimes after making modifications to the scheme.
65. The Planning Inspectorate told us that in contrast to London airports owned by BAA, municipally (or quasi-municipally) -owned airports were likely to face less hostility to their proposed developments. In addition, the regions outside the South-East were more likely to favour economic development plans for their areas.

London City Airport

66. Although significantly smaller than BAA's London airports, London City provides an interesting case study, because of its challenging location in the South-East, close to densely populated areas and the boldness of the scheme: a totally new airport within the Royal Docks, 6 miles east of the City. It was promoted by John Mowlem and Company plc in the early 1980s, despite the absence of any government policy support.
67. Table 5 shows the chronology of the development of the airport, from concept to first commercial flight.

TABLE 5 **London City Airport original development chronology of events**

<i>Period</i>	<i>Activity</i>
August 1982	Publication of the feasibility study.
Autumn 1982 to Spring 1983	Promotion campaign and opinion polls of the local residents, showing strong support for the scheme.
30 November 1982	Application for development submitted to the London Docklands Development Corporation.
January 1983	Application is called in by the Secretary of State.
8 June to 28 October 1983	Inquiry held.
August 1984	Approval by the Secretary of State.
1984	Judicial review of the Secretary of State's decision.
May 1985	Outline planning consent established, including planning conditions limiting the capacity of the airport to 1 mppa and 30,160 ATMs.
April 1986	Construction starts.
October 1987	Start of passenger-carrying operations.

Source: www.lcacc.org.

68. We note, however, that the environmental impact of the airport was expected to be relatively limited due to the orientation of the runway and type of aircraft used: the original proposal for 36,500 ATMs would result in a 35 NNI²⁸ noise contour which would affect 400 people. In addition, the area suffered some of the highest deprivation rates in the UK and had been the focus of substantial government and local initiatives to achieve regeneration.

²⁸Noise and Number Index.

69. London City told us that the airport was a significant part of the strategic regeneration of the docks area. This had once employed 25,000 people, so local employment was a key issue. London City provided 2,000 jobs and was easily the largest employer in Newham. Although strongly supported locally, the development of the airport had been opposed by the Greater London Council (GLC), when Ken Livingstone was its leader, as it had wanted to use the site for housing; and the GLC had instigated the 1984 judicial review of the ministerial decisions to allow the airport development.
70. In an article describing the events that led up to the opening of the airport, Roger N Sainsbury, Director of John Mowlem, recounted the unusual nature of this development: the creation from scratch of an inner-city airport, which was severely constrained by its environment, by a company with no previous history in the industry was unheard of. As further explained, the airlines were reluctant to make any commitments and it was necessary for the developer to commit the investment on the basis of faith in the concept and without any guarantee that any airline would ever fly from the airport.²⁹
71. The conditions imposed in the original planning application severely restricted the ability of the airport to become commercially viable, as it was only able to handle aircraft with a very limited effective commercial range. In October 1989, the airport operator made an application for the extension of the runway; the introduction of new (and noisier) aircraft types, which had an operational range of 1,000 miles; and an increase in ATMs from 30,160 to 36,500. Permission was granted in September 1991.
72. London City told us that throughout its 25-year history it had concentrated on people, local businesses and local government. Although the previous mayor's office at the GLA had remained unfriendly towards the airport, good local relations had greatly eased the task of planning for growth. London City had been able to progress smoothly from 36,000 ATMs to 73,000 and then to 120,000—all regulated by a section 106 agreement. This also covered opening hours, night flights (16 a night were permitted), noise and access roads. It had also been made very clear that consultation would be renewed as soon as there was a question of the airport approaching any of the limits set. In the local community, the airport was a 'face' that was recognized and which had a number of friends. The airport had found that the earlier it talked to local interests—for example, over the masterplan in 2006—the better, and that consultation could buy it great goodwill and could lead to significant shifts in local opinion, which had become more positive towards the airport. The airport's contacts with the community had saved it both a great deal of expense in legal and consultancy fees and the significant administrative effort that would have been needed for the public inquiries that had been averted as a result of these contacts.

International comparisons

73. In considering whether aspects of the planning system are unduly constraining airport capacity growth in the UK, it can be helpful to examine whether planning systems adopted in other countries have significantly different impacts on the airport markets and their growth. We recognize the limitations of these types of comparison, but set out below the evidence we have seen on this matter.

²⁹London City Airport—a new approach to city centre travel, Roger N Sainsbury, John Mowlem PLC, UK—Eighth world airport conference. Thomas Telford Ltd, London, 1987.

74. In his report, the Secretary to the T5 inquiry commented that it was not necessarily the case that decisions on major infrastructure projects were taken more quickly on the Continent than in the UK, if the total length of the process was considered:
- the Frankfurt Airport authorities had said that under existing German legislation the planning and legal procedures to obtain approval for a fourth runway would take up to ten years;
 - the new airport at Munich, which had opened in 1992, had taken 17 years from its inception to final approval; and
 - in the Netherlands, the fifth runway at Amsterdam's Schiphol airport had taken over ten years to gain approval following publication of the initial proposals in the airport masterplan.
75. BA commented that Amsterdam, Frankfurt and Paris had all faced strong opposition to expansion from well-organized environmental lobbyists which had had to be dealt with through the planning process. The airline added that this was the same situation as that faced by BAA at its London airports. It said that claims that the delay in expanding Heathrow was due to planning and environmental difficulties, that were greater than at Amsterdam or Frankfurt, were not valid.
76. The Planning Inspectorate told us that although historically Continental planning systems—for example, in The Netherlands and Germany—had tended to be more plan-led and prescriptive than those in the UK, there had been some convergence since 1990. However, the UK system remained more discretionary than some Continental equivalents.
77. BAA commented that international comparisons of this kind were notoriously difficult to make without a thorough examination of the planning system and the role of government policy in each country, as well as an examination of the circumstances of the particular runway development mentioned. It agreed with the Planning Inspectorate that government policy played an important role in the French, German and Dutch planning systems. It added that it was necessary to have clear government support to secure planning permission, and that runways which had secured planning permission at Schiphol, Charles de Gaulle and Frankfurt had all enjoyed government support. It did not accept (and said that BA had not demonstrated) the alleged similarities between the planning systems and level of opposition to runways in the South-East and those in Continental Europe. However, in its view, what was similar was that government policy was necessary for successful runway development in the UK as well as in Continental Europe. BAA considered that prior to the White Paper there was insufficient clarity in government policy to give a reasonable prospect that a planning application for a new runway in London would get planning permission.

Other airport projects requiring planning application

78. The vast majority of airport developments requiring planning applications are not called in by the Secretary of State and are considered by the appropriate local authority.
79. The Government's target for decisions on major applications by local authorities is 13 weeks³⁰ and eight weeks for minor applications: the Planning Inspectorate told us

³⁰71 per cent of planning decisions made by local councils on major applications were made within 13 weeks in 2006/07.

that major applications requiring an Environmental Statement (ES) took 16 weeks to be decided.

80. BAA provided us with data on planning applications relating to capacity expansion since 1998. The only two airports in BAA's portfolio which have made a significant number of planning applications to local authorities have been Heathrow and Stansted. Virtually all of them have been approved. A notable exception to this was the application to vary passenger and ATM limits at Stansted, which was refused on 29 November 2006, although BAA considered that this refusal had been significantly influenced by issues arising from BAA's separate proposal for a second runway at Stansted Airport.³¹ Table 6 shows that although on average the local authorities took around 17 or 18 weeks to reach a decision, there are significant variations.

TABLE 6 Time taken by local authority to reach decision*

Airport	Weeks		
	Average	Maximum	Minimum
Heathrow†	18	212	<1
Stansted	18	93	1

Source: BAA, CC analysis.

*Approved applications, for which date of approval was provided.

†BAA told us that over the last year the average performance of Hillingdon has improved so that it is now dealing with 75 per cent of Heathrow's submissions within the period set out for major and other planning applications of 13 and 8 weeks respectively.

81. Although relatively rare, appeals to the Secretary of State can add significantly to the duration of the application process. Data from the Planning Inspectorate suggests that appeals last up to five to six months. Table 7 shows that time taken by Ministers to reach a decision may, however, add a further five to six months to the inquiry and varies significantly, as there are no established norms governing how long Ministers at the DfT take to reach decisions after receipt of an inspector's report.

TABLE 7 Duration of airport development appeals

Airport	Development	Inquiry duration (days)	Start of inquiry	End of inquiry	Date report dispatched	Date of decision	Total number of weeks
Coventry Airport	Construction of passenger terminal	46	1.2.05	19.7.05	9.12.05	7.4.06	61
Coventry Airport	Construction of passenger terminal, associated car parking, expansion of aircraft apron	62	10.1.06	31.7.06	12.1.07	14.6.07	74
Sywell Aerodrome	Construction of all weather surface to existing (grass) runway	13	25.7.06	30.8.06	24.11.06	21.11.07	69
Farnborough Airport	Increase the permitted annual ATMs at weekends and bank holidays without changing the permitted total number of annual movements	8	23.1.07	5.4.07	27.6.07		
Stansted Airport	Variation of conditions to increase passenger and ATM numbers	40	30.5.07	19.10.07	14.1.08		

Source: Planning Inspectorate.

³¹Permission was subsequently granted by the Secretaries of State in October 2008, on appeal by BAA.

82. In this respect, the application by Coventry Airport for the building of a 2 mppa terminal to replace the current temporary terminal which has the capacity to process (albeit with difficulty) 1 mppa illustrates the significant planning costs and delays that can be incurred by smaller airport operators. The application was first made to the relevant planning authority, Warwick District Council, on 1 November 2004. Due to a failure by the local authority to determine the application within the prescribed period, Coventry Airport launched an appeal. The public inquiry took from 10 January to 31 July 2006. The application was refused by Ministers on 14 June 2007, nearly three years after it was made. Thereafter Coventry Airport made an unsuccessful appeal against the decision. The total cost of the planning process to the airport operator was about £4.5 million and the cost of the appeal was estimated at an additional £1.5 million, excluding administrative costs. We note that on a cost-per-passenger basis, this is higher than the costs of the T5 inquiry.
83. MAG told us that despite efforts by the Government to speed up and simplify the planning system, getting approval for airport projects was a time-consuming, risky and costly undertaking, requiring the production of many reports and assessments. MAG believed that this was due to local authorities becoming increasingly risk averse and nervous at the prospect of legal challenge, however remote the possibility of one in practice; to changes in guidance; and to EU legislation. MAG illustrated this point with three examples:
- (a) The consideration of a proposal for a 3 mppa terminal at Bournemouth Airport had taken 23 months and cost MAG over £90,000 in legal and consultancy expenses largely as a result of additional work asked for mainly by third party organizations (especially the Environment Agency, Natural England and the Highways Agency) but also to some extent by the local authorities. This was despite: the backing of Christchurch Borough Council, the main local authority, the fact that the development was entirely within the airport boundaries, and the fact that it was supported by a range of planning policies and the White Paper. The planning application was later the subject of a judicial review launched by the New Forest National Park against Christchurch Borough Council (as the LPA).
 - (b) An application for the conversion of an area used for car parking to an airfield apron at Manchester Airport had cost £103,000 in fees and studies.
 - (c) Another scheme to convert some land in Macclesfield Borough Council for replacement car parking had been refused by the planning authority and by the Secretary of State on appeal, even though it had long been allocated for airport purposes in Macclesfield's Development Plan.
84. The Planning Inspectorate concurred with MAG's view: although changes to the planning system had sought to increase the speed of dealing with applications and appeals, the thoroughness of the checks had increased and the zeal with which special interests pursued their goals had become greater.

Applications under the General Permitted Development Order 1995

85. As explained in Appendix 4.3, under the GPDO 1995, airport operators are permitted to carry out limited aviation development at, or near to, an airport after consulting the LPA, without needing to seek planning permission. However, the ability to extend passenger terminal facilities under the GPDO is subject to a limit of 15 per cent additional floor space.
86. BAA told us that most of the developments at Glasgow and Aberdeen were carried out under its GPDO rights and that all capacity expansion at Edinburgh since 1998

had also been carried out in this way. We note that out of 14 capacity expansion projects and eight car-parking projects carried out at Gatwick since 1998, eight and six respectively were carried out under GPDO rights and similar rights are also used extensively at Heathrow and Stansted. BAA told us that the cost of applying for permission under GPDO rights might vary depending on the local council involved. All of its airports provided the appropriate level of information to support the application. However, different local authorities dealt with the information with varying degrees of intensity which affected the cost of applying for permission. At Heathrow and Gatwick the local authorities dealt with the information in a way that was more akin to a normal planning application, whereas at Stansted the local authorities applied a lighter touch.

87. A variety of projects have been carried out under such rights, including:
- (a) pier extensions;
 - (b) extension of terminal facilities;
 - (c) rapid exit taxiways;
 - (d) provision of stands and aircraft parking areas; and
 - (e) apron improvement and redevelopment.

BAA's management of planning inquiries

Common ownership of airport and planning

88. BAA has argued that its planning expertise is derived from common ownership of airports in Scotland and the South-East and has sought to emphasize its outstanding track record in handling planning inquiries. BAA told us that a key benefit of common ownership was its ability to secure planning permissions for new airport capacity more effectively than separately-owned airports; BAA claimed that this superior ability would enable BAA airports to gain planning consent for new capacity faster, and with greater certainty, than would be the case for separately-owned airports or separately-owned airport groups. Moreover, BAA explained that disruption to its planning team as a result of the requirement to divest airports could increase the risk of securing planning permissions in current planning applications as well as increasing the risks associated with securing new capacity in the line with the White Paper.
89. This view hinges on the following key arguments:
- (a) considerable experience of the UK planning process, owing to the flow of major projects within the group;
 - (b) innovative and sophisticated approaches to securing planning permissions, drawing on the company's collective skills and experience;
 - (c) ability to marshal unique expertise in a coordinated fashion that is most likely to secure the requisite planning permissions;
 - (d) development of effective working relationships with delivery agencies (including DfT Rail, Network Rail, the Highways Agency and NATS) that can be leveraged across projects at different locations; and

(e) strong corporate reputation with stakeholders for its responsible approach to operating and developing airports.

90. This section explores how BAA's arguments stand up to close scrutiny.

Approach to planning applications and inquiries

91. Although BAA has undoubtedly been able to secure planning permission for its projects over the last 20 years, the evidence we have seen³² does not support the view that it has been more effective than others at doing so as a consequence of enjoying common ownership of the major airports in Scotland and the South-East.
92. Similarly we have seen no evidence that BAA adopts a more innovative approach to planning inquiries than others. The evidence also suggests that BAA's approach to the T5 inquiry was, at least, a contributory factor to its long duration. BAA disagreed with these conclusions and contended that there was no evidence which supported any criticism of its conduct during the T5 planning inquiry. BAA also considered that Manchester Airport or London City were not relevant comparators; that the assertions in this paragraph and paragraph 91 run contrary to those of all principal consultees; and that they were not based on any reasonable interpretation of the evidence. We can accept the generally held view that local authorities in the South-East are more hostile to airport developments than in other parts of the UK, and for this reason, we have not reached our conclusions from direct comparisons with developments at other airports. But we have taken into account the evidence given to us by MAG and other airport operators, the evidence of the inspector's report in the T5 inquiry, as well as BAA's own account of its approach to planning inquiries. BAA has not presented us with any evidence which we consider contradicts the views we have expressed.
93. In particular, we have considered the following evidence:
- (a) comments made by various parties involved in the T5 inquiry (relayed in paragraphs 24 to 52 above);
 - (b) delays to the decision on the SG1 appeal in 2008 at Stansted Airport arising from an issue relating to NOx modelling,³³ which was identified by BAA only after the inspector's report had made its recommendation;
 - (c) BAA's late and limited consultation with local authorities prior to the T5 inquiry, in contrast with MAG's consultation with the local community throughout its development of the R2 scheme;³⁴ and
 - (d) BAA's approach to consultation in relation to the Stansted SG2 scheme, which we describe in detail in Section 7 of this report.
94. We have observed that BAA has been successful in the recent past at gaining support for the incremental expansion of some of its airports, particularly Gatwick and Stansted. BAA told us that in recent years it had sought to adopt a partnership approach based on constructive dialogue in order to secure permission for airport

³²As described in the preceding sections on airport planning inquiries.

³³The modelling had been based on inaccurate data.

³⁴BAA argued that these comments significantly understated the significance of various forms of pre-consultation with local authorities and other efforts outside the formal inquiry process. There is, however, no record of such consultation taking place or of any actions taken as a result of such consultation in any of the numerous internal papers produced in the run-up to the inquiry, which raises questions about the purpose and effectiveness of these asserted interactions.

development at Gatwick in 2001, and at Stansted in 2002. The company has been successful in its endeavours and this approach has resulted in an agreement to increase passenger throughput at Gatwick to 40 mppa and at Stansted to 25 mppa without the need for planning inquiries. BAA also described to us how it had sought to engage with objectors to the SG1 project on points that were relevant to the reasons for the refusal that had led to the planning inquiry and produced with Uttlesford District Council a Statement of Common Ground document in order to reduce the scope of the inquiry.

Time taken to develop planning applications

95. In addition to the evidence (set out above) suggesting that BAA had been slow in its preparations to act on the policy in the 1985 White Paper, BA told us that BAA had been slow to start work on the Heathrow third runway project: in its June 2007 submission to us, BA told us that BAA had not begun work to create the Heathrow runway options, let alone lobby for them, even though the T5 planning decision explicitly stated that it did not fetter consideration by the Government of future runway options for Heathrow. In contrast, BA had begun work on options to increase runway capacity at Heathrow immediately after the conclusion of the T5 inquiry and shared the results with government policy makers. It was only during the last months of the process, once BA had secured Heathrow's place on the Government's agenda, that BAA had begun some work on the options for expanding runway capacity at Heathrow. Following the publication of the White Paper, BA had taken the lead in setting up the Future Heathrow Group, to which it invited BAA. BAA had only agreed to join in 2007, more than three years after the group was set up. BA also told us that BAA had only committed two full-time members of staff to the Heathrow runway development project led by the Government for the first two years after publication of the White Paper. BA concluded that BAA's failure to commit sufficient resources to the Heathrow project had jeopardized delivery of the new runway within the ambitious time frame set by the Government. BA recognized, however, that BAA had subsequently committed further resources to the project.
96. However, BAA told us that BA's views were incorrect: the SERAS technical work for which BAA had done considerable work on runway options for Heathrow (including work on airport layout and air quality issues) had begun in 1999. The T5 decision had not been given by Ministers until November 2001. BAA added that the DfT's Project for Sustainable Development at Heathrow (PSDH) had been established in 2004 and that BAA had supported this project with technical expertise and financial support. The DfT stated that over the last few years BAA had done a lot of work on improving capacity in the South-East and that it had seen no reluctance in BAA's pushing forward developments.
97. We note, however, that when the then DETR had asked BAA to undertake runway studies jointly in 1999, BAA only offered to provide technical assistance when required by the Government due to its focus on 'securing co-operation and acceptance by local planning authorities for urgently needed terminal development'. We also note that, generally, BAA appears to carry out technical feasibility studies only when requested directly by the Government and ahead of policy decisions does not proactively undertake technical studies in order to inform its own views of where capacity should be built.

The reform of the planning regime

98. The planning system regulates land use and development in the public interest, and thereby may constrain the operation of the market. In particular, as appears from the

above description of airport planning applications and inquiries, obtaining planning permission for some planning applications, particularly for large airport projects, has involved long delays which have significantly constrained the growth of airports. The Government therefore has taken steps to reform the planning system, as described in paragraphs 70 to 97 of Appendix 4.3.

99. Many of these reforms have focused on the procedures to be followed in inquiries and appear to be generally viewed as positive steps.
100. However, from a competition point of view, the reforms concerning the role of the Government in infrastructure planning have the potential adversely to affect competition. The need for a strategic framework for planning decisions on major infrastructure projects was clearly set out in the Barker Report, which proposed three potential models for clearer government policy. The Planning Act 2008 in turn has adopted a model based on Statements of Strategic Objectives or National Policy Statements (NPSs).³⁵ The nature and content of NPSs was debated at length in the General Committee debates during the passage of the Planning Bill. A particular issue was how specific an NPS ought to be. The more specific that government policy is, the less time is needed during inquiries to establish the need for a proposed development, but the more likely that a fixed policy will restrict choice and thereby distort competition. We explore below whether the current statement of government policy on aviation, as published in the White Paper, has struck the right balance between:
 - (a) allowing the market to determine where and when investments should take place; and
 - (b) providing the support needed to prevent unnecessary planning delays and the resulting distortion of competition.

The reform of inquiry procedures

101. The Barker Report noted that many of the procedural issues associated with the planning system had been addressed via the reforms implemented by the Planning and Compulsory Purchase Act 2004 (PCPA 2004).
102. The Planning Inspectorate also told us that legislative and other improvements carried out over the last few years had tended to shorten inquiries nowadays. In practice there were not many sitting days and delays were now often at the Ministerial decision-making stage.
103. CLG told us that the creation of the IPC³⁶ by the Planning Act 2008 was a response to the need to improve the speed, access and transparency of the planning process. The IPC would normally have nine months—six for examination and three for decision—in which to deal with projects, following a pre-examination process between the developer and the IPC. The Chairman of the IPC could, however, extend the nine months' period, subject to certain conditions, including notifying the relevant Secretary of State. The separation of policymaking from the taking of decisions on individual schemes would increase transparency; and the settling of issues of need in the NPS would achieve increased speed. Occasionally there might be particularly difficult cases that were so complex that the IPC might decide it required longer than the prescribed nine months to probe the evidence before it could

³⁵See paragraphs 77 to 80 of Appendix 4.3.

³⁶See paragraphs 82 to 94 of Appendix 4.3.

reach a decision. In these circumstances, the Chairman of the IPC would write to the Ministers concerned providing the reasons for this.

104. The statutory requirement for developers to carry out a consultation and the availability of guidance to developers by the IPC may result in a more consistent approach to planning and better preparation by potential developers, thus also speeding up the inquiry process.
105. Based on the T5 inquiry, it seems possible that the total inquiry process time could be shortened by two years, but some of this gain may be offset by increased preparatory time due to more tightly defined documentary requirements and statutory consultation, although we note that the Planning Act 2008 sets timescales and parameters for the consultation process.
106. The IPC will consider only very large schemes and smaller airport projects will continue to be considered under normal planning procedures by local planning authorities. MAG expressed concerns that this dual system would lead to some inconsistencies:
 - (a) There could be conflicts between the White Paper and planning policy. For example, it had been planned at one stage to deal with the position of airports in the green belt through a revision of the relevant Planning Policy Guidance note (PPG2), but this work had been dropped and it was not clear what framework the IPC would be operating under in this respect.
 - (b) Another concern was that a two-tier system could arise between smaller developments and those developments considered by the IPC, for example in relation to the former being determined in relation to section 70 of the TCPA 1990, while the IPC might be applying different tests (eg not starting with the Development Plan). The NPS still needed to deal with non-IPC cases (eg regionally significant infrastructure projects).
107. MAG told us that there was evidence now that in some areas airports were being encouraged to form a joint view of capacity issues, for example in relation to appearing at Examinations in Public into Regional Spatial Strategies (eg South-West and North-West). A similar trend was alluded to by Coventry Airport.

Statements of government policy

The Barker Report

108. The Barker Report identified that a critical component of ensuring timely decision-making was that the strategic framework for decisions was clearly set out by central Government. Decisions should be made at the spatial level that best reflect spill-over effects on the economy and projects that are of national significance should be determined at the national level, while preserving the democratic mandate given to local authorities. The benefits of setting clear government policy were that there would be greater certainty and reduced time spent debating need, reduced time spent debating alternative locations, and a more joined-up framework for the provision of infrastructure nationally.
109. The Barker Report identified three potential models for clearer national policy:
 - (a) Assessment of need: this would involve the Government drawing up a set of assessments of need for major infrastructure developments, which would provide a framework for decision-making on individual projects and indicate the principle

of the need for each particular type of development. There would be no requirement for coordination between different types of infrastructure.

- (b) Statements of Strategic Objectives: these would be similar to assessments but would, where appropriate and possible, be spatially specific, and would provide a clearer spatial framework to aid decision-making for major infrastructure projects. They would also assess the environmental, social and economic impact of the different options needed to meet likely future requirements and so go beyond mere expressions of need. A possible model was the 2003 White Paper.
 - (c) A National Spatial Strategy: this would set out social and economic trends and the likely impact on the way in which land is used and needed. It could include policy on the relationship between regional housing markets, labour markets, travel patterns and supporting infrastructure.
110. Given the strengths and weaknesses of each option, the Barker Report stated that there was therefore merit in the middle approach of drawing up Statements of Strategic Objectives with a degree of spatial specificity where this was possible and appropriate. These would have to be drawn up with regard to the operational requirements of the different sectors to which they refer, while ensuring that they did not attempt a level of specificity that would unduly constrain the market. Importantly they would have to be reviewed regularly to ensure that assumptions within them remained up to date.

The White Paper

111. Government policy on airport development is currently enshrined in the White Paper (as confirmed in the 2006 Progress Report). We consider in this section:
- (a) the characteristics of the White Paper which may impact on competition;
 - (b) how airport policy has been interpreted on the ground by planning inspectors; and
 - (c) whether the Planning Act 2008 may have an impact on this.

The White Paper: characteristics and implementation

112. The White Paper sets out government policy on airports in very specific terms: it identifies the airports at which it supports development; in many cases the type of development and level of capacity increase it would support and, in some cases, it indicates preferences for the timing of such development. However, the White Paper makes it clear that the timing of any planning applications will be a matter for commercial decisions by the operators.
113. The White Paper outlines possible timings for delivering new runways at Stansted (2012, later put back to 2015) and Heathrow (2015 to 2020). Although these are not prescribed, the White Paper states that the first new runway in the South-East should be at Stansted, to be delivered as soon as possible. The paper supports the further development of Heathrow and recognizes that there would be a substantially better prospect of meeting the strict local environmental criteria set out in the White Paper for expansion at Heathrow if a third runway and terminal capacity were built in the 2015 to 2020 period (on 15 January 2009 the Secretary of State for Transport announced his decision confirming policy support for adding a third runway at Heathrow with additional passenger terminal facilities and a slightly longer runway,

but subject to an aggregate limit of 605,000 annual movements, with any increases above that being subject to review in 2020). In effect, the White Paper defines the locations and sequence of investment in runway capacity in the South-East.³⁷

114. The White Paper states that it is up to BAA to take forward the development at Stansted in a way that is responsive to users. However, the paper also specifies the type of runway development supported by the Government and proposes indicative timings for delivery, thus in effect expressing views on commercial considerations. Similarly the White Paper expresses views on the role and nature of services that smaller airports should concentrate on: a number of airports in the South-East were supported for their role in business aviation; Coventry was identified as a niche airport catering for air freight and flown mail and the White Paper stated that in the light of its conclusions on capacity elsewhere in the Midlands, and having regard to potential surface access, environmental and airspace constraints, the Government would not envisage any significant further development being appropriate beyond the level of passenger throughput in the application which was under consideration at the time.³⁸

115. The assessment of need, based on the modelling of customer demand, was carried out prior to the White Paper. We understand that the initial large set of possible development options was sifted down using criteria including capacity, likely impacts on local communities, costs and the avoidance of analysing multiple substantively similar schemes. These options were appraised using the DfT's integrated appraisal framework, which covered economic, social and environmental factors. The DfT's modelling focuses on passenger demand and capacity at each airport and across the UK as a whole, rather than the nature of airlines' business models (although differences in passengers' responses to drivers of demand between business models are allowed for). The views of airlines were taken into account as part of the formal consultation process. The assessment did not consider the potential impact of the Government's policies either on present or future competition between airlines or between airports. The White Paper, however, appears to have had a significant bearing on the commercial interactions between BAA and its customers: for example, BAA told us that the SACC's demand to cap spending on the SG2 project would be likely to result in a development that fell short of what government policy required.³⁹ There is also evidence suggesting that BAA's drive to deliver a second runway at Stansted as soon as possible (in accordance with government policy) has taken precedence over consultation with its customers.⁴⁰ It therefore appears to us that the specificity of the White Paper has significantly distorted the relationship between BAA and its Stansted customers.

116. The White Paper states that it does not seek to preclude any development. However, we consider that lack of support for development, or views on the role that a given airport should fulfil within the aviation sector, expressed in the White Paper is likely to be given a prominent role during a planning inquiry. In this respect, we note the Planning Inspectorate's view that Government Policy as set out in the White Paper will be a material consideration of significant weight in planning inquiries, but could be outweighed by other considerations.

³⁷It considered that, although strong on its own merits, the case for a runway at Gatwick was not as strong as for the options at Stansted and (subject to meeting the above conditions) Heathrow, and proposed to keep the option of development of a wide-spaced runway at Gatwick open after 2019 due to the uncertainties surrounding the development of Heathrow.

³⁸The operator of Coventry Airport had made an application for a 2 mppa terminal. The appeal against refusal of this application was later withdrawn. The DfT clarified its position in a letter from the Parliamentary Under-Secretary of State: 'Our preferred option for the provision of additional capacity to serve the region's air transport requirements is for the development of an additional runway at Birmingham Airport'.

³⁹7/12/07 meeting with BAA.

⁴⁰Minutes of the White Paper Executive, 4 October 2006: Point 3.15.

117. BAA told us that non-White Paper options were extremely unlikely to secure permission. The DfT's view was that while the White Paper gave support to particular developments, and made clear that it would not seek to overturn the 1979 planning agreement preventing construction of a second runway at Gatwick before 2019, decisions on other developments would be made as part of the planning process on their individual merits.
118. However, this view by the DfT seems to be contradicted by the fact that the White Paper includes comments not only on the suitability of large expansion plans (which are clearly of importance to the national economy), but also on smaller airports, as noted above. In this respect, the recent application⁴¹ for a 2 mppa terminal by Coventry Airport⁴² is interesting. In his conclusions, the planning inspector considered that the development would conflict with policy because, inter alia, the complementary role of Coventry Airport, which had been identified in the Regional Spatial Strategy and the White Paper, would be diminished. The inspector added that although the development would make beneficial use of existing airport infrastructure, he had considerable doubts whether it would represent the *best* use as required by the White Paper, given that it would detract from Coventry Airport's specialist niche role for freight operations, for which the availability of public transport was less important, and would duplicate passenger services already available at a nearby airport much better served by public transport. There was, therefore, a conflict with the White Paper policy,⁴³ which weighed against the proposal. Ministers agreed with the inspector's views. Of particular interest are the following remarks in the Ministerial decision letter, which appear to favour coordination over competition between airports:

The Secretaries of State agree with the inspector that it is relevant to bear in mind that there is an alternative airport (Birmingham International) only a few miles from Coventry Airport, offering services to similar destinations (but within a much wider range of destinations), itself a major transport interchange, and that if the appeal is dismissed, virtually all the services which would have been provided would be readily available a relatively short distance away at Birmingham International Airport. On that basis, they agree with the inspector that, on the face of it, there is some merit in the argument that there is no need for the proposed development, and it also has a bearing on the sustainability objective of reducing the need to travel by car.

We note that Coventry Airport was found not to conflict with the development of Birmingham in relation to airspace capacity. We also note that Warwickshire County Council, Coventry City Council and the LPA (Warwick District Council) supported Coventry Airport's application.

119. The Planning Inspectorate told us that although the White Paper had made it clear that Birmingham was to be regarded as the primary regional airport, it did not regard this as being absolutely determinative.

⁴¹Coventry Airport lost its appeal against the Secretaries of State's decision to refuse permission in the High Court on 6 October 2008.

⁴²Appeal by West Midlands International Airport Ltd. Land at Coventry Airport South, Siskin Parkway West, Coventry. Report by the inspector dated 12 January 2007.

⁴³The 2003 White Paper had stated that:

Coventry Airport currently serves a specialist role within the region, catering for business aviation, air mail and some freight, and can continue to perform this role within existing constraints. There is a current planning application for a terminal development at the airport. However, in the light of our conclusions on capacity elsewhere in the Midlands, and having regard to potential surface access, environmental and airspace constraints, we would not envisage any significant further development being appropriate beyond the level of passenger throughput in the current application.

120. It was put to us by London City that the review of the White Paper (which is expected to take place between 2009 and 2011⁴⁴), would provide an opportunity for airport operators to put forward new schemes and ensure that the policies remained up to date with market developments. However, the DfT told us that this was not the case: airport operators had had the opportunity to put forward schemes in the run-up to the White Paper and the focus was now on the delivery of the projects which were supported by the Government. There was no plan to consider new schemes in the short to medium term.

Views of BAA

121. BAA told us that it fully supported the White Paper and that working within the framework that it set would be the quickest way to deliver capacity at its airports. In addition, BAA identified a number of benefits resulting from location-specific airport policy: it reduced blight to local communities; it gave confidence to airport operators to invest; and it helped to coordinate important stakeholders. These statements are consistent with the Government's rationale for the White Paper. BAA did not identify any weaknesses in the policy. BAA was of the view that any disturbance to the policies contained in the White Paper would in turn adversely affect the capability of the planning process to assist in timely delivery of government policy.
122. According to BAA, in a scenario where planning policy did exist but encouraged competition between airports (eg a runway race) there would be a number of adverse consequences including:
- (a) no airport operator could approach the submission of its own planning application with any confidence that it would necessarily be supported by Government, which would be likely to result in lower investment in the quality of the application process of a reluctance to proceed at all;
 - (b) residents living close to the various potential candidate airports would suffer years of uncertainty;
 - (c) regional and local plans would not be capable of being prepared with the confidence of providing for the necessary employment and housing land implications of airport expansion;
 - (d) no specific regional or local plan would be obliged to incorporate policies to support individual airport projects; and
 - (e) major statutory providers such as the Highways Agency or Network Rail would be reluctant to develop coordinated plans for the expansion of individual airports and unable to develop their investment strategy with any confidence.
123. According to BAA, such a policy approach would result in longer and more uncertain planning inquiries and it was very likely that joint inquiries would need to be held between competing proposals, so that their relative merits could be considered:
- (a) it would at least double the number of participants at the inquiry;

⁴⁴John Healey (Minister for Local Government) reported during the debates on the Planning Bill that: The aviation White Paper is due and the Government are committed to reviewing it sometime between 2009 and 2011. At that point, should the Secretary of State for Transport wish to review it, either as it stands or as the basis of a national policy statement, she would have to consider policy questions about whether it was sufficiently up to date, current and comprehensive. I guess that those would be policy matters for her. (Thursday 17 January 2008).

- (b) competing applicants would be likely to cross-examine each other so that the airport operator's case would be not only positive in respect of its own proposals but would be likely to be destructive of the competitive proposal; and
 - (c) planning applications and environmental statements would be more complex. It would be more difficult to forecast with any certainty the throughput of an airport proposal, for example because there would be no certainty about which other airports would be approved. Environmental impact would, therefore, be less certain and any planning decisions would be at greater risk from challenge.
124. BAA said that the clarity of the White Paper meant that key strategic issues relating to forecasting, the need for a particular airport expansion and the benefits of airport expansion could claim to be 'settled'. Under a policy of generalized, rather than specific, support, objectors would be expected to argue that alternative expansion could be provided at other airports. In addition, BAA argued, airport operators would be employing tactics to frustrate other operators' planning applications, including:
- (a) objecting to proposals during the inquiry, as had already been the case in the past;
 - (b) gaining planning consent but not undertaking the investment, in order to reduce the need or capacity case for competitors' proposals;
 - (c) covertly or overtly funding third party objectors, ie local groups who live in the vicinity of an airport;
 - (d) acquiring land directly through nominee companies adjacent to competitor airports in order to thwart expansion plans; and
 - (e) seeking to influence the investment plans of infrastructure providers to ensure that rail, road or similar capacity was directed towards their own airport, rather than a competing airport.
125. BAA's planning advisers, RPS, noted that some might regard the level of specificity of the White Paper as overly prescriptive, but added that there were a number of reasons why it represented a sensible approach, including:
- (a) promoting a sequence of development avoided combined public inquiries and the prospect that a choice needed to be made between the different proposals;
 - (b) the development of a third runway at Heathrow was inevitably delayed for environmental reasons;
 - (c) were the White Paper to have favoured either Heathrow or Gatwick for the development of the next runway after Stansted, uncertainty would have been created for both airports and the communities in which they were located and decision making would be more difficult;
 - (d) specifying a wide-spaced runway had the advantage of identifying the importance which the Government attached to capacity gains; creating greater certainty for the planning inquiry that the normally larger impacts of wide-spaced runway development were likely to be acceptable; and inevitably reducing the length of the inquiry because of the lesser need for alternatives to be discussed;
 - (e) given the depth of the SERAS study, there was every reason why policy could legitimately be so specific; and

- (f) the consequence of the above was an increased prospect of delivering capacity as close as possible to when it was needed.

Views of third parties

126. The Planning Inspectorate told us that the absence of clear government locational policy for provision of additional runway capacity between 1985 and 2003 would clearly have been likely to make any planning inquiries far more wide-ranging and long running, but such a lack would not have precluded attempts to make provision in an absolute sense. The Planning Inspectorate noted that the impact of the development of one airport on the economic role of another airport might be considered in a planning inquiry if it was a material consideration relating to the proposal being considered. However, unless the competitor could demonstrate harm, the views of competitors would in themselves be unlikely to attract significant weight. Under the present system, it would be very rare for alternative options at other airports to be a relevant consideration, given the locational specificity of the White Paper.
127. London City told us that the White Paper had attempted to fill the policy gap, largely successfully. In general, the White Paper enhanced competition by making it easier to succeed in development applications that were compatible with it. Criticism that the White Paper was too location-specific was misplaced. Had it not been location-specific, it would have been a failure. London City's circumstances and needs, for example, would not have been properly covered in a non-location-specific White Paper. The White Paper had dealt with London City helpfully. Admittedly it had made it more difficult for those airports whose schemes were not supported. However, the absence of a scheme from the White Paper did not necessarily preclude it getting the go-ahead. Indeed the processes mapped out in the White Paper allowed new schemes to be brought forward.
128. The GOSE also drew our attention to the need for clear government policy, giving the example of motorway service area developments, in relation to which lack of clarity had led to planning paralysis as objectors had been able plausibly to argue in any given case and location that the development application should be turned down because the promoters were not able to prove that there was not a better site elsewhere. The GOSE also noted that the DfT's approach to major airport development was different from that applied to significant infrastructure development in the ports industry. Because the rate of expansion required for the South-East's airports was massive and immediate (given that the current level of capacity was clearly inadequate), because airport projects had different impacts from, especially, infrastructure developments at ports (in terms of noise, air quality and overflying safety considerations) and also because they were so controversial, the White Paper was quite specific as to the location of, as well as the need for, new airport development. For ports, where there was somewhat more spare capacity anyway, the DfT was leaving location issues to the market and concentrating more on the general capacity requirements resulting from its predicted levels of growth in, especially, container and roll-on roll-off traffic.
129. By contrast, Coventry Airport was of the view that the Government should not decide by how much an individual airport should grow—this should be decided at local level. If government support was needed in order to get developments past local opposition, then the Government should set broad parameters rather than absolute limits on development.

The future of the White Paper in the context of the Planning Act 2008

130. CLG told us that the Planning Act 2008 set out, at a high level, what NPSs might cover, requirements for consultation and a sustainable development duty, but decisions on whether there would be a larger number of separate NPSs or a smaller number with a suite of annexes, and on the detailed content they would contain, would follow. An NPS would be designated by the relevant Secretary of State following public consultation and Parliamentary scrutiny. Government departments would have to be cognizant of the legal requirements for an NPS and the need not to adversely affect competition. The purpose of the reform was to ensure that those infrastructure investments which were needed were delivered. It was not intended to fetter the ability of operators to bring forward new projects.
131. CLG was not necessarily expecting the majority of NPSs to be overly specific in terms of location or site and regarded the White Paper as simply one model. The intention, generally, was that NPSs would set out the criteria to be applied in deciding whether a location was suitable for a specified description of development.
132. BAA argued that it was not only the aviation sector where the Government was knowingly seeking to influence the location of major infrastructure, as evidenced by a number of government policy statements relating to nuclear power stations. Although a number of the statements identified for these purposes by BAA emphasize the importance of being as locationally specific as possible, they also make it clear that the current intention is for the NPSs to focus on the identification of the criteria for the assessment of sites, although this may result in the identification of the most suitable locations.
133. We accept that the Government currently intends that both the NPS on nuclear power and the NPS on airports will be site-specific. However, it is not entirely clear at this stage what is meant by this objective in practice. We have reviewed the White Paper on Nuclear Power and consider that the evidence does not support the view that site-specificity in relation to the NPS on nuclear power is likely to go beyond identifying the criteria for identifying the most suitable sites and providing a list of potential sites. Although difficult to judge at this stage, the proposals set out in the White Paper on Nuclear Power seem to us much less specific than those in the White Paper, which identifies suitable sites for development; the sequence and possible timing of investments; the nature of each development (eg what capacity increase the development is expected to deliver; whether it will be a new runway, the extension of an existing runway, a terminal etc). It also prioritizes between sites (eg Heathrow over Gatwick, even though it recognizes that Gatwick's case is strong on its own merits) and supports a specific commercial role for certain airports (eg for business aviation or for freight). In any event, it is far from evident that nuclear power stations and airport developments should be subject to a similar approach by the Government, since the two industries work within very different legal and operational frameworks. We therefore consider that there is limited value in drawing comparisons between the policies underlying each industry, beyond acknowledging that for both industries the Government is intending to develop a site-specific NPS.
134. It also remains unclear at this stage whether the White Paper will be designated as an NPS, in whole or in part: CLG commented that air transport issues had featured significantly in the responses to the Planning Bill consultation. It was understood that the DfT's aim was to establish a statement for aviation incorporating the White Paper in a way which meets the Government's proposed policy and statutory requirements for NPSs; the DfT was already committed to produce a further progress report between 2009 and 2011, which would provide a good opportunity to designate the White Paper in conjunction with that report. Government departments would have to

be cognizant of the policy and legal requirements for an NPS and the need not to affect competition adversely. In deciding whether to designate the White Paper as an NPS, the Secretary of State for Transport would be able to take into account the sustainability analysis and consultation carried out for the purposes of complying with the statutory and policy requirements for NPSs. We note that the Minister for Local Government stated during the debates on the Planning Bill that it was very likely that any proposed NPS on airports, whether it was a development of or the actual White Paper, and irrespective of what public consultation was deemed appropriate, would be subjected to Parliamentary procedure.⁴⁵

Overall views on the effects of government policy on competition

135. As noted above, the Barker Report stated that Statements of Strategic Objectives would have to ensure that they did not attempt a level of specificity that would unduly constrain the market and would have to be reviewed regularly to ensure that assumptions within them remained up to date. We have developed our view of the White Paper in accordance with these principles.
136. Our consideration of the Government's air transport policy is concerned only with the possible consequences of the White Paper on competition. We are not expressing views on the merits of the policy itself.
137. Overall, our view is that:
 - (a) The White Paper has provided a policy framework for planning airport expansion projects, which is widely regarded as being necessary and useful, to facilitate, and indeed encourage, investment. The previous lack of such a framework had been widely identified as a serious hindrance to airport development in the UK.
 - (b) However, there are aspects of the White Paper which have the potential to restrict or distort competition. In particular, by supporting the location and indicating a preference for the timing of additional runway capacity at Stansted and Heathrow, and also stating that a new runway at Gatwick would only be supported if there was no alternative way forward, it appears to have at least two negative consequences. First, against the background of uncertainty over at least the timing of expansion at both Stansted and Heathrow, given the need to obtain planning consent, it arguably raises the risks of further delay to much-needed new capacity in the South-East. And second, it may make it more difficult for projects which have not received explicit Government support in the White Paper to obtain planning consent. While planning applications for projects which have not received explicit government support in the White Paper will be considered on their merits, given the level of specificity adopted in the White Paper, they are unlikely to be in as strong a position as if they had explicit support in the White Paper.
 - (c) There may be other consequences for competition. In particular, since government policies in the White Paper were based on an assessment of specific proposals put forward by airport operators at the time, and although the Government has kept them under regular review, the market for airports and airlines has changed and developed and can be expected to continue to do so, though in ways which may be unavoidably out of step with the high level of detail specified in the White Paper.

⁴⁵Public Bill Committee, Thursday 17 January 2008 morning session.

- (d) Also, by specifying the nature of the services that certain airports should provide, the White Paper may restrict the ability of such airports to develop and respond flexibly to market developments. This is illustrated by the outcome of the application by Coventry Airport for the expansion of its passenger terminal. The airport's niche role for freight operations, as identified in the White Paper, was one of the reasons advanced by the planning inspector for recommending the rejection of the application. The White Paper similarly identifies specific roles for some of the smaller airports in the South-East, thus potentially constraining their ability to develop in competition with BAA airports in the future.
- (e) The specific nature of the White Paper also blurs the boundaries of responsibility between the Government and the airport operator, particularly where the Government has commented on the type of runway configuration it supports. While the White Paper states, in relation to Stansted, that responsibility for taking specific airport developments forward in a way that is responsive to users lies with the commercial airport operator, it is difficult to reconcile this with a government policy which favours certain specific locations for development over other suitable locations, which identifies specific levels of capacity development at each location underpinned by government forecasts of demand, and which in some cases indicates a preference for the timing of such developments. There must be a risk that in practice the type, scale and timing of airport developments may become disconnected from the operational needs of airlines and customer requirements.
138. The White Paper expresses views on a wide range of commercial airports in the UK, irrespective of their size and economic impact. Given the principles set out by the Barker Report that decisions should be made at the spatial level that best reflect spill-over effects on the economy and that projects that are of national significance should be determined at the national level, while preserving the democratic mandate given to local authorities, it is unclear to us why the White Paper needs to be specific in relation to airports which have an evidently limited impact on the national economy. We note that past aviation policy statements have tended to set specific policies for the small number of large airports within a more general framework to be applied to other airports.
139. We note that there currently appears to be no plan to review the policies set out in the White Paper to take into account changes in the market or to give an opportunity to airport operators to put forward new schemes, even though some developments identified in the White Paper have proved to be commercially unviable and are therefore not being taken forward.
140. We also remain unconvinced by the argument that a less prescriptive approach would lead to planning paralysis in the South-East:
- (a) It is not clear to us that a policy which sets the total maximum amount of capacity to be provided within the South-East over the next few decades and identifies locations which are suitable on their own merits (without attempting to prioritize them or to set timetables for delivery), would not be equally effective.
- (b) We note that since the TCPA 1990 there has been at least one occasion when two airports put forward competing development proposals: Manchester and Liverpool in the 1990s. Ministers, in their decision on MAG's application for a second runway, made it clear that it would be inappropriate to assess the respective environmental impacts of the two airports when Liverpool was the subject of a separate planning application, and decided not to reach any conclusions on the overall respective merits of the two airports. As noted previously, MAG success-

fully gained planning permission for its second runway within relatively short timescales. Similarly in the South-East, the 1981–1983 airport planning inquiries considered two alternative proposals: a new terminal at Stansted (supported by BAA) and a fifth terminal at Heathrow (supported by Uttlesford Council). These two examples indicate that the planning system is able to cope with simultaneous proposals.

- (c) We accept that if the approach chosen was to carry out a planning inquiry into more than one airport development proposal, its duration might be extended, but we are not convinced that this approach would necessarily be less efficient, given that the studies and development of the White Paper took five years and examined development options which ultimately proved to be commercially unattractive. It also seems to us that a process in which the merits of two competing proposals are debated in the open forum of a public inquiry has the potential to be more transparent.
- (d) In the past, airport operators have both supported and objected to planning applications by other operators. It is not clear to us from our review of inspectors' reports that their views systematically made any difference, positive or negative, to the outcome of the inquiries.
- (e) We consider that the tactics described in paragraph 124(b) to (d) may arise in a competitive environment, but we note the following:
 - (i) obtaining planning permission as a 'spoiling tactic' (ie with no intention of undertaking the investment) would not only incur significant costs, but might also damage the credibility of the airport developer concerned as regards other planning applications, especially if these involved the compulsory purchase of land;
 - (ii) similarly, although an airport operator could theoretically fund third party objectors, such tactics might damage its credibility in the eyes of policy-makers and might affect its ability to gain planning permission for its own schemes;
 - (iii) there is less incentive to engage in such tactics in a capacity-constrained market, experiencing significant demand growth; and
 - (iv) acquiring land adjacent to competitor airports would be ineffective if the airport had CPO powers (which is the case for BAA London airports).
- (f) We accept that if there were competing airport proposals in the same region, obtaining support from other infrastructure providers (such as the Highways Agency or Network Rail) might be more difficult, as the Government would not be able to direct its efforts to a specific development. We do not see any reason why this could not be solved by putting in place the right economic/financial incentives.

Section 52 and section 106 agreements

141. Planning conditions and agreements, where appropriate and reasonable, can facilitate the growth of airports by allowing operators to secure planning approval which would not otherwise be obtained. They can, however, also be a significant constraint on growth, if they go beyond what is necessary to secure the planning permission to which they relate.

142. Third parties have commented on BAA's apparent willingness to fetter long-term capacity expansion opportunities for short-term gain.
143. BA told us that at the T5 planning inquiry BAA had invited the planning inspector to rule out both mixed mode on the existing Heathrow runways and also a third runway when no evidence on future development had been presented to the inquiry. This is described in the T5 planning inquiry report: the planning inspector reported that BAA had asked him to recommend that a third runway be ruled out and had commented that the construction of a further runway was not a practical proposition. BAA was also reported to be firmly opposed to the introduction of mixed mode. In his conclusions, the inspector placed only limited reliance on BAA's request and placed more weight on the Government's commitment to undertake a review of national aviation policy after deciding the fate of T5 (paragraph 34.5.30). 'In the context of the Government's review, it should be assumed that no further major development would take place at Heathrow after T5' (paragraph 34.5.31) (paragraph 81.4 of the T5 report). BAA told us that its comments did not hinder the further consideration of Heathrow for a third runway. By contrast, in the course of the R2 inquiry, MAG did not express views on the need for a third runway. The company had signed, prior to the start of the inquiry, an agreement not to build one before 2011, only ten years⁴⁶ after the second runway came into operation. Given that the T5 inspector's conclusions that BAA's request that he should rule out the building of a third runway did not help the company win approval, it is also unclear to us that making this potentially highly constraining offer was necessary to obtain permission for the T5 development.
144. In addition, in 1992 BAA entered into a section 106 agreement with Eastleigh Borough Council, which places an absolute restriction on its ability to extend the runway at Southampton. We note the GOSE's view that Eastleigh and other councils in the area are supportive of the growth of the airport. BAA told us that it had been committed to development restrictions at Southampton (comprising a Flying Controls Agreement and an Airport Development Agreement) as part of the acquisition of the airport. BAA told us that there was no scope for it to renegotiate with Eastleigh the substance of the runway restrictions contained in the draft agreement which had been negotiated by the previous owners in order to obtain an outline planning permission for the development of two business parks within the existing airport parameter. It added that the physical restrictions of the site were well known at the time and Eastleigh had taken the view that the runway development restrictions would not affect the current or future operations of the airport. We understand BAA's reluctance to renegotiate the draft agreement, given the physical restrictions of the airport; the perceived growth prospects at the time; and the risk that doing so would have posed to the willingness of the owners to sell.

The 1979 Gatwick agreement

145. The then British Airports Authority entered into an agreement under section 52 of the Law of Property Act 1971 in respect of Gatwick Airport with West Sussex County Council (West Sussex) as part of the process to obtain planning permission for the construction of the North Terminal and associated stands and taxiways.
146. The agreement states that for a period of 40 years from the date of the agreement (13 August 1979) the British Airports Authority 'will not construct or cause or permit to be constructed on land at Gatwick airport a second operational runway or any part of such a runway for the taking-off or landing of fixed wing aircraft' (see [Annex 1](#) for the full text of the British Airport Authority's covenants with the Council). [REDACTED] An argu-

⁴⁶An additional runway would clearly not be needed within ten years.

ment was made during the 2002 judicial review of the Government's SERAS consultation document that preparatory work could be carried out before 2019, which would allow the opening of the runway by 2021.⁴⁷

147. BAA questioned the relevance of the conduct of the British Airports Authority, under state ownership and control, nearly 30 years ago in providing an understanding of the current impact of the planning system and government policy. BAA commented that the 1979 agreement was a continuation of government policy from the 1960s to protect land around Gatwick from runway development. However, the Minister's statement to Parliament at the time was: 'The present Government were not consulted about the agreement and are not parties to it. Not being parties to the agreement, the Government cannot be bound by it.'⁴⁸
148. BAA added that the section 52 agreement helped consent to be achieved for very significant capacity gains and had not constrained the growth of the airport. We do not accept that the agreement has not constrained growth: the declared runway capacity of the airport has not increased since 2002 and demand for slots has exceeded supply for a number of years. Given that under the agreement, it is estimated that a new runway could not be operational at Gatwick before 2023, it could be said that the section 52 agreement will constrain growth at Gatwick for the next 15 years or so.
149. BAA explained that it had not tried to seek to discharge this agreement at any point. This was confirmed by Crawley Borough Council (Crawley). BAA told us that it considered that it would be unwise to do so because any attempt to set aside the agreement would be unsuccessful. In its view, an unsuccessful attempt would be both damaging to relations with local authorities and costly. In addition, BAA provided legal advice to the effect that it would be very unlikely that any of the grounds for a discharge by application to the Lands Tribunal would apply and the application would be strongly contested by a number of affected parties. BAA added that it believed West Sussex would not have agreed to amend or discharge the agreement and that the Government would not have been prepared to override the agreement by an Act of Parliament. However, we note that on a number of occasions throughout the 1980s and 1990s, it was stated by various parties, including the RUCATSE working group, that the Government had said that since it was not a party to the agreement it could not be bound by its terms. The Government has, however, separately stated on a number of occasions that it recognizes the importance of the agreement.
150. Virgin told us that it seemed unlikely that an independently-owned Gatwick would have agreed not to seek to build another runway before 2019, as it did not make commercial sense.
151. After 1985, the Government actively sought advice on the need for a new runway in the South-East and Gatwick was identified by study groups as a suitable location for such investment. The RUCATSE report reiterated the view that the British Airports Authority had entered into the section 52 agreement independently of the Government and earlier than the 1985 White Paper and that the Government did not consider itself bound by its terms.⁴⁹
152. The Government also asked BAA to study the feasibility of a close parallel runway at Gatwick in 1995. This is highly relevant in that planning inspectors should have

⁴⁷The Queen on the application of (1) Medway Council and Kent County Council (2) Essex County Council (3) Norma Mead and David Fossett and Secretary of State for Transport, 26 November 2002.

⁴⁸Hansard HL Deb 23 Oct 1979 Vol 402 cc 8–11.

⁴⁹Runway Capacity to Serve the South East, a report by the working group, paragraph 6.

regard to Ministerial announcements in Parliament and at other public occasions, not just White Papers.⁵⁰ BAA told us that there was an indication that the Government might be prepared to seek to overturn the 1979 agreement. BAA, however, added that none of the issues identified in this paragraph and paragraph 151 could be claimed to represent statements of government policy on airport policy and, as such, they could be expected to have no (or very little) force in the context of a public inquiry.

153. In its response to the Government's consultation on RUCATSE,⁵¹ BAA explained the circumstances that had led to the signing of the 1979 agreement, tentatively suggesting that the situation at Gatwick should be reviewed due to change of circumstances:

[The agreement] followed a direction from the Government in the 1970s to give up the safeguarding for a second runway at Gatwick. At that time, it was envisaged that government airports policy would lead to the identification and construction of a new two-runway airport elsewhere in the South East, ultimately displacing Gatwick from second to third place in terms of size. The Government did indeed identify Stansted as the location for such a two-runway airport in 1979 but subsequently made a further policy decision not to pursue a two-runway airport there in the light of circumstances at that time. ... There may thus be circumstances which justify a review of the position of Gatwick.

This appears to contradict BAA's evidence to us that it considered at the time that the conditions that would have permitted it to obtain government support for a discharge of the agreement were entirely adverse.

154. Crawley noted that BAA had not at any stage sought to bring the agreement to an end, particularly in the mid-1990s when the RUCATSE report was published and when BAA had been asked by the DfT to carry out a feasibility study for a close-parallel runway. It appears from Crawley's evidence to us that from its point of view the case for or against a close parallel runway was a finely balanced one.⁵² We also note that BA was at the time actively pursuing the development of Gatwick as an alternative hub airport for its operations (the 'the hub without hubbub strategy'), which could have given BAA an additional commercial incentive for seeking to annul the agreement. BAA told us that BA's attempt to develop Gatwick as a second hub to Heathrow had little or no relevance to the issue of the 1979 agreement due to the time taken to develop a new runway and because the decision was reversed shortly after it was launched. Such a view illustrates BAA's lack of responsiveness to its airline customers, given that BA was and still is by far BAA's largest customer and remains the UK's largest airline.⁵³ We also understand that BA attempted to build Gatwick as a second hub from 1995 to 2000 (ie that the strategy was not reversed shortly after it was launched), and that the lack of runway capacity and awkward airport layout at Gatwick had been significant factors in BA's decision to reverse the strategy and concentrate its Gatwick operations on the point-to-point segment.⁵⁴
155. BAA made in September 1999 a 'Unilateral Statement of Intent', setting out its commitment to limiting as much as possible the effects of the airport's growth and impact on the environment—a statement which remains in force until 31 December 2018. One of the provisions confirmed that the 1979 Agreement was 'unaffected by this

⁵⁰Inspectors Handbook GP1.

⁵¹BAA/CC2008/531, Attachment 4—RUCATSE submission by BAA plc—Draft 3, paragraphs 35 and 36.

⁵²Views expressed in relation to the SERAS consultation on runway options at Gatwick.

⁵³In 2007, it accounted for 41 per cent of UK airline capacity (in available tonne kilometres), according to CAA statistics.

⁵⁴Source: Airline Network Development in Europe and its Implications for Airport Planning, Guillaume Burghouwt, pp117 & 118.

statement of intent, and the press release issued by West Sussex County Council added: 'The statement also confirms the current agreement with the County Council that no second runway should be built at Gatwick before 2019'.⁵⁵ This in effect meant that BAA would support the agreement for its duration, and was interpreted this way by the local community and others.⁵⁶ This coincided with the start of BAA's negotiations with Crawley to facilitate the incremental growth of the airport to 40 mppa. BAA disagreed with the above interpretation and told us that its Unilateral Statement of Intent could not be interpreted to support a view that BAA was too prepared to accept or offer constraints upon itself not to expand further at airports in order to secure planning permission.

156. In its 2002 consultation document, the Government said that it had considered that the agreement preventing the development of a third runway at Gatwick before 2019 should not be overturned.⁵⁷ BAA concurred in its response to the Government. However, it supported the inclusion of Gatwick options in the short-list of potential options for development post-2019.
157. We consider that this evidence shows that if, following privatization, BAA had wished to overturn the 1979 Agreement, it is unlikely that this could have been done by obtaining the consent of the County Council or by an application to the Lands Tribunal. However, it appears that it would have been possible for the Government to have acted, if BAA had persuaded Ministers of the need to discharge the agreement to meet the changed circumstances. The evidence suggests that BAA took no step to make such representations to Ministers, and did not see runway development at Gatwick as a priority, but instead concentrated on T5 at Heathrow, followed by its current proposed developments at Stansted.

Assessment

158. This evidence suggests that BAA or its predecessors have on several occasions offered significant restrictions to development of runways at its airports in the South-East for periods of time which are unusually long, considering that a right to apply for modification or discharge of a planning obligation would now normally arise after five years in respect of agreements entered into after October 1991 (when section 12 of the Planning and Compensation Act 1991 came into effect).
159. Although we have had evidence of other, non-BAA, airports entering into planning obligation agreements, to our knowledge none has agreed to be subject to restrictions for a period of time comparable with those agreed by BAA and its predecessors.
160. It appears to us that these restrictions, in particular the restriction on runway development at Gatwick, have not only restricted BAA's freedom of decision in responding to the need for additional runway capacity in the South-East, but may also have been an important factor in influencing government policy, such as not considering the option of expanding Gatwick in *The Future Development of Air Transport in the United Kingdom*, the original 2002 consultation paper on the future development of air transport in the South-East referred to in paragraph 121 of Appendix 4.3.

⁵⁵FN—Press release 445 of 23 September 1999.

⁵⁶See comments by the judge in the Medway Council case; minutes of meeting held by Gatwick Airport Consultative Committee on 30 January 2003; CC meeting with Crawley Borough Council.

⁵⁷This is described in more detailed in Appendix 4.3.

Development of government policy in the 1990s

161. The purpose of this section is to examine how government policy in relation to airports expansion in the South-East has been formed since the privatization of BAA.

BAA's views

162. BAA said that successive governments had taken the view that there should always be a government-led approach to airport development. BAA added that until the White Paper, policy had been based on making best use of existing runway assets, since the Government's view was that there was sufficient runway capacity. Government policy to meet expected demand was to develop terminal and other non-runway capacity, not to provide new runways.
163. According to BAA, the 1985 White Paper took the view that existing runway capacity was sufficient for the period it covered, that is up to 1995, although BAA conceded that there was a hint that in the late 1990s there might be more of a case for extra runway capacity. Generally, the Government's attitude in the mid-1980s was, in BAA's view, that the airport operator should decide when but not necessarily where developments should be carried out. This would be considered alongside the Government's view of where and when development was needed as a matter of public policy. BAA was of the view that, in any event, in the absence of clear policy support it was extremely difficult to bring a major airport project to fruition. It argued that this was a particular problem for the South-East (where policy was actively opposed to runway development) and that MAG had not been constrained to the same extent. The 1985 White Paper had expressly excluded second runways at Gatwick and Stansted and had spoken only of the potential for new terminal capacity.
164. BAA also said that the succeeding RUCATSE work had resulted in options for additional runway capacity but the Government had decided not to pursue the options identified, although BAA had pressed for more development of capacity at its South-East airports. The Secretary of State for Transport had announced in 1995 that BAA should not consider the options for a second runway at Gatwick or a third one at Heathrow but should instead examine 'less damaging' options such as a 'close parallel' runway at Gatwick. In 1998, the new Government had asked BAA to stop work on the close parallel runway at Gatwick, citing its intention to develop an integrated transport policy. BAA felt that it had no choice but to comply, but had hoped that this might lead to a fresh review of runway options (which it did in due course).
165. The new Government published the Integrated Transport White Paper, *A New Deal for Transport: Better for Everyone* in 1998 (the 1998 White Paper). This contained a commitment to developing a new airports policy. SERAS had followed (and other studies for the rest of the UK). The results were put out to consultation (and there was a judicial review on the consultation exercise's omission of Gatwick from the extra runway capacity debate). BAA had identified four new potential runway options—Heathrow, Gatwick and two at Stansted—and had supported the meeting of demand which would require three new runways. BAA told us that:

it had worked hard to ensure that Government policy supported the continued growth of air travel and that securing Government policy support for the development of two runways at its London airports represented a major achievement for BAA, and provided a window of opportunity for the company to provide a substantial increase in capacity at its airports over the period to 2030.

Review of the evidence

166. In this section, we consider how government policy on runway development in the South-East was shaped in the 1980s and 1990s, drawing upon public sources and BAA's internal records.
167. We accept that government policy has a significant impact on airport planning, although we note the Planning Inspectorate's comment that the absence of a national policy statement on runway capacity in the 1990s would not have precluded attempts to make provision for a new runway in an absolute sense but would have made any planning inquiries likely to have been far more wide-ranging and long running. Our review of contemporaneous evidence, including transcripts to the T5 inquiry, also suggests that following the privatization of BAA in 1987, the Government considered that it had a lesser role to play in decisions on where and when infrastructure, including runways, should be built and that this should be largely left to the market. The Government considered that it could only express a definitive view when the applications were eventually made and called in. The Government sought through its airports policy to provide a framework which would guide airport operators but did not seek to specify particular sites. The Government expected airport operators to take a long-term view and plan sufficiently far ahead. In addition, the Government did not seek to dictate the timing for bringing forward applications, but might provide an indication of possible timescales.⁵⁸
168. In addition, the evidence, which we discuss below, suggests that the formation of government policy is the result of much interaction with airport operators and other stakeholders and that blaming the lack of investment in runway capacity in the South-East on lack of government policy both underplays the responsibility BAA had to bring forward investments in time to meet demand and fails to recognize the influence BAA could have had on the shaping of that policy.

The 1985 White Paper and privatization of BAA

169. We have already discussed a number of the statements of policy included in the 1985 White Paper. Another key objective set out in the paper was 'to make the best use of existing facilities and provide new capacity only when this is economically justified'. The 1985 White Paper clearly stated, inter alia, that a second runway should not be built at Gatwick and acknowledged the existence of the agreement between BAA and West Sussex that no second operational runway should be built for a period of 40 years.
170. The BAA privatization prospectus⁵⁹ stated that responsibility for developing capacity was with the airport operator, whilst recognizing the Secretary of State for Transport's role in encouraging or facilitating such investment.
171. The prospectus stated that a key aspect of BAA's business was the development of airport capacity in time to meet demand and added that the planning process, together with the lead times involved in construction, made it necessary to plan new developments well in advance. The prospectus identified runway capacity as a particular constraint at Heathrow and Gatwick. This was a major reason for the development of Stansted, which had significant spare runway capacity. The prospectus also described the involvement of the Secretary of State for Transport and the CAA in the development of airport capacity:

⁵⁸This is discussed at length in transcript 71 of the T5 inquiry.

⁵⁹BAA Offer for Sale by County NatWest Limited on behalf of the Secretary of State for Transport.

(a) In July 1986, the Secretary of State had asked the Chairman of the CAA to set up a committee to examine, in the light of the interrelationship between airspace management and runway utilization, what further capacity for aircraft movement could be made available at Heathrow and Gatwick within current environmental constraints.

(b) Under the Civil Aviation Act, the CAA is required to review the provision of airport capacity in the UK from time to time and to make recommendations to the Secretary of State arising from such reviews. The Secretary of State has power under the Act to direct the CAA to take such steps as it considers appropriate to encourage or to facilitate the provision of any facilities or services in accordance with its recommendations.

172. Also relevant to our consideration of these issues is the fact that the Government had put in place in 1986 traffic distribution rules⁶⁰ prohibiting the use of Heathrow by new entrant scheduled services and by whole-plane passenger charter flights. The aim of these rules was to help cope with mismatch between airports within 'the London system'.

The CAA's study

173. In 1988, the Government asked the CAA to review traffic distribution policy and airport and airspace capacity.

174. In its preliminary advice provided in February 1989 (CAP 548), the CAA concluded that a new runway for the London area was likely to be needed in about 2000 and that planning for one should begin. In parallel, the House of Commons Transport Select Committee produced a report on Air Transport Safety. This included a number of comments on the need for additional runway capacity and identified Gatwick as a particularly well-suited location.

175. The CAA delivered its final advice in 1990 (CAP 570). In its covering letter, the Chairman of the CAA, Sir Christopher Tugendhat, stated: 'I cannot emphasise too strongly the importance I attach to early identification of the next site for major runway development'. It stated that although Heathrow and Gatwick were already nearly full, and although some were arguing that a new runway should immediately be built at either of these two airports, its assumption was that no additional runway capacity to meet demand in the South-East would be justified until the existing capacity at the present major South-East airports (ie including Stansted) was virtually full. The study confirmed the findings of the CAA's consultative paper, CAP 548, that a new runway would be needed in the first few years of the following century:

The forecast suggests that the London area runways will be completely full in the middle of the next decade, with even Stansted becoming congested in peak periods in the years immediately preceding. The precise dates are debatable and will, as explained, depend on the accuracy of the assumptions on economic growth, the rate of increase of aircraft size etc, but it is vital that if the principle is accepted that additional capacity will be needed at around the turn of the century the site should be designated as soon as possible. This need is not dictated primarily by all the necessary planning and consultation, although this will indeed

⁶⁰TDRs were first introduced in 1978 at the south-east airports and were designed to relieve growing pressure on Heathrow and to build Gatwick as a more efficient airport. The right to make rules was enacted in the Airports Act 1986 under section 31, which allowed the Secretary of State to make rules providing for traffic to be distributed between airports serving the same area.

take many years, but by the complexity of airspace management as traffic grows.⁶¹

The study identified ten sites which, in air traffic control terms, might be capable of handling the additional traffic, but confirmed Gatwick as the favoured site for development, as this would be preferable in terms of airline competition to development at Heathrow.

176. Internal BAA documents⁶² show that BAA disagreed with the CAA's analysis of runway capacity, and was intending to question the suggestion that runway capacity might be needed at Heathrow by 2003.⁶³ Annex 2 shows capacity and demand forecasts made in the 1990s and shows that BAA's demand forecasts tended to be towards the lower end of the range, but not materially different from the others. In any event, all forecasts of capacity and demand by BAA and others proved to be gross underestimates. BAA had considered options at its three London airports and noted that investment in a second runway at Stansted 'was likely to be the most feasible'. Aware that 'it would be difficult for BAA to avoid sounding complacent', the report recommended that the following be emphasized: lack of airspace capacity had been the cause of delays; the Government should get on with studies and consultations on the aspects not covered by the CAA; the next decisions had to be on terminal capacity; and given that the lead time to build a runway was eight to nine years, including a public inquiry, there was time to get the decision right—in about 1995.
177. We note that the timing put forward for bringing a new runway to fruition was with hindsight rather optimistic: MAG managed to bring its runway project to fruition in ten years; BAA told us that it considered that a minimum of 12 years was needed to go through the entire process.
178. In April 1989, the Chairman of BAA wrote to the Secretary of State to set out the company's views on the matter of runway capacity:
- in our view the debate has been started prematurely, but it has now gained considerable momentum and the Government must soon be ready to respond. ... Our experience of national airport planning through the late seventies and early eighties was that only the Government can control the required studies because of the range of interests involved and the limitations to the CAA's statutory duties.
- In the same letter it sketched out the scope of the required studies.
179. On receipt of the CAA's advice and BAA's representations, the Secretary of State for Transport announced that the Government was not committed to any of the options identified by the CAA, and that there was no question of any major new runway development taking place without full public consultation and an opportunity for objections to be heard. It then proceeded to set up the RUCATSE working group to evaluate the wider implications of the development options identified by the CAA.
180. The Government's involvement in airport capacity planning was also changing. The 1986 TDRs relating to passenger traffic were abolished in March 1991, which resulted in the transfer of a number of low-frequency long-haul services to Heathrow

⁶¹CAA CAP570: *Traffic distribution policy and airport and airspace capacity: the next 15 years*, paragraph 8.35.

⁶²Note for the Board of Directors of BAA plc, CAA report on runways in the South East, July 1990. These views were reinforced in a subsequent paper: *South East Airports Development Strategy*, September 1990.

⁶³This was followed by a letter dated 17 August 1990 from the Chairman of BAA to the Secretary of State, raising these concerns.

from Gatwick and the introduction of 20 new airlines to Heathrow. BAA noted this change of policy in its internal documents:

Government policy has become increasingly contradictory over the last decade or so in the sense that it has endeavoured to be more responsive to the wishes of consumers (hence relaxing the Traffic Distribution Rules and allowing more carriers into Heathrow) while at the same time wishing to see the most effective use of existing resources (which suggests a need to make use of spare capacity at the less attractive locations).⁶⁴

RUCATSE study

181. The study involved contributions from various stakeholders and the consideration of issues through a number of subgroups. Of particular interest is the Passenger Capacity Working Party involving the DfT, BA, BAA, the CAA and IATA.
182. As part of this work, BA expressed strong reservations on the approach adopted: it was concerned that the working party had been seeking to quantify the level of utilization that was likely to be achieved at busy, popular airports where supply did not meet demand. BA believed that RUCATSE should have sought to determine at what level of utilization of capacity additional runway capacity should be provided, then to determine when that level of utilization would be reached. Based on an Association of European Airlines study,⁶⁵ BA argued that 70 per cent yearly utilization was accepted as the saturation point, and it would be unreasonable to determine the timing of the need for a new runway linked to a utilization at Heathrow exceeding 95 per cent (which was the assumption made throughout the study). BA added that the approach that it was suggesting was consistent with MAG's decision to go ahead with a second runway. Noting the issues associated with a multi-airport system, BA concluded that on its chosen measure Gatwick and Heathrow, on a stand-alone basis, should already have another runway to satisfy demand, and that the trigger utilization level for the South-East system overall was rapidly approaching.

TABLE 8 Application of the 70 per cent trigger point to BAA's south-east airports

	<i>Annual ATMs*</i>	<i>Maximum possible utilization level</i>	<i>Utilization</i>
Heathrow	364.4	420	87.4
Gatwick	188.2	220	85.5
Stansted	23.8	220	10.8

Source: BA's submission to RUCATSE (29 Jan 1992) in BAA/CC2008/593.

*1990 used for LHR/LGW and 1991 for Stansted.

183. In its report to RUCATSE, the Passenger Capacity Working Party recognized the issue raised by BA and commented that its estimates of achievable passenger throughput should not be viewed as desirable levels of capacity utilization to be achieved before new capacity was provided. The cost to passengers and possible risk to UK airlines and to London from loss of competitiveness would need to be considered in the assessment of the need for new capacity.

⁶⁴Paper for the Airports Committee—RUCATSE Discussion Note, 14 December 1993.

⁶⁵Capacity of Aviation Systems in Europe—Scenario on Airport congestion, November 1987.

184. In its final report published in July 1993, RUCATSE did not, however, adopt BA's proposed approach and concluded that achievable passenger throughput at South-East airports in the absence of extra runway capacity should be assumed to be those put forward by the Capacity Working Party, namely:

(a) Heathrow: 70 mppa in 2005 rising to 80 mppa in 2010;

(b) Gatwick: 30 mppa in 2005 rising to 35 mppa in 2010; and

(c) Stansted: 30 mppa in 2005 rising to 35 mppa in 2015;

and that, even without the construction of more runway capacity in the South-East (apart from the extension to the runway at Luton), the airport system in the region could support significantly more passengers than the CAA had assumed, which it estimated to be 170 million by 2015. It concluded that the benefits to passengers could provide a case for a further runway at Heathrow or Gatwick by 2010 or, if this were not provided, at Stansted by 2015. By way of clarification, the RUCATSE working group said that it had not sought to identify optimal levels of capacity utilization at which new capacity should be brought on stream, but simply to determine the levels of capacity utilization and passenger throughput that were likely at BAA's London airports in the absence of additional runway capacity.

185. The RUCATSE report recognized that well before 2015 capacity constraints at Heathrow and Gatwick would be imposing very large costs on users, which would lead to some potential passengers not travelling and to many others travelling from airports which were more distant or otherwise less convenient for them. The report also recognized that there were costs of very high runway utilization which were not captured by its modelling procedures. These would take the form both of delays and of constraints on the range, frequency and scheduling of services.

186. The RUCATSE group concluded that only the four existing major South-East (Heathrow, Gatwick, Stansted and Luton) airports⁶⁶ offered worthwhile prospects of responding to forecast levels of demand without serious inconvenience and cost to users and excessive fragmentation of the network of services in the area. It concluded that any proposals for new runway capacity would be initiated by prospective developers and would be subject to the full rigours of the planning system. Nonetheless, its work suggested that a new runway at either Heathrow or Gatwick would be substantially taken up from around 2010; pressure for the Stansted and Luton options was unlikely to be strong before about 2015. Heathrow would afford the greatest benefits to the air transport industry and passengers, but it would also give rise to the greatest scale of disbenefits in terms of noise impact on people, land use and property demolition. Gatwick would also generate high benefits, which would have to be set against substantial environmental problems. Stansted had lower benefits, with environmental problems in many ways similar to those at Gatwick.

187. BAA gave us a number of internal documents relating to its contribution to the RUCATSE studies, which clarify BAA's thinking at the time: BAA was concerned that a possible additional runway at Heathrow would almost certainly be linked by some organizations to the T5 planning application;⁶⁷ BAA's stance had been and remained that additional runway capacity in the South-East was not required until 2015.

⁶⁶The Group did not assess the option of developing a new site.

⁶⁷This concern is identifiable in a number of formal documents, notes etc.

188. In one document,⁶⁸ BAA declared that increasingly contradictory government policy put BAA's decisions to invest in major projects at considerable financial risk. While BAA was prepared to tolerate this risk in the case of T5, it was unreasonable for it to take on the full risk of promoting the development of another runway (if this was what it decided to do) in the absence of a clearer statement of government policy and the document suggested that BAA should indicate in its submission that it was not prepared to do so. It went on to discuss the need for another runway in the South-East. It noted that [REDACTED]. BAA told us that these comments reflected the importance it attached to securing permission for T5, the planning process for which was under way at the time, and BAA's concern about the significant risks to its timely delivery. We note that an independent owner of Gatwick would not have had such concerns and might, as a result, have been keener to support runway capacity expansion at Gatwick, particularly as there were many arguments in favour of such a development, as shown by both the CAA and RUCATSE studies.
189. Following the publication of the RUCATSE report, BAA intended to communicate to the press that its priority was T5, that another runway would come much later and that there was time to study options; and that it was for the Government to balance the importance of providing airport capacity against the serious environmental consequences.
190. In its May 1994 response to the Government's consultation on the RUCATSE report, BAA stated that more time was needed to study, for each location, more innovative solutions such as the more intensive use of existing facilities, commuter runways or close parallel runways similar to the one proposed by MAG. These were in fact suggestions which had been made by BA during the RUCATSE study.⁶⁹ BAA's paper emphasized that the timing of the need for another runway could be deferred if T5 was approved and steps were taken to maximize the capacity of existing runways. An internal memo states: [REDACTED]. BAA also envisaged a more intensive use of Gatwick throughout the next decade and beyond. This would be achieved through a combination of peak spreading, increases in average aircraft loads and using up existing spare runway and terminal capacity.
191. All internal documents and submissions to the RUCATSE working group and the Government show that BAA's approach to these issues was consistently reactive and that the company had no intention of taking the lead on any issue. BAA puts the responsibility for assessing the need, deciding location and easing the way through the planning system squarely on the Government's shoulders, even though this was clearly not government policy at the time. In several letters we have seen, BAA stated that, in its view, it was for the Government to commission studies and make decisions on the location of new runway, which suggests that this opinion was not universally held (as now claimed by BAA). We also note that BAA did not appear to have carried out detailed technical feasibility studies prior to any Government-led work.
192. In addition, in its May 1994 submission to the Government, BAA stated that:
- There is an overwhelming need for a clear policy framework. In the shorter term (5–10 years) BAA would commend to Government an incremental strategy for meeting demand and for Government to ensure that it puts in place a series of policies designed to support that strategy. For the longer term, Government needs to consider the inter-

⁶⁸Paper for the Airports Committee, RUCATSE Discussion note, presented by the Director Strategy and Compliance, 14 December 1993.

⁶⁹Source: RUCATSE discussion note—14 Dec 1993.

relationship between airports policy and regional planning and to determine the process by which decisions on further runway capacity in the South East could be reached. It is inconceivable that BAA or anyone else should be left to promote another runway through the existing planning process in the absence of a clear policy framework. Whatever options are selected as a result of further studies, the Government will need to make firm choices and adopt them as policy. It should also secure the necessary development consents for a new runway either through an Act of Parliament, a Special Development Order or some other similar process. This would follow the precedent of other major infrastructure projects such as the link to the Channel Tunnel. BAA believes there is time to enable further studies to take place and for further consideration of Government's policy role. ... The future is unclear and it would be wrong in BAA's view to take bold decisions now (for or against another runway) when it is neither necessary nor appropriate to do so.

These views were to an extent echoed by BA in its comment to the T5 inquiry that it would be for the Government to decide where the next airport development was to go.⁷⁰

193. On 2 February 1995, the Government announced that it had decided to drop the option of a new runway at Heathrow and announced that BAA should do further work to establish whether there might be less environmentally-damaging alternatives to the RUCATSE recommendations, such as a close-parallel runway at Gatwick. The Secretary of State for Transport commented:

I am clear that BAA should not consider the options studied at RUCATSE ... for a second runway at Gatwick. But it has been suggested that there may be better, less environmentally damaging runway options than those considered by RUCATSE. It is understood that this study is now in progress. I am therefore asking BAA to examine whether there might be less damaging options for development, such as a close parallel runway at Gatwick.

This statement indicates full endorsement by the Government of BAA's representations following the Government's consultation on the RUCATSE report.

194. In May 1996, the House of Commons Transport Select Committee recommended to the Government that there should be a long-term policy for the provision of airport capacity. In the 1998 Integrated Transport White Paper, the Government accepted the need for such a policy and committed to establishing a policy looking 30 years ahead.
195. By 1997, BAA's study of the technical feasibility of the options for development at Gatwick had not yet been completed, even though it had originally been envisaged that the technical feasibility study would be completed by the end of 1996 and that BAA would report on all aspects of the study (technical feasibility, airport facilities and environmental impacts) to the Government by summer 1997.⁷¹ BAA subsequently asked the newly-elected Government whether it wished BAA to continue leading the work, stating that it was now the appropriate time for the Government to assume leadership of studies into the runway capacity issues for the South-East.⁷² The

⁷⁰Paragraph 8.5.3. of the T5 inquiry report.

⁷¹Source: correspondence between BAA and DETR.

⁷²BAA letters to the DETR dated 17 July 1997 and 17 October 1997.

Government announced on 19 January 1998 that it had asked BAA to put this work on hold so that it could review the issue in the light of the 1998 White Paper on integrated transport policy.⁷³ [X] BAA had been planning to follow the technical work by establishing a wider group (involving local authorities and community representatives) to assess the environmental and economic consequences of developing a second runway.

196. In 1998 the House of Commons Select Committee for Environment, Transport and Regional Affairs published a report on Regional Services. In its conclusions, the Committee noted:

Two years on from the *UK Airport Capacity* report by the previous Transport Committee, nothing has been done to address the issues that were identified as matters of concern. The Government must produce a clear statement of airport and aviation policy, given the changes in the aviation industry over the past ten years and the capacity pressures on the system. In view of the reluctance of BAA to make plans for future runway capacity, it must be for the Government to make statements on this vital national matter.

It added:

BAA has put insufficient effort into reviewing the pending shortage of runway capacity and its implications to the UK regions. Both BAA and BA have little commercial incentive to increase the number of air transport movements at Heathrow. The Terminal 5 application appears to have stifled other initiatives and will not in any case assist regional air services since it will encourage further the use of larger aircraft. There may be a case for changing the regulatory regime under which BAA operates in order to provide it with stronger incentives to develop capacity. We are not convinced that there are any significant benefits resulting from BAA owning the three main London airports and believe that ways should be considered of increasing competition within the South East airports system.

SERAS

197. Correspondence between the then DETR and BAA shows that BAA sought to distance itself from the studies being undertaken. In a letter to the DETR, it stated:

BAA starts from the position that it is the responsibility of Government to indicate how demand for additional runway capacity should be met. Whilst we are ready to provide any technical assistance you may require, we would not wish to prejudice your independence or ours by jointly commissioning runway consultancy studies. Our overriding and immediate concern is to secure co-operation and acceptance by local planning authorities, for urgently needed terminal development. These include Gatwick to around 40 mppa, and Stansted expansion to 15 mppa and beyond.⁷⁴

198. In its response to the SERAS consultation, BAA reiterated its view that it was up to the Government to take the key, specific decisions on the number of runways to be

⁷³House of Commons Hansard Written Answer for 13 March 2000.

⁷⁴BAA letter to the DETR dated 25 March 1998.

provided and their location. BAA more specifically asked the Government to make decisions on:

- (a) the airport location(s) in the South-East where new runway development should not be provided during the period covered by the White Paper, so that unnecessary blight would be avoided;
- (b) the airport location in the South-East where a new runway was most urgently needed, along with an indication of the type of runway envisaged and its associated infrastructure;
- (c) the other airport location(s) in the South-East where new runways would, in all probability, be needed during the 30-year period, and where land should therefore be safeguarded; and
- (d) the number of runways and the type of runway development, along with their supporting infrastructure, which would be provided at each of these other airport locations.

199. BAA also recommended that:

- (a) a scheme for a short, 2,000-metre runway at Heathrow should be included in a short-list of four possible sites from which the Government should select up to three in the White Paper, noting the advantages of layouts containing passenger handling facilities north of the A4;
- (b) a scheme for one new runway at Gatwick should be included in a short-list of four possible sites from which the Government should select up to three in the White Paper noting, however, that the 1979 agreement would prevent the airport operator from constructing a second runway at Gatwick before 2019;
- (c) schemes for two new runways at Stansted should be included in a short-list of four possible sites from which the Government should select up to three in the White Paper; and
- (d) a scheme for a new airport at Cliffe should not be included in the White Paper.

200. BAA stated that development at Heathrow would be financially viable on a stand-alone basis and that developments at Stansted and Gatwick would need to be shared across users of the London system as a whole.

Making best use of existing facilities

201. Government policy has consistently been to make best use of existing facilities. We asked BAA what was meant by this statement. BAA told us that there was no written definition but that it had interpreted it as meaning making full or maximum use of the existing runways, adding that in the case of Gatwick this would mean achieving traffic of about 40 mppa using the single runway. BAA added that because of this policy it had focused on bringing forward applications to provide more terminals in order to extract the latent capacity that existed within the runways. BAA acknowledged that MAG had acted at a much earlier point in time than BAA would have regarded as making full use of a runway, but considered that MAG's decision was due to a higher level of local support. BAA added that other countries had similarly made the decision to invest in new runways at an earlier point in time than it had, but con-

sidered that this was attributable to differences in policy support towards runway development.⁷⁵

202. In its response to the Government's consultation on RUCATSE, BAA stated its interpretation of the policy of successive governments that effective use should be made of existing airports: BAA's philosophy had been to ensure that terminal capacity was provided where it allowed existing runway capacity to be effectively utilized. Considering when another runway might be justified, BAA noted that additional runway capacity was normally provided at much lower levels of utilization than those assumed by RUCATSE, quoting the example of Manchester, Frankfurt's third runway, Amsterdam's proposal for a fifth runway and Paris CDG's plans for a third and ultimately a fifth runway. BAA did not, however, suggest that it should adopt the approach of these other airports, but pointed out that this policy would put London's competitive position at stake and that this issue demanded careful consideration by the Government.
203. BAA told us that its interpretation of government policy was corroborated by a government statement made in 1985. This statement was made specifically in reference to Heathrow and the context within which it was made suggests that it was neither intended as a clarification of government policy nor necessarily applicable to all airports. BAA told us that the Secretary of State for Transport reaffirmed this policy in 1993, although it seems to us that the statement made is of a general nature and does not clarify the meaning of 'making best use of existing facilities'.
204. The interpretation of the Government's objective of making the best use of existing facilities was debated during the T5 inquiry.⁷⁶ Having reviewed evidence from the Government and the CAA among others, the planning inspector concluded that this policy did not mean that maximum use should be made of the theoretical capacity of any airport. It did, however, involve recognition that a concentration of airport development at existing sites was likely to have a better economic justification and achieve a better balance of economic benefits and environmental impacts than development at an entirely new airport. While these impacts could impose limits on the use of an existing airport, the objective did not require development which would otherwise be acceptable at Heathrow to be restricted until all available capacity at other airports in the South-East was fully used.⁷⁷ The inspector did not agree with the interpretation that making best use of facilities equated with making best use of existing runway capacity. The T5 inquiry transcripts, in which the then Department of Transport (DTp) explained this policy, corroborate this interpretation.

Our views

205. BAA's view was that clear government support would have been required in order to gain approval for the development of new runways at its airports in the South-East in the 1990s. It seems to us that such support was unlikely to materialize as long as the airport operator itself showed little appetite for investing in those potentially politically difficult projects and consistently argued that such projects were not needed for many years to come.
206. BAA commented that all the evidence presented in this section of the appendix only shows that there is an interaction between the Government and airport operators and does not demonstrate that policy is a result of this interaction. We do not agree with

⁷⁵4 February hearing with BAA.

⁷⁶Paragraphs 3.4.1 to 3.4.8.

⁷⁷Paragraph 3.6.4.

BAA on this matter. We note that there was, throughout the 1990s, a close alignment between a number of BAA's recommendations to the Government and subsequent statements of policy, which suggests that BAA's views on this issue carried significant weight on the Government's thinking. Given that BAA was responsible, as the airport operator, for bringing forward and funding specific proposals, it seems to us that the reluctance of the airport operator to support runway developments would have inevitably resulted in a lack of government support for such unpopular schemes.

207. BAA also argued that in the period to 1997 it was evident that the Government was unwilling to develop a clear runway policy: this could be attributed to the controversial nature of such a policy coupled with the political weakness of the Government at the time. The fact that the Government commissioned studies on runway capacity as early as 1987 and followed this with a detailed study of runway options in the early 1990s does not support this view.
208. BAA's strategy throughout the 1990s was to seek to maximize the use of its existing runways, as clearly stated in correspondence between BAA and the DTp. BAA told us that its actions had been driven by the Government's policy of making best use of airport facilities, which it understood to mean 'making full use of runway capacity at its airports'. Based on the information we have seen, we consider that the statement of government policy left much scope for different interpretations by airport operators. In any event, there is no single measure of runway capacity (due, in part, to its link with service standard) and BAA's calculation of maximum achievable runway capacity failed to consider the effect on network resilience and costs to the airline industry and users.
209. We have therefore concluded that BAA's actions throughout the 1990s, in particular its reliance on the Government to promote runway development, its failure to seek to motivate the Government to accept the need for such development, its risk-averse terminal-focused approach to airport development, and its portfolio approach to the development of its London airports, have exacerbated delays in the delivery of runway capacity in the South-East. Whilst the difficulties inherent in obtaining planning permission for such developments cannot be denied, particularly in the absence of specific statements of government policy, they do not in themselves explain the reluctance of the company to press for more runway capacity.

Extract from the 1979 Agreement

1. THE BAA covenants with the Council:
 - (a) The BAA will not construct or cause or permit to be constructed on land at Gatwick Airport a second operational runway or any part of such a runway for the taking-off or landing of fixed wing aircraft
 - (b) The BAA will not use or permit to be used the facilities at Gatwick Airport or any of them to serve or be used in association with a second operational runway for the taking-off or landing of fixed wing aircraft which might be constructed on land adjacent to or in the vicinity of Gatwick Airport nor will they carry out or cause or permit to be carried out at Gatwick Airport any development to serve or be used in association with such a runway
 - (c) The BAA will not construct or cause or permit to be constructed a second operational runway for the taking-off or landing of fixed wing aircraft on land adjacent to or in the vicinity of Gatwick Airport
 - (d) At any time when the main runway is in use or is available for operational use the emergency runway shown edged yellow on the said plan ("the emergency runway") shall not under any circumstances whatsoever be used for the taking-off or landing of fixed wing aircraft. Furthermore the emergency runway shall be used for taking-off or landing of fixed wing aircraft only during times when the main runway is temporarily non-operational by reason of an accident or structural defect or when maintenance to the main runway is being undertaken and in all cases where maintenance is to be carried out other than in an emergency the BAA will give at least forty-eight hours notice in writing to the Council
 - (e) If the emergency runway is at any time widened extended or re-aligned or if an additional or alternative emergency runway is at any time during the subsistence of this Agreement constructed on Gatwick Airport or on land adjacent to or in the vicinity thereof then the provisions of sub-clause (d) shall thereupon immediately apply to the emergency runway as so widened extended or re-aligned or to any such additional or alternative emergency runway as the case may be during the subsistence of this Agreement
 - (f) The BAA will ensure that records are kept of all aircraft movements which involve the taking-off or landing of fixed wing aircraft from or on the emergency runway and will on request make such records available to the Council

High-level comparison of a selection of demand and capacity forecasts made in the 1990s

- The tables below show a selection of key forecasts of demand and capacity for BAA's London airports made in the 1990s.

TABLE 1 Passenger forecasts across major London airports (Heathrow, Gatwick, Luton, Stansted)

	<i>mppa</i>			
	<i>2000</i>	<i>2005</i>	<i>2010</i>	<i>2015</i>
CAP 570	97	113	N/A	N/A
RUCATSE	95.5	118.9	162.9	194.8
BAA (RUCATSE)	94	115	135	160
BAA (T5 inquiry)	97.9	117.9	142.1	167.6
British Airways (T5 inquiry)	100	123	148	N/A
DETR (T5 inquiry)	104	124	153	184
CAA (T5 inquiry)	99	124	151	183

Source: CAP 570, T5 inquiry report, BAA/CC2008/531.

- CAA statistics show that actual passenger numbers across the four airports reached 132 mppa by 2005.

TABLE 2 Runway capacity estimates

	<i>ATM</i>		
	<i>Heathrow</i>	<i>Gatwick</i>	<i>Stansted</i>
RUCATSE	410,000	220,000	220,000
CAP 570	370,000	220,000	220,000
BAA (July 1990 paper)	405,000	220,000	180,000
BAA—T5 inquiry—without T5	417–425,000		
BAA—T5 inquiry—with T5	453–458,000		

Source: RUCATSE report, CAP 570, T5 inquiry report, BAA.

- RUCATSE forecast that the average aircraft load would increase from 115 in 1992 to 195 by 2015 (page 24 of the RUCATSE final report). RUCATSE recognized that if aircraft were not operating at these levels of capacity, then Heathrow and Gatwick would be operating at full capacity by 2005.
- CAP 570 assumed that runway capacity of 370,000 passenger air transport movements (PATMs) at Heathrow would be reached within the following few years, but that passenger numbers would continue to grow with increased aircraft size to about 49 million by 2005.
- BAA now believes that ATM capacity at Heathrow is 480,000.