

Annex B – The Secretary of State’s request for advice to the CAA



From the Parliamentary
Under Secretary of State

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Dear Sir Roy,

Request for advice as to whether the Secretary of State for Transport should de-designate Manchester and Stansted Airports under Section 40 of the Airports Act

Following our February 2007 consultation on proposed criteria for the designation and de-designation of airports, the Secretary of State has decided on the criteria to adopt. I am now writing to the Civil Aviation Authority (CAA) to require the CAA to provide advice under Section 16(1) of the Civil Aviation Act 1982 on whether the Secretary of State should de-designate each of Manchester and Stansted airports, in accordance with these criteria.

I should like to receive the CAA's advice by Friday 6 July 2007 for each of the airports. We will then issue the advice publicly together with consultation documents seeking views of interested parties on whether each of the airports should be de-designated.

The Criteria for De-designation

After considering the responses to the consultation, the Secretary of State has decided to adopt the following criteria. Therefore, the criteria against which we would like the CAA to provide its advice about the status of Manchester and Stansted Airports as designated airports are:

'Designation of an airport is appropriate if, in the view of the Secretary of State:

- 1. the airport, either alone or together with any other airport(s) in common ownership or control, has or is likely to acquire, substantial market power; and*

2. *domestic and EC competition law may not be sufficient to address the risk that, absent regulation, the airport would increase and sustain prices profitably above the competitive level or restrict output or quality below the competitive level; and*
3. *designation under Section 40 of the Airports Act 1986 would, taking account of the magnitude of the risk identified in (2) and its detrimental effects were it to materialise, deliver additional benefits (i.e. over and above competition law) which exceed the costs and potential effects of such designation (i.e. the incremental benefits are positive).*

De-designation is appropriate if, in the view of the Secretary of State, any of these factors would cease to apply were the airport to be de-designated.

In reaching any decision to designate or de-designate, the Secretary of State will take into account all other relevant matters, including international obligations.'

In order to help the understanding of stakeholders, the decision letter on the criteria includes additional information about how we will apply the criteria, and particularly the first criterion. The CAA should take this additional information into account in preparing its advice.

Format and content of the advice

I am content for the CAA to decide the precise structure in which the advice is provided to the DfT for each airport, as this will partly be affected by the nature of the analysis that CAA carries out and provides. However, for each airport, we would like the advice to state clearly the CAA's assessment against each of the individual criteria, the CAA's overall recommendation to Government, and to re-iterate the CAA's assessment in a short summary. In doing so the CAA should set out the analysis and evidence that supports the CAA's view, to assist the Secretary of State with his decision.

I would expect the CAA, where appropriate, to draw upon its previous analyses, analysis undertaken by the OFT, the responses received by the CAA to its consultations, and the responses received by the DfT to its consultation. These consultations have together highlighted a number of areas to which the DfT would wish to draw the CAA's attention:

- **The impacts that route overlaps have on the relevant catchment area of the airports.** Respondents observed that catchment areas are smaller for services that are operated from multiple airports and that this might have implications for the appropriate market definition.
- **The costs of airlines switching routes and/ or operations between different airports.** A number of airlines stated that switching costs, even for individual routes, were quite high.
- **Airport's cost structures and incentives.** Respondents commented on the analysis published by the CAA of the impact on airports' profitability from losses of passenger throughput, and the incentives on airports to seek additional throughput.

- **Capacity availability.** Some airlines argued that while overall an airport might have spare capacity, an airport could have market power if capacity was constrained at certain key points in the day, such as the morning peak, and at different parts of the infrastructure, such as the terminal instead of the runway.
- **The relevance of historical information.** Some airlines commented that there are factors that limit the degree of reliance that can be placed on historical pricing information, including the existence of long-term contracts between the airport and airlines.

I do, however, recognise that there are limitations on the CAA's ability to gather information to inform certain issues.

Next steps

I would be grateful if you could confirm that the CAA is able to provide its advice by Friday 6 July 2007.

My officials would, of course, be happy to meet the CAA to discuss any of the issues raised in this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gillian Merron', with a horizontal line underneath the name.

GILLIAN MERRON