

1 Wednesday, 11th July 2007

2 (10.00 am)

3 MR PHILLIMORE: Good morning, everybody. The inquiry is now  
4 resumed. The usual reminders about mobile phones and  
5 the attendance list. Mr Humphries, can you give me an  
6 indication how far we have got with your  
7 cross-examination? Your estimate was five to five and  
8 a half hours. I think you are probably four hours  
9 through at this stage?

10 MR HUMPHRIES: We have got three-and-three-quarter hours  
11 through, sir, at this stage, thank you. I think I am  
12 still on target.

13 MR PHILLIMORE: Thank you for that. Anything procedural  
14 before we continue? I understand Mr Hill is delayed at  
15 the moment but he is expected to be here at 10.15 to  
16 10.30. Okay, we will continue, then. Mr Humphries.

17 MS LOUISE CONGDON (continued)

18 Cross-examination by MR HUMPHRIES

19 MR HUMPHRIES: Ms Congdon, once again, good morning.

20 A. Good morning.

21 Q. We have just finished dealing with a section on long  
22 haul forecasts.

23 A. Yes.

24 Q. We are now going to just move on to York Aviation's view  
25 on transfer passenger percentage.

1 A. Yes.

2 Q. Certainly, and we can deal with this, I hope, quickly,  
3 in ACC/11 you don't produce a transfer passenger  
4 percentage?

5 A. No, the transfer passenger figures are subsumed into the  
6 forecast of terminal passengers which I give.

7 Q. Of course. Of course they are, but there is no separate  
8 forecast. In ACC/1, however, you do comment on transfer  
9 passengers. That's in the section starting at  
10 paragraph 5.62. I think we can agree, can't we, that  
11 currently the transfer passenger percentage is about  
12 12 per cent?

13 A. No. We can't agree that, I'm afraid. The latest data  
14 from CAA says it is around 10 per cent.

15 Q. All right. It is now around 10 per cent; was it  
16 12 per cent last year, I think?

17 A. Yes, and 13 per cent the year before.

18 Q. 13 per cent the year before. That, of course, is with  
19 a very small proportion of long haul, approximately  
20 0.3 million passengers?

21 A. Yes, but one has to look at actually who is transferring  
22 and what the transfer passengers are. There is very  
23 little transfer on to long haul at Stansted. The  
24 majority of transfer at Stansted at the moment is  
25 passengers from the UK and Ireland transferring on to

1 services to other European destinations, where those  
2 destinations are not served direct from points  
3 particularly in Scotland or in Ireland. So the fact  
4 that Stansted may develop long haul services to places  
5 like New York that are already served from Scotland and  
6 from Ireland does not suggest to me that the long haul  
7 traffic at Stansted is relevant to an assessment of  
8 transfer passengers.

9 Q. Ms Congdon, again, we will end up taking a long time.  
10 I simply asked you how many long haul passengers there  
11 were. I know you are anxious to say things and I don't  
12 want to stop you, but try and just answer a question if  
13 you can.

14 We certainly expect on your own forecast that the  
15 number and network of destinations at Stansted is going  
16 to grow as the airport grows; that's indeed fundamental  
17 to your forecasting methodology, the new routes?

18 A. Correct, but at a slower rate than it has in the past,  
19 and probably at a slower rate than the rate of  
20 introduction of new direct services from the points in  
21 the UK and Ireland which are supplying the transfer  
22 passengers to Stansted.

23 Q. Again, on your own forecast, you expect the number of  
24 long haul passengers to grow to between 1.4 to  
25 2.6 million?

1 A. Yes, but again, you have to look at the sort of  
2 destinations and say how likely is it that passengers  
3 from the rest of the UK and Ireland would be seeking to  
4 transfer at Stansted to those destinations. There's  
5 nothing magical about long haul in itself in generating  
6 transfer volumes. It's the ability to connect between  
7 two places that are not served directly. So if there  
8 are lots of flights to New York, it is highly unlikely  
9 that they will generate transfer volumes at Stansted.

10 Q. We know that at the other BAA South East airports, both  
11 Heathrow and Gatwick, which have higher overall  
12 passenger numbers, again, there are higher transfer  
13 percentages?

14 A. I know that's correct for Heathrow. I can't recall the  
15 Gatwick percentage off the top of my head.

16 Q. Now, do you suggest a figure for the transfer percentage  
17 at 2015?

18 A. I haven't suggested a particular figure because we  
19 haven't done a detailed analysis of it, but the way one  
20 would normally do an analysis of the potential for  
21 transfer traffic is to actually look at the ability to  
22 make connections that are not otherwise served direct.  
23 So, for example, I know from my experience at  
24 Manchester, which did have a network of long haul  
25 services, those long haul services generated very few

1 connecting passengers at Manchester, but there were  
2 still a lot of passengers at Manchester connecting at  
3 Heathrow and Gatwick to destinations that were not  
4 served direct from Manchester. So people would be  
5 connecting through to Heathrow to go to points in Africa  
6 that weren't served direct from Manchester. People  
7 would be connecting at Gatwick to go to Dallas which was  
8 not served direct, but people were not connecting at  
9 Heathrow and Gatwick in substantial numbers to fly to  
10 New York. So I would expect, if I was doing a transfer  
11 forecast, to do that sort of analysis.

12 Q. Now, cargo. Again, in ACC/11 and ACC/1, you have not  
13 produced cargo forecasts?

14 A. We have not produced specific cargo forecasts at the  
15 time. Since then we have obviously been talking and  
16 looking a bit more at cargo trends, and I think there  
17 are indications that the cargo growth in the South East  
18 of England compared to the rest of the UK is slowing,  
19 because an increasing amount of cargo is being trucked  
20 to other European hubs.

21 Q. But no forecast?

22 A. No specific forecast in the ACC/11 document.

23 Q. Fine. York Aviation's busy hour rate and daily demand  
24 profile evidence. Again, the busy hour rate, just  
25 again, confirm this, I think the Inspector does know

1           what the concept is, but this is the number of  
2           passengers through a facility in an hour which is  
3           exceeded for 5 per cent of the year?

4   A.   That is the 95 per cent busy hour definition, yes.

5   Q.   Right.  Again, ACC/11 doesn't comment on busy hour rates  
6           or the daily demand profile, but ACC/1 does do so?

7   A.   Yes.  We didn't, for the purpose of the forecasting  
8           report in ACC/11, feel it necessary to do busy hour  
9           forecasts; it was not relevant to the exercise we were  
10          seeking to do at the time.  What we did comment on --

11   Q.   Ms Congdon, no criticism.  I'm just establishing, so the  
12          Inspector knows where to look, they will not find  
13          anything in ACC/11?

14   A.   Yes.  ACC/1 then comments on what was in the ES.

15   Q.   Precisely.  In the ES, we have some data in the air  
16          traffic volume, CD/19?

17   A.   Just bear with me while I find it.  (Pause)

18   Q.   I just want firstly to identify where the data is, and  
19          then I will go on to ask other things.  The data there,  
20          it's in the appendix A1 and it is table A1.2?

21   A.   Yes.

22   Q.   We can see there it talks about the busy hour rate for  
23          total departures, international arrivals, and domestic  
24          arrivals, and the reason, Ms Congdon, that international  
25          and domestic arrivals are dealt with separately is

1           because those are within the terminal's separate  
2           facilities.

3   A.   Yes, I understand that.

4   Q.   There is an international departure end of the building  
5           and a domestic departure facility at the other end of  
6           the building.

7   A.   It is the arrivals that are split, not the departures.

8   Q.   Sorry, I do apologise, an arrivals end of the building,  
9           and an international arrivals and domestic arrivals end  
10          of the building?

11  A.   Yes.

12  Q.   That's why they are looked at differently, isn't it?

13  A.   That's my understanding, yes.

14  Q.   A different busy hour rate for each of them. Then those  
15          figures were updated in the CIP for 2007 and we have the  
16          figures for that at ACC/10. Again, let's just  
17          familiarise ourselves with the figures. So ACC/10, in  
18          that document, page 127 in the bundle numbering. That's  
19          page 26 in the original numbering.

20                You can see there that again, the comparable figure  
21                for 2014/15, the departures busy hour rate has gone up  
22                somewhat from 4,820 to 5,060?

23  A.   Yes.

24  Q.   Domestic arrivals has fallen somewhat from 850 to 690?

25  A.   Yes.

1 Q. International arrivals is about the same. It was 4,300  
2 in the ES and it's now about 4,330, so about the same.

3 A. Yes.

4 Q. Now, those forecasts are obviously based on a number of  
5 factors, aren't they? Runway capacity would be one of  
6 the factors taken into account?

7 A. Indirectly.

8 Q. Obviously the demand mix has an effect on busy hour  
9 rate?

10 A. That will have a fairly substantial effect, yes.

11 Q. The volume and type of flights in a particular hour is  
12 obviously one of the factors that goes to that mix?

13 A. That would be the predominant factor, yes.

14 Q. Obviously that leads one to a forecast of the number of  
15 passengers in each hour which allows you to derive  
16 a busy hour rate?

17 A. Yes, but a bit like forecasts overall in top-down and  
18 bottom-up, I would expect that anything derived  
19 bottom-up in this case would also be sense checked  
20 top-down, in the sense of is the projection of the  
21 specific mix of traffic in a busy hour coming up with  
22 the type of number one would expect by reference to the  
23 general ratios and trends for peak spreading at  
24 airports.

25 Because if you don't do that, you can come up with

1           some quite wildly erroneous figures.

2   Q.   That is the theme I think that you pick up in your  
3       paragraph 5.72 of ACC/1?

4   A.   Yes.

5   Q.   You are talking there first of all about profile of  
6       demand, and you agree that the profile of demand will  
7       flatten further, the peak will spread, but the issue is  
8       one of degree?

9   A.   Yes.

10  Q.   You say that to achieve the busy hour profile set out in  
11       the ES, the ratio of busy hour passengers to annual  
12       would have to fall to 282 for departing passengers?

13  A.   Yes.

14  Q.   You come to a view towards the bottom of that paragraph  
15       that if you assume the ratio of busy hour departure  
16       demand to annual falls to around 325 by 2014/2015,  
17       demand in the busy hours could be 17 per cent higher  
18       than in the ES and 6 per cent higher than in the CIP?

19  A.   Yes.

20  Q.   That obviously once again is based on an assumption as  
21       to how the ratio will fall, isn't it?

22  A.   No, it is based on some analysis of data.  Again, there  
23       is a common theme here, Mr Humphries.  It is based on  
24       analysing data, exposing that data which I do in figure  
25       2.1 in ACC/5 and saying based upon that data, which

1           everybody can see, I assume this.

2   Q.   What was the ratio for departures for last year?

3   A.   Just bear with me a second while I read it off the

4       graph.   About 340, I think.

5   Q.   I think the last year, the figures I have are that it

6       was about your 325.

7   A.   I haven't got a calculator in front of me, I haven't got

8       the figures in front of me; if someone wants to put the

9       figures in front of me or lend me a calculator, I'm

10      quite happy to look at that.

11  Q.   Okay.   If it was, as I suggested to you last year about

12      325, I think slightly higher than that, you would expect

13      that ratio to fall further, wouldn't you, as the airport

14      continues to grow, for the reasons you tell us at the

15      top of 5.72?

16  A.   Well, I refer you and the Inspectors to figure 2.1 in

17      ACC/5, where I actually set out the actual data from

18      BAA's patterns of traffic document.

19  Q.   Yes.   That is actually not what I asked you about, is

20      it?

21  A.   I'm explaining.   I have done a calculation which sets

22      out clearly how I would expect a ratio to fall based on

23      actual data, and it's in figure 2.1 in ACC/5.

24  Q.   Yes.   What I asked you is as the airport grows, you

25      would expect the ratio to fall further, wouldn't you?

1           The answer is yes.

2    A.   Yes, and I have done that calculation.

3    Q.   I have seen the two sets of data there in that document.

4           We will come to that later.  Now, as I have said, the

5           assumption therefore in your paragraph 5.72 that leads

6           you to say that the busy hour rate would be 17 per cent

7           higher than in the ES, if as I suggested to you that

8           ratio has already been achieved, you would expect the

9           exceedence over the ES figure to be less than

10          17 per cent.

11   A.   Well, I think as I say in paragraph 5.72, I think the

12          CIP figures which BAA itself has recalculated appeared

13          far more reasonable.  So my criticisms were largely

14          levelled at the figures in the ES, which I think were

15          unrealistic.  I do not have as much criticism or very

16          little criticism of the figures in the CIP.  But I think

17          insofar as this application has been promoted on the

18          basis of the ES rather than the CIP, I was highlighting

19          the potential discrepancy.

20   Q.   Well, we will come to the implications later of some of

21          these differences between us.  As far as the arrivals

22          busy hour rate is concerned, I don't understand you to

23          be criticising the figure which is either in the ES or

24          the very similar figure in the CIP?

25   A.   It appears more reasonable.

1 Q. Let's then turn to a slightly different but related  
2 issue of the implications of some of these forecasting  
3 issues between us. The first one I want to look at is  
4 the issue of a lower long haul proportion. Now,  
5 obviously we don't accept the ACC case and you don't  
6 accept our case, and I'm not going to go over that  
7 again, but I want to consider the implications of your  
8 evidence.

9 If the overall long haul proportion is lower, can we  
10 just see by reference to ACC/1, page 44, table 5.8, what  
11 the different figures you've set out for -- there,  
12 passengers per PATM, tell us. We can see that as  
13 a generality, long haul services have higher passenger  
14 PATM numbers than do short haul services?

15 A. Yes.

16 Q. Would I be right in understanding, therefore, that if  
17 there is less long haul in the overall fleet mix, but if  
18 one maintains the 243,500 passenger ATMs per annum, you  
19 would expect the throughput at that PATM number to be  
20 less than BAA has forecast?

21 A. Yes, if you maintain this number of PATMs, the  
22 achievable, that is actually taken account of in my  
23 table 5.10 on page 56 of ACC/1. I actually do  
24 a calculation based on 1.5 million long haul passengers  
25 and demonstrate that we can still contain demand within

1           241,000 ATMs.

2   Q.   Yes, the reason I didn't take you to that table is

3           simply because there you have used 264,000 PATMs, which

4           is the overall ATM limit we are suggesting --

5   A.   No, at 5.10, I used 241.

6   Q.   I'm so sorry. I was looking at the table below. Yes,

7           241. Well, again, that's not quite the number that is

8           being proposed, but one can see that with a lower long

9           haul proportion --

10  A.   Yes.

11  Q.   -- as a generality with the proposed PATM limit, one

12           gets a lower passenger capacity?

13  A.   But one can handle 30 million passengers with a lower

14           long haul component of 241,000 ATMs.

15  Q.   Ms Congdon, thank you for that. The point I was putting

16           to you, though, is that you would tend with a lower long

17           haul proportion to get a lower passenger capacity; the

18           airport would become PATM constrained rather than MPPA

19           constrained?

20  A.   Possibly, yes.

21  Q.   Right. Therefore, in terms of a number of the issues

22           that the Inspector has been considering, or would have

23           to or will have to consider, one would expect

24           passenger-related environmental impacts to be less than

25           those assessed?

1 A. Yes.

2 Q. That would include, for example, all other things being  
3 equal, surface access?

4 A. That would depend to some extent on whether the absence  
5 of long haul and the different mix of traffic actually  
6 resulted, as it may well do, in increased busy hour  
7 departing passengers in the early morning on short haul  
8 flights --

9 Q. That's why --

10 A. -- actually exacerbating some of the peaking patterns on  
11 the roads, so it's not automatic --

12 Q. That's why I said all other things being equal. We are  
13 going to come to busy hour rates. But can you just  
14 agree with me, all other things being equal, those  
15 passenger related impacts, including surface access,  
16 would be lower?

17 A. Well, I don't accept that all other things would be  
18 equal in terms of surface access.

19 Q. I know that.

20 A. I think other passenger-related impacts would be lower  
21 but I don't agree that you can simply put that  
22 unrealistic proposition to me and expect me to agree on  
23 surface access.

24 Q. Ms Congdon, of course I accept those reservations, but  
25 in order that I don't try and encapsulate all of this

1 cross-examination in one single question, I am trying to  
2 break things down, but we will come to busy hour rates  
3 in a moment. Transfer proportion. That's another of  
4 the areas where there is a difference between us, and  
5 I want to understand for the Inspectors' benefit what  
6 the implication is of that?

7 A. Yes.

8 Q. Again, I accept that you don't accept our case and we  
9 don't accept your case, but I just want to understand  
10 the implications of the difference. Can we just assume  
11 that the transfer percentage stayed at 12 per cent.  
12 Let's just take that as an assumption, all right?

13 A. Okay.

14 Q. Rather than BAA's 17 per cent, which is assumed.

15 A. Yes.

16 Q. At 17 per cent, the percentage of OD passengers,  
17 passengers originating or with destinations in the UK,  
18 would be 83 per cent, the converse of the 17 per cent.

19 A. Yes.

20 Q. So at 35 MPPA, the OD passengers, the non-transfer  
21 passengers, would be about 29.1 MPPA. Take that from  
22 me, check it afterwards --

23 A. That sounds about right.

24 Q. It is only my maths and therefore suspect, but I think  
25 that's the figure.

1 A. It sounds a familiar-ish type of number, so ...

2 Q. At 12 per cent of transfers, the OD percentage would be  
3 88 per cent?

4 A. Yes.

5 Q. The number of OD passengers therefore at a 35 MPPA  
6 airport would be about 30.8 MPPA?

7 A. There or thereabouts.

8 Q. We can see therefore the difference in the two transfer  
9 passengers in relation to the number of OD passengers is  
10 the difference between 29.1 and 30.8; that is an  
11 increase of about 5.8 per cent.

12 A. Yes, although of course if the transfer percentage was  
13 lower, which I know you don't accept, it could be over  
14 10 per cent, for example.

15 Q. It could. Obviously depending how low you push the  
16 transfer percentage, the number will change. Now, the  
17 Inspector obviously knows that for certain impacts  
18 including surface access, the ES carried out what was  
19 called a 40 MPPA sensitivity test.

20 A. Yes.

21 Q. The 40 MPPA sensitivity test looked at an increase in  
22 passengers traffic during the peak hour of 14 per cent.

23 A. Yes, but against a rather odd distribution of demand  
24 throughout the day with an artificially depressed busy  
25 hour.

1 Q. Yes, but 14 per cent at that time, and so the effect of  
2 the transfer point you have put to me, if we were to  
3 assume a transfer percentage at 12 per cent, would be  
4 well within the sensitivity that has been tested?

5 A. Well, I don't know whether it would in fact be, if one  
6 took this year's CIP 2007-type busy hour rates and  
7 actually did the same calculation based on those, and  
8 applied that to the surface access network. I'm not  
9 sure I share your confidence that it would be within  
10 that sensitivity test.

11 Q. Let's come to the busy hour rates, then, to see the  
12 implication of that difference between us, and again,  
13 I emphasise, I know you don't accept our case, I know we  
14 don't accept yours. Let's just park that for the  
15 moment.

16 Clearly if there were more passengers in the busy  
17 hour, then on average one would expect there to be fewer  
18 passengers in other hours of the day, the total number  
19 of passengers obviously remaining the same?

20 A. Yes, the profile throughout the day may well change,  
21 yes.

22 Q. Your point is that traffic might be more peaky than we  
23 have assumed?

24 A. Or it might have a different time of peak as well.

25 Q. A different time of peak?

1 A. Certainly compared to what's in the ES.

2 Q. Now, if we consider the morning peak hour, can we just  
3 look at your figure at 5.2; that's in ACC/1. We can see  
4 there, if we look at figure 5.5 for departing passengers  
5 first of all, and the red line with circles, for those  
6 that have it in colour, show the busy day profile for  
7 the 35 MPPA case.

8 A. Yes.

9 Q. I want to understand, are you suggesting that the busy  
10 hour you would expect would be different to that, the  
11 same as that, or ...?

12 A. We are certainly raising a question as to why things are  
13 so radically different than assumed in the 25 MPPA  
14 original approval. I have not gone into a level of  
15 detail to suggest a specific alternative profile. What  
16 we have sought to do is raise questions about how much  
17 reliance can be placed on this. Because there is no  
18 explanation in the inquiry in detail, or certainly there  
19 wasn't until my meeting with Mr Maiden, about how these  
20 profiles have been derived, why they might be different  
21 now than they were in the ES. We are simply raising the  
22 question as to how much reliance those who do want to  
23 take environmental points or surface access points as  
24 part of our case wish to place on them.

25 Q. So you are not suggesting a different profile?

1 A. Not specifically, no.

2 Q. Well, you say not specifically; you either are or you  
3 aren't?

4 A. No, we are just suggesting that these may not be  
5 reliable.

6 Q. All right. But if you are not suggesting an alternative  
7 profile, I can't ask you about alternative profiles, so  
8 I'll just ask you about what we do have here. These  
9 figures, we know, are based on tables again in the ES.  
10 I don't know whether you still have to hand CD/19?

11 A. Yes.

12 Q. And the same appendix that we had before, table A1.10 on  
13 this occasion. That table shows hourly flows of  
14 non-transfer passengers on an average September weekday,  
15 and I believe what you have done for each of  
16 the different cases, 2004, the 25 MPPA case and 35 MPPA  
17 case, is represent that data in graphical form in your  
18 figure 5.5?

19 A. Accurately, I hope, yes.

20 Q. I believe so. I haven't checked. We can note, of  
21 course, that the hour in the left-hand column is the  
22 hour beginning GMT plus 1, so that these profile figures  
23 have been corrected for British Summer Time?

24 A. Yes.

25 Q. We can see that that departures busy hour occurs at

1           about 6.00 in the morning, the hour beginning at  
2           6.00 am?

3    A.   Yes, I think between 6.00 and 7.00, yes.

4    Q.   Between 6.00 and 7.00?

5    A.   Well, it is the hour beginning 6.00.

6    Q.   That is of course for departures.  Of course we know  
7           that people travel to the airport, in order to depart,  
8           some two hours before departing?

9    A.   Well, one to two hours.

10   Q.   One to two hours.  So if you are right, that the busy  
11           hour rate is higher, that is having an effect on the  
12           traffic in the 4.00 to 5.00 am British Summer Time hour?

13   A.   It will also have an effect later in the day to the  
14           extent to which passengers are being dropped off at the  
15           airport, and not either using public transport or  
16           parking at the airport themselves, because the people  
17           returning from having dropped off passengers may well be  
18           seeking to travel back into London in the busy hour.  
19           I think you are in danger of straying into the surface  
20           access area, which is not really my area to deal with.

21   Q.   I understand that, of course.  But we can note, can't  
22           we, that if you are right, that the busy hour should be  
23           higher than we have forecast, and as we agreed a few  
24           moments ago, as a consequence on average, other hours  
25           would be lower --

1 A. Other hours in the middle of the day may well be lower,  
2 yes.

3 Q. Well, other hours, we don't know which other hours would  
4 be lower?

5 A. For example, given if we said the runway limit which may  
6 of itself -- the runway capacity, which may of itself be  
7 a limit on the peak hour, I might, for example, expect  
8 that departure peak, starting in the hour 6 o'clock, to  
9 spread more into the adjacent hours. So that would tend  
10 to push more cars on to the road later. So it isn't  
11 simply a matter of saying that single hour grows; it is  
12 that morning peak will widen.

13 Q. Yes, but with a peak time on local roads of 8.00 to  
14 9.00 am, that would be related to departures one to two  
15 hours before of what, 10.00, 11.00, maybe later during  
16 the day?

17 A. But it also might relate to people who dropped off  
18 passengers at the airport at 7 o'clock and are driving  
19 back into London.

20 Q. Yes, well remote from the airport. If they have dropped  
21 someone off at 7 o'clock, they are not going to be on  
22 local roads at 8 to 9 o'clock?

23 A. I accept that, but I think you are taking me into the  
24 area of highway modelling, which is not my area of  
25 expertise and I'm not the appropriate witness to deal

1 with that.

2 Q. Of course, I know that, and I am not going to ask you a  
3 lot of detail, but what I want to understand is the  
4 consequence of your point that the busy hour rate would  
5 be higher. Let us just consider the same point but for  
6 the evening peak. If we look firstly at your figure  
7 5.4, we can see that the evening peak in the 35 MPPA  
8 case is about 10 o'clock in the evening, and indeed if  
9 you go to the airport and you stay there through the  
10 day, you can see that arrivals area becomes extremely  
11 congested late in the evening, doesn't it?

12 A. So I understand, yes.

13 Q. Again, that data in figure 5.4 is derived from the data  
14 in CD/19.

15 A. Yes.

16 Q. Again, from that same table, table A1.10. Again, we can  
17 see, can't we, that the arrivals busy hour for the  
18 35 MPPA case is about, in the hour starting 2200 hours?

19 A. Yes.

20 Q. Of course, arriving passengers will make their surface  
21 access movements after arriving?

22 A. Again, those that arrive will make their surface access  
23 journeys after they arrive, but those who come to pick  
24 them up will be making their journeys to the airport  
25 before the passenger arrival.

1 Q. Possibly, but again, late in the evening?

2 A. Yes, we are not taking a point on the evening peak. It  
3 was the very strange and unexplained difference between  
4 the morning arrivals peak that we were seeking to  
5 highlight here. Because, throughout the ES, BAA seeks  
6 to rely on the fact that the impacts for 35 MPPA are  
7 less than the impacts for the previous 25 MPPA case, and  
8 one of the reasons why that might be so is if the  
9 arrival busy hour in the morning had been artificially  
10 adjusted lower without adequate explanation.

11 Q. Yes. What we can see from all that as a generality is  
12 if you are correct that the busy hour rate should be  
13 17 per cent higher in the morning departures peak hour  
14 than BAA has suggested, because that reduces the number  
15 of passengers in other hours, one would expect as  
16 a generality a reduction in traffic on local roads in  
17 the am peak hour for surface access?

18 A. As I have said, I don't know that that is necessarily  
19 so. It would need to be modelled and we would need to  
20 see the figures. I'm not the witness who is the  
21 appropriate person to deal with this. All I'm saying is  
22 I'm not sure it's necessarily so.

23 Q. I only make these points because you yourself say of  
24 your busy hour rate criticisms of BAA's forecasting that  
25 this will have, paragraph 5.75:

1           "The profile is highly material to considerations of  
2           surface access."

3   A.   Yes.

4   Q.   That's why I'm trying to explore with you what that  
5           effect would be?

6   A.   Yes, but we don't have evidence before us, I believe, to  
7           enable us to determine what that materiality is.  What  
8           I have tried to highlight in answer to your questions is  
9           some of the issues and factors that you would then need  
10          to take into account.

11  Q.   The next point between us, just to understand some of  
12          the implications, the effect of higher landing charges.  
13          Again, I know you don't agree our case, we don't agree  
14          your case.  Just consider some of the points relating to  
15          this.  We can both accept, can't we, that both you in  
16          your forecast and Mr Maiden in his forecast has  
17          explicitly modelled the effects of higher landing  
18          charges.  You don't agree on how it is done and what the  
19          results are, but you have both done it?

20  A.   Well, we both made an assessment of the impact.  I made  
21          an assessment of the impact based upon data of  
22          the actual effects of changes in airport charges on  
23          passenger throughput at airports.  Mr Maiden has told us  
24          an elasticity he has assumed.  He has not adequately  
25          explained or presented the evidence upon which that

1 elasticity is based.

2 Q. I know you don't agree --

3 A. If you just let me finish, it really would help.

4 Q. We can agree you have both explicitly modelled that

5 effect; of course you don't agree with each other about

6 what you have done and whether that's correct.

7 A. I have modelled the effect; he has assumed an effect.

8 Q. Your effect, we know that landing charges are now,

9 I think, £5.50, aren't they?

10 A. Yes.

11 Q. BAA's expectation is that they will go up to £8 in

12 2014/2015?

13 A. Yes.

14 Q. That's a rise of £2.50?

15 A. Yes.

16 Q. That's over an eight-year period?

17 A. Yes.

18 Q. That's about 32p per year, approximately?

19 A. Yes, approximately.

20 Q. That's, what, half the cost of a morning newspaper?

21 A. I think that's not the relevant point. You are starting

22 from the wrong position. You are starting at the £5.50

23 rather than the 2.61.

24 Q. I didn't ask you about the £5.50; I said 32p is about

25 half the cost of a newspaper?

1 A. Yes, but 32p is not the relevant figure. What you want  
2 to do is actually start from £2.61 --

3 Q. Ms Congdon, please. Try to restrain your enthusiasm.  
4 32p is -- I tried to think of some things you can buy  
5 for 32p.

6 MR PHILLIMORE: I think we know what you can get for 32p.

7 MR HUMPHRIES: I know, I wouldn't have thought it was  
8 difficult. Ms Congdon, your assessment, we know, gets  
9 down from an unconstrained forecast, if we look at  
10 ACC/11, table C3, that's page 345, we can see, if we  
11 look at the 2015 line, your unconstrained demand  
12 forecast for the optimistic projection is 42 million.

13 A. Yes.

14 Q. You get down to your 33 million and 26 million by the  
15 application of your high and low elasticities?

16 A. Yes.

17 Q. We know that that involves a rise in landing charges  
18 between now and 2015, which is on average 32p per annum?

19 A. That's why I was correcting you. It doesn't do that.  
20 It takes into account the rise from the £2.61 that the  
21 carriers were paying as the appropriate base charge  
22 events from which to make that calculation. But the  
23 other important thing to remember about this calculation  
24 is it's not simply a calculation based on passenger  
25 elasticity. It's a calculation that takes into account

1 the effect of that price rise on the airline yields, the  
2 effect on viability of services, and whether in fact  
3 services will be withdrawn from the airport. So it's  
4 not an elasticity in the way Mr Maiden uses it; it's  
5 a much more complex calculation.

6 Q. Yes. But I've assumed in these forecasts that you have  
7 yourself assumed that 100 per cent of the increase in  
8 landing charges is passed on to passengers?

9 A. That's not the way it's calculated. It's calculated  
10 taking into account the aggregate effect on airport  
11 passenger throughput of a charge increase, some of  
12 which --

13 Q. If you --

14 A. Can I just finish, please? Some of which may be passed  
15 on to passengers, some of which will have to be absorbed  
16 by airlines as a part of their profit. The combined  
17 consequence sees a reduction in growth.

18 Q. So again, just so that the Inspectors can see how what  
19 we would say an extreme position you have taken, that  
20 fall from 42 million down to 33 million or 26 million  
21 doesn't even assume that all of the 32p, or if you take  
22 it from a base of £2.50, the 64p increase per annum, you  
23 don't even assume all of that is passed on to  
24 passengers?

25 A. No, because the fact that the airlines have to absorb it

1 as part of their profit has an impact on the viability  
2 of the services, and that to my mind is just as  
3 important as the actual pass through to passengers.  
4 That to my mind is a fundamental mistake in BAA's  
5 approach to this.

6 Q. So passengers, who desert the airport in such large  
7 numbers on your elasticities, aren't even having to pay  
8 an increase of 32p per annum?

9 A. Some may, some may not. It's not as straightforward as  
10 that. It's not a simple --

11 Q. Of course this is based on your elasticities, which as  
12 we examined yesterday, have an R squared ratio as low as  
13 31?

14 A. Some have an R squared ratio as low as 31; some have  
15 an R squared ratio at 60 and 60 is actually a very good  
16 R squared ratio for a predictive relationship.

17 Q. It is hardly surprising, is it, when there is such  
18 a weak correlation as the basis for your elasticities  
19 that you end up with such extreme results, passengers  
20 being asked to pay less than -- 32p more for a flight,  
21 and deserting the airport on your forecast in such large  
22 numbers?

23 A. It doesn't work like that, Mr Humphries. First of all,  
24 I did not accept yesterday it was a weak relationship.  
25 So I didn't accept that; I don't accept it now. With

1 data which has become available since these proofs were  
2 originally written, the relationship is actually much  
3 stronger again, so I do not accept it is a weak  
4 relationship, but there are uncertainties about it,  
5 which is why we presented the answer as a range.  
6 Secondly, the 32p point is a very cheap point. It is  
7 a point that has been made by BAA and others, but it  
8 fails to understand the way in which the airlines and  
9 passengers actually book. One has to actually talk to  
10 the airlines which is something BAA doesn't seem to want  
11 to do, to understand how the effect of relatively small  
12 changes in the airfare can affect quite dramatically the  
13 booking profiles on flights, and it doesn't take much of  
14 a change in that airfare to actually move a service from  
15 being viable to being non-viable.

16 Perhaps if BAA had spent a bit more time talking to  
17 the airlines about the effect of price increases, they  
18 would have the same understanding as I have of what is  
19 likely to happen. That assessment of what is likely to  
20 happen is by reference to actual evidence in the market  
21 of what has happened to growth of passengers at airports  
22 when airports have sought to put up prices ahead of  
23 the market trend or reduce prices ahead of the market  
24 trend where airports have seen faster or slower growth.  
25 It is actual evidence of what is happening, so you can

1           make cheap points about the 32p in the price of  
2           a newspaper, but it does not actually tell you how the  
3           market responds.

4    Q.   Ms Congdon, I said at the beginning, I know that we  
5           disagree, BAA and the ACC, on this.  Can we just  
6           consider for a moment the implications of a slowing of  
7           the growth in demand from the point of view of  
8           the issues the Inspector is concerned about.  The  
9           implication would be that both the benefits and indeed  
10          the impacts of the growth of the airport would be  
11          deferred.

12   A.   Yes.

13   Q.   Just touch now on a slightly different issue: other  
14          parties' forecasts.  Again, I know that you disagree  
15          with SH&E's views, but the Inspector can note, can't he,  
16          that BAA's forecasts have been endorsed by SH&E as being  
17          reasonable and robust?

18   A.   I think the problem with the SH&E analysis is that if  
19          you actually read it, it doesn't of itself contain any  
20          data or analysis.  So they have simply --

21   Q.   Yes --

22   A.   Can I answer the question?

23   MR PHILLIMORE:  I think the problem is you are not answering  
24          the question at the start, so if you could do that,  
25          please, before you continue.

1 A. Ask me the question again, please.

2 MR HUMPHRIES: Right. The point I was making, I know you  
3 disagree with SH&E's forecasts. That is well recorded.  
4 It is in the document. But the Inspector can note that  
5 SH&E have expressly endorsed BAA's forecasts as being  
6 reasonable and robust.

7 A. Yes, but the SH&E report, if you actually read it,  
8 doesn't of itself contain any data or analysis or  
9 justification for the views that they hold. From the  
10 meeting I held with SH&E, it was clear to me that they  
11 had had access to even less material about how BAA  
12 undertook its forecasts than was available to the ACC.  
13 So I think one has to form a view when reading their  
14 report about how much reliance can be placed on their  
15 assertions and judgment, unfounded on evidence.

16 Q. You reproduce in ACC/11 the DfT's forecast. Again,  
17 could you turn to that. ACC/11.

18 A. Yes.

19 Q. It is page 281 in the bundle; that is page 37 of  
20 the document itself.

21 Table 4.1. We can see there that the DfT's forecast  
22 is that for 2015, Stansted will have a throughput of  
23 32.8 million?

24 A. Yes.

25 Q. Very close to BAA's CIP figure?

1 A. Coincidentally, yes.

2 Q. The DfT, as you told us, explicitly models low cost  
3 carriers and forecasts a figure of 21 million, lower  
4 than BAA?

5 A. Yes, but you have to remember that these forecasts were  
6 actually done based on 2001 data, so they are actually  
7 six years old now, and I think one has to look at them  
8 in that context.

9 Q. Yes, but these are the forecasts of the DfT, the DfT --

10 A. Some years ago, yes.

11 Q. Yes, but you are not producing any more recent ones, are  
12 you?

13 A. They haven't produced any more recent ones. They are  
14 due to publish a revised passenger analysis document  
15 shortly, I believe, but it's not available yet.

16 Q. The DfT thought that long haul would be 7 million,  
17 considerably higher than BAA's forecast?

18 A. They did at the time, yes. I don't know what they do  
19 today.

20 Q. So we can see that in overall terms, the DfT's forecast,  
21 which you told us earlier was a forecasting method that  
22 did explicitly take account of low cost carriers, is  
23 radically different from York Aviation's forecast?

24 A. It's an old forecast. I would be interested to know  
25 what forecast the DfT would come up with today. We

1 don't have that available.

2 Q. They were still forecasting for 2015, weren't they?

3 A. Based on 2001 data, when the market was somewhat  
4 different.

5 Q. We don't have before us any forecast from any of the  
6 airlines at Stansted themselves?

7 A. No, because they asked me to produce that report for  
8 them.

9 Q. Yes. We don't have any view of Ryan Air's forecasts of  
10 growth at Stansted?

11 A. I talked to Ryan Air and they signed off the report. It  
12 went in in the ACC's name. It would not have gone in  
13 without the key airlines on the ACC signing the report  
14 off.

15 Q. Yes. We don't have any forecast from easyJet?

16 A. My answer is the same. EasyJet also signed off the  
17 forecasting report.

18 Q. Yes. So we have no idea of what their own forecasts  
19 are, do we?

20 A. Well, I have talked to them and they have signed off on  
21 the forecasting report, so I consider that is  
22 a reasonable representation of the aggregate views of  
23 the airlines at Stansted.

24 Q. Well, as SH&E pointed out in CD/134, the York paper  
25 needs to be seen as part of an ACC negotiating position.

1           Of course those airlines are going to sign off the  
2           report?

3    A.  No, it doesn't.  It is a professionally generated report  
4           giving my objective opinion, that the airlines signed  
5           off the document they were happy to have submitted under  
6           the ACC banner.  I would not put my name or my company's  
7           name to a document that I didn't think was an objective  
8           and fair report.

9    Q.  Now, physical development anticipated in support of  
10           35 MPPA.  We know that obviously certain physical  
11           development was assessed for environmental impact  
12           purposes in the environmental statement.

13   A.  Yes.

14   Q.  BAA produced a plan at appendix A4 with blue and green  
15           developments assumed in the two cases?

16   A.  Yes.

17   Q.  Of course because this is a section 73 appeal, it was  
18           necessary for BAA to assess development that had been  
19           applied for and granted permission in 2003, and it did  
20           so?

21   A.  Could you repeat the question?  I think I lost a word  
22           there.

23   Q.  Yes, because it is a section 73 appeal, BAA assessed  
24           development which had been applied for and indeed  
25           granted planning permission in 2003?

1 A. Yes.

2 Q. The CIP 2000, by contrast, is a document setting out  
3 BAA's capital investment programme for the next ten  
4 years.

5 A. Yes.

6 Q. It's a consultation document, isn't it?

7 A. Yes, it purports to be.

8 Q. It has two categories of development. Can you just look  
9 at the CIP. It's ACC/10. Turn to page 134 in the  
10 bundle; that's page 33 in the document itself.

11 MR PHILLIMORE: Mr Humphries, I think when you introduced  
12 this document, you actually said the CIP 2000; that's  
13 what I noted down.

14 MR HUMPHRIES: I'm so sorry.

15 MR PHILLIMORE: It is 2007?

16 MR HUMPHRIES: It is 2007, that was a slip of the tongue.  
17 I'm so sorry.

18 MR PHILLIMORE: Thank you. Sorry, could you just remind us  
19 of the page again?

20 MR HUMPHRIES: Of course. Page 134, sir. Paragraphs 3.8.1  
21 and 3.8.2 identify for us the two categories of  
22 development in the CIP, don't they?

23 A. Yes, and certainly when one looks back, the projects  
24 move between categories often without explanation from  
25 year to year.

1 Q. At category A, we can see from paragraph 3.8.1, are  
2 projects for which BAA has either already committed to  
3 in terms of prior spend; or they are projects which BAA  
4 intends to commit spend in year 1, based on current  
5 information. So those are, my shorthand, the firmer or  
6 more committed projects?

7 A. Yes, but some projects move from A back to B from year  
8 to year. It does seem to move in both directions.

9 Q. Of course, that's noted and we discussed that yesterday.  
10 Category B, the paragraph tells us:

11 "Those projects represent our intention to invest  
12 future capital to address a particular business need  
13 based on a range of solution options, cost estimates and  
14 delivery programmes."

15 A. Yes, except solution options are never given in the CIP.  
16 That's one of the problems.

17 Q. As the next paragraph tells us:

18 "The initial years of the programme will be  
19 dominated by A list projects ... beyond the first few  
20 years ... largely comprise B list projects."

21 A. Yes.

22 Q. It says then in the fourth line:

23 "These projects have been presented to enable  
24 airlines to share our understanding of the underlying  
25 business need and potential solutions. Similarly the

1 cost is expressed in terms of a range reflecting  
2 different solutions available. The overall level of  
3 expenditure indicated will not be sufficient to deliver  
4 the entire A list and all the B list at the top end of  
5 the range costs. One of the main purposes of  
6 the consultative exercise and the engagement process  
7 that follows is to explore the demand for the projects  
8 and the quantum of expenditure required."

9 So it's pretty clear, isn't it, that particularly in  
10 relation to the category B projects, many of which you  
11 are critical, and you produced yesterday your own  
12 schedule which indicated those projects which you  
13 thought wouldn't be needed at 35 MPPA, do you remember  
14 the document at ACC/25?

15 A. Yes.

16 Q. It is pretty clear, isn't it, that the CIP is intended  
17 to engage in just that sort of debate?

18 A. The problem we have, we had last year and we have again  
19 this year, is the ACC responds to the CIP in detail, and  
20 indeed did so by 31st May. I do not have the bundle  
21 number, sir, but it is page 4 of the document. It notes  
22 that BAA would respond in writing to all responses  
23 received by 31st May. Well, as far as I'm aware, BAA  
24 has not yet even had the courtesy to acknowledge the  
25 ACC's letter on this year's CIP, sending detailed

1           comments, project by project, on the need for specific  
2           facilities. The same thing happened last year. So the  
3           ACC sends back detailed comments saying: we need this,  
4           we don't need this, there is not enough justification,  
5           we think that conflicts potentially with G2, and BAA  
6           don't reply and then the next thing that happens is  
7           schemes start on site.

8    Q. Well, wrong to say those things aren't taken into  
9           account. There is, of course, a discussion and  
10          engagement on these things --

11   A. No, it is hardly a consultative process if a document is  
12          issued which gives inadequate information, doesn't  
13          discuss different options for meeting particular needs,  
14          doesn't set out clearly what the needs are that the  
15          scheme is designed to address, and then when detailed  
16          comments are sent back saying: this doesn't look right,  
17          we don't agree with this, can we have more information;  
18          there is no response given, and then the next thing that  
19          happens is you wait for a year's time and the next CIP  
20          is issued for consultation. That is not consultation.

21   Q. Ms Congdon, I don't accept that for a moment. But  
22          insofar as the ACC is not happy about any of those  
23          things, it's a matter that they can take up with the CAA  
24          as regulator?

25   A. Yes, but you have asked the question here. I'm just

1           correcting your perception that this document is the  
2           start of an open consultation process. It is not.

3   Q.   Indeed they have taken it up with the CAA as regulators?

4   A.   Yes.

5   Q.   The regulator has commented on those matters?

6   A.   It has, and I have no doubt you will be raising those  
7       points with Mr Clayton this afternoon.

8   Q.   Indeed. Now, when you at ACC/5, paragraph 2.25, go  
9       through the various figures in the CIP --

10  MR PHILLIMORE: Mr Humphries, sorry, can you just bear with  
11       us while we locate ACC/5.

12  MR HUMPHRIES: Yes, of course.

13  MR PHILLIMORE: You couldn't give us some pointers as to  
14       where it might be, please? In the original --

15  MR HUMPHRIES: ACC/5? No, it was a separate document; it's  
16       the rebuttal proof. Beyond that, I can't give you much  
17       assistance. It is on your desk somewhere, I suspect.

18  MR HILL: I have a spare.

19  MR BOYLAND: If we could borrow that for a moment. It's  
20       rather strange, we seem to have mislaid our copies.  
21       Thank you.

22  MR HUMPHRIES: In paragraph 2.25, you tell us, and I'm going  
23       to paraphrase, that the ACC does not necessarily agree  
24       with the development costs put forward.

25  A.   Yes.

1 Q. That's noted and we know that. It's clear even on the  
2 basis of those costs, schemes to enable 30 MPPA to be  
3 handled would amount to no more than 108 million, whilst  
4 those schemes not required would be in the order of  
5 280 million. I think those figures are based on your  
6 attribution of the CIP projects to those which were  
7 required to handle 30 and those which were required to  
8 handle 35 and beyond --

9 A. Correct. It was to give an order of magnitude of the  
10 potential savings.

11 Q. Then you say this towards the bottom:

12 "The difference in the scale of the capital  
13 programme of this order of magnitude, hence the value of  
14 additions to the RAB for the next quinquennial review,  
15 would make a very material difference to the charges to  
16 users."

17 Now, of course, that link just simply can't be made,  
18 can it? It is a matter for the CAA what items are  
19 included in the RAB?

20 A. It is, but given the level of automaticity that takes  
21 place between BAA's proposals of capex and what actually  
22 goes into the RAB, whilst you cannot be precise and say,  
23 yes, it will be 280 million, it gives, as I say, an  
24 order of magnitude that potentially would be saved from  
25 the RAB.

1 Q. Indeed, I understood one of your arguments to be  
2 yesterday that some of the projects have already been  
3 included in the RAB and therefore would not be  
4 additions. They are Q4 projects?

5 A. But they could effectively be taken out, as I said  
6 yesterday, and the regulator could impose what we call a  
7 "P nought drop", ie a reduction in the RAB, leading to  
8 a reduction in the cap, effectively backdated to the  
9 last year of the current quinquennium, to become the new  
10 start point for the next quinquennium. There are  
11 precedents for that. It has happened in the past.

12 Q. Indeed. So it would be wrong therefore to conclude,  
13 wouldn't it, that simply because the projects in the way  
14 that you have divided them are in the CIP, which is  
15 a consultation document, that automatically means they  
16 would be fed through to the RAB and become part of  
17 the landing charges for the next quinquennium?

18 A. It is not automatic to every dot and comma, but given  
19 what we see with the CIP, which is the CIP comes out,  
20 the airlines say we are not happy with these projects,  
21 they are too expensive, we don't think that is needed,  
22 we think there is an alternative solution for that which  
23 is cheaper; a year goes by, the CIP comes out again, and  
24 lo and behold, the cost has gone up for most projects,  
25 there's no overall reduction in the CIP over a ten-year

1 period, although there may be a some slippage of  
2 expenditure. The airlines can have no confidence that  
3 anything other than figures of this magnitude will be  
4 put forward by BAA as those schemes that are necessary  
5 to be within the RAB. The fact that some of them may  
6 already be in the RAB, wrongly, from the previous  
7 decision, and others are new additions, doesn't alter  
8 the point that the reduction in the RAB could still be  
9 of the order of 280 million or more.

10 Q. As you say, I can examine the CAA's view on these things  
11 with Mr Clayton.

12 You identify then in your proof two projects which  
13 you draw particular attention to. One is the arrivals  
14 bay. This is in ACC/1, paragraph 6.14. It starts at  
15 6.13. At 6.14 you tell us:

16 "The CIP 2007 indicates that the arrivals bay is now  
17 being planned to handle an increase of 28 per cent in  
18 the flow of arriving passengers."

19 You say:

20 "I assume this means an increase of 28 per cent from  
21 the level of demand experienced in 2006."

22 Now, that is an assumption. My instructions are  
23 that assumption is wrong. In fact it was 28 per cent on  
24 an earlier figure when the project started. But,  
25 Ms Congdon, we don't need, do we, to make assumptions of

1           this sort of what the busy hour rate will be. The busy  
2           hour rate is set out in the CIP itself, in the figures  
3           we looked at earlier.

4    A. I think you will find, if you actually look, the CIP  
5           does not contain sufficient detail, so one has to make  
6           assumptions. So I stated I made an assumption because  
7           the figure wasn't there. If the figure had been there,  
8           I would have used it. BAA tends to publish its actual  
9           busy hour rate figures for the previous year and give  
10          them to the airlines at the time of the charges  
11          consultation in the autumn of each year. So the 2006  
12          figures will not have been available at this point in  
13          time, at least to the airlines, so I made what  
14          I considered to be a reasonable assumption.

15   Q. All right, I'm not criticising that, but it is on the  
16          basis of that assumption that you then get to a capacity  
17          of 37 MPPA?

18   A. Yes, but that's also borne out by other information that  
19          has been supplied to the ACC. It has capacity for in  
20          excess of 35 MPPA.

21   Q. Well, Ms Congdon, as we have agreed, that assessment you  
22          have carried out is based on an assumption.

23   A. It's based on that assumption there, yes.

24   Q. Yes.

25   MR HOLGATE: Can I just say, sir, there is no evidence to

1           contradict that assumption. This evidence has been on  
2           the table for many weeks and there has been no rebuttal  
3           of it. So whatever the correct position is has not even  
4           yet been put to the witness with a source to back it up.

5   MR PHILLIMORE: I think it is a point for re-examination.

6   MR HOLGATE: Well, it is ultimately a point for closing  
7           submissions, but it is something one should be aware of  
8           when we go through these questions.

9   MR HUMPHRIES: Well, Ms Congdon, you say in that next  
10          sentence:

11                 "The busy hour rate for international arriving  
12                 passengers is not given. Assuming it was 3,800, this  
13                 would suggest the capacity of the arrivals bay was  
14                 4,850."

15                 BAA has set out, hasn't it, in the CIP, what it  
16                 considers to be the busy hour rate in 2014/2015. We  
17                 looked at that earlier, didn't we?

18   A. Yes.

19   Q. It is not 4,850?

20   A. No, but I am saying that the capacity of the facility  
21                 might well be 4,850, but the demand for the facility is  
22                 4,330, hence it has capacity for more than 35 MPPA.

23   Q. Well, as I said, we don't accept that assumption. The  
24                 departures bay, which is paragraph 6.15 and following.  
25                 Of course, there's a distinction, isn't there, here, as

1 we touched on before, between the ES which assessed for  
2 environmental purposes two additional departure bays,  
3 because there were two additional departure bays in the  
4 application?

5 A. Yes, and there are two additional departure bays  
6 currently in the RAB.

7 Q. And the CIP, which of course identifies an anticipated  
8 need of one additional departure bay?

9 A. Correct.

10 Q. I think you accept that one additional departure bay  
11 will be needed for the airport operating at 35 MPPA?

12 A. I think, just let me check ACC/25 which I have now  
13 managed to mislay from earlier. I have found it, thank  
14 you. Yes, we accept it is needed between 30 and 35, but  
15 not for 30.

16 Q. The relationship with G2, we discussed this yesterday to  
17 some extent, and I think there is agreement between us  
18 that there is little or no conflict between BAA's G2  
19 proposals and the proposed G1 development?

20 A. Not between BAA's proposals, no.

21 Q. Absolutely. The BAA proposal we can see, I'm just going  
22 to identify the document in part for the Inspector's  
23 benefit. If we just look at CD/167, that is the  
24 development proposal document we looked at yesterday at  
25 CD/217, which was the consultation document. If you

1 look at the plans at the back, plan 1 gives the extended  
2 airport boundary in the proposed G2 scheme, and plan 2  
3 gives the indicative layout of the two-runway airport,  
4 and in broad terms, Ms Congdon, we can see that the BAA  
5 proposal is a wide-spaced runway with the runway to the  
6 south and east of the existing runway?

7 A. Yes.

8 Q. The Inspectors, if they compare the two plans, can see  
9 what is added as part of the G2 development to what  
10 already exists or will exist as part of G1. Now, the  
11 ACC has suggested a very different solution be  
12 considered?

13 A. It is suggested that a better solution would be  
14 a solution based on one of BAA's original options for  
15 a closed space parallel runway to the north and west of  
16 the existing runway.

17 Q. That solution, again, I don't want to go into the detail  
18 of it, but I do want the Inspectors just to be aware of  
19 it. If one was to look in the December 2005 G2  
20 consultation document --

21 A. Which I haven't actually got, but I can recall it.

22 Q. CD/217. I think it is going to be handed to you.

23 A. Right. I didn't bring that one with me. (Handed)

24 Q. Again, if one looks towards the very end at plans 17 and  
25 18 --

1 MR BOYLAND: Just bear with us, Mr Humphries, please.

2 (Pause)

3 MR PHILLIMORE: The plan number seems to have dropped off

4 the bottom of ours. Is it these two you are looking at?

5 MR HUMPHRIES: Yes, sir. You might benefit from a copy of

6 the original which has the colour, but I think for

7 present purposes yours will be fine, and yes, in the

8 bottom right-hand corner the plan number is given, and

9 you can see by reference on plan 17 to the bottom --

10 MR PHILLIMORE: We can't, unfortunately, that's the problem.

11 They have been copied without that part.

12 MR HUMPHRIES: One is going to be produced, sir. (Handed)

13 MR PHILLIMORE: Thank you.

14 MR HUMPHRIES: Ms Congdon, I'm not going to ask you a lot of

15 detailed questions about the layout, that is not for

16 this inquiry, but I just want to highlight what the

17 positions of the two parties are, so the Inspectors are

18 aware of it. Plan 17 is again a plan which shows

19 additional airport boundary for what was then called

20 option D. That was a BAA option on which it consulted.

21 A. Correct.

22 Q. Plan 18 shows the indicative layout for option D, and

23 the Inspector can note, can't he, that the ACC commented

24 in response to the consultation document?

25 A. Yes, I think it is a document that is before the

1 inquiry.

2 Q. It is ACC/13; I don't think we need to spend any time  
3 looking at it, although we can if you want to. But the  
4 ACC's position was that it preferred option D to what  
5 became the proposed option?

6 A. It preferred a modified version of option D.

7 Q. It was in relation to that that BAA and the ACC had  
8 a number of discussions and meetings about what the  
9 variation on option D was that the ACC preferred?

10 A. I think Mr Clayton may wish to discuss, comment on those  
11 meetings but you need to put into context that those  
12 meetings and detailed discussions only actually took  
13 place some six or seven months after the ACC had  
14 submitted its comments, and at a time when BAA had  
15 already internally determined which option it had  
16 selected. So whether it is fair to characterise those  
17 as a number of detailed discussions, I'm not at all  
18 sure.

19 Q. So be it. Again, I suspect that is an area on which we  
20 will not agree. But in your proof at paragraph 7.13,  
21 you make this point:

22 "It's clear from the CIP 2007 that there are schemes  
23 presently being promoted as part of the G1 development  
24 which may not be required or which may be abortive,  
25 dependent on the precise detail of the G2 layout."

1           You highlight 2. I will come back to that in  
2           a minute. But what you are talking about there when you  
3           talk about the precise detail of the G2 development is  
4           not a comment on BAA's proposed layout; it's a comment  
5           on the prospect that an option D variant be promoted?

6    A. No, the prospect that a more cost-effective and  
7           efficient layout is promoted through the planning  
8           system. It may or may not be an option D variant.  
9           There could be other variants which would still mean  
10          that development within the CIP could prejudice the  
11          achievement of a cost-effective layout.

12   Q. All right. Am I right in thinking that the ACC has not  
13          yet come off the fence as to what variant it prefers?

14   A. We have been struggling to get enough information, basic  
15          base information from BAA, to enable that exercise to  
16          take place. For example, I think it is documented in  
17          Mr Clayton's evidence, we had for a long time been  
18          seeking something as simple as a digital base map of  
19          the airport to enable us to actually do some  
20          optioneering. Ironically, as part of the preparation  
21          process for this planning inquiry, we have actually now  
22          been supplied with that digital base map which we were  
23          told absolutely the ACC could not have, so the ACC will  
24          now be in a position to do actually do some detailed  
25          optioneering work in preparation for the G2 inquiry.

1           That is not for this inquiry.

2    Q.   So is the answer to my question yes?

3    A.   We still have more work to do to actually develop an ACC

4           definitive option.

5    Q.   Is the answer to my question yes?

6    A.   Can you put the precise question again?

7    Q.   You can't remember, can you? Haven't got a clue. Let

8           me ask it a different way. What I asked was have you

9           come off the fence as to what is your solution. Has the

10           ACC got now a position, a refined or a fixed position,

11           as to what alternative layout it would like to see come

12           forward?

13   A.   Not at this stage. What it has is a number of clearly

14           enunciated principles set out in the G2 response

15           document from last year, which it believes are the

16           correct basis upon which G2 should be developed, taking

17           into account the specific characteristics of traffic at

18           Stansted and developing an appropriate land efficient

19           solution to meet those needs.

20   Q.   Now, you then say in paragraph 7.13 that you will

21           highlight two schemes where there may be conflict, and

22           in paragraph 7.14 you identify the first of them, which

23           is taxiway infrastructure at the southern end of the

24           existing runway. Is that, as I think the paragraph

25           indicates, the Juliet taxiway phase 4 scheme?

1 A. Yes, I understand that's the name of it, yes.

2 Q. If we look to what the CIP says about that particular  
3 scheme, look at ACC/10, page 180, that's page 79 in the  
4 original document.

5 A. Thank you. Sometimes the projects are not in numerical  
6 order in the documents and they are sometimes hard to  
7 find.

8 Q. I'm aware also that you are looking at the original  
9 documents, not the bundle, which is why I am giving both  
10 references.

11 A. Yes.

12 Q. We can see there ST/7/D, Juliet taxiway phase 4. It is  
13 described in the first paragraph. Then in the second  
14 paragraph it says:

15 "The decision to proceed with this investment will  
16 be made pending the outcome of the SG2 planning  
17 inquiry."

18 A. Yes.

19 Q. So it's clear, isn't it, that BAA is not proposing that  
20 in the way that would be abortive expenditure?

21 A. No, but it is still in the CIP, which forms the basis  
22 for a discussion with the regulator, which determines  
23 airport charges. So it's still relevant to this  
24 exercise that we have to go through of looking at the  
25 cost of development, the charges to the airlines and the

1 demand.

2 Q. Well, Ms Congdon, I would have thought there is a fairly  
3 clear note of caution against that item?

4 A. There is a note of caution, but it has to be looked at  
5 in the quantum of the whole CIP.

6 Q. Of course the other item which you draw attention to,  
7 paragraph 7.15 of the proof, is the proposed works to  
8 Thremwall Avenue. Again, that's dealt with in the CIP,  
9 page 192.

10 It is page 91 in the original numbering. That, as  
11 we can see from the top of the page, is clearly  
12 identified as a category B project; in other words  
13 a project on which BAA is consulting to look at need and  
14 demand?

15 A. Yes, and I have already explained the failures of  
16 the consultation process, but whether it is a B project  
17 or not, it still forms part of a quantum of capital  
18 programme, at least part of which is likely to find its  
19 way into the RAB.

20 Q. We have discussed that and I note that answer.

21 A. I think I also expand on some of these issues as well in  
22 ACC/5, so there is further detail given in ACC/5 on  
23 these issues.

24 MR PHILLIMORE: It has just gone 11.30 am, Mr Humphries.

25 First of all, can you give me a general context as far

1 as further time required, please?

2 MR HUMPHRIES: Yes. I have got to page 31.

3 MR PHILLIMORE: I don't think that helps me very much at  
4 all.

5 MR HUMPHRIES: Well, I end on page 31, so if you give me  
6 just a couple of moments, we will end.

7 MR PHILLIMORE: Okay, thank you.

8 MR HUMPHRIES: Ms Congdon, we know, of course, that the  
9 merits of the different G2 runway options is not  
10 a matter for this inquiry; we are agreed on that.

11 A. Yes.

12 Q. It's in your rebuttal. We have agreed, haven't we, that  
13 the G1 development will not prejudice BAA's proposal for  
14 G2.

15 A. It will not prejudice BAA's proposal but it will  
16 prejudice achieving an efficient and cost-effective  
17 layout in terms of minimising land take.

18 Q. As you agreed when we discussed this right at the  
19 beginning of your cross-examination, part of your  
20 justification for the 30 MPPA cap is the relationship  
21 between G1 and G2.

22 A. It's to allow these very complex and important planning  
23 issues to be resolved in the planning system over the  
24 next few years.

25 Q. Therefore, part of your justification for the 30 MPPA

1 cap is that G1 might prejudice a G2 development for  
2 which BAA will not be applying for planning permission?

3 A. If you take planning permission as definitive, ie that  
4 a scheme cannot be varied through the planning process.  
5 I'm not sure life is quite as black and white as that.

6 Q. Well, I don't quite understand what that means. It  
7 would be difficult to envisage, wouldn't it, a variation  
8 of an application from a runway south and east of  
9 the existing one to one north of the existing one, being  
10 the sort of small variation that Mr Harborough would  
11 allow through on the nod?

12 A. I'm not suggesting it would, but I don't think anyone is  
13 suggesting that the G2 application is likely to go  
14 through on the nod, but it is not without precedent in  
15 my experience at planning inquiries for alternative  
16 schemes to be promoted at the same inquiry.

17 Q. Is the ACC planning to promote alternative schemes?

18 A. You will have to ask the ACC.

19 Q. You have not been told that?

20 A. I have not been told that and as far as I'm aware we  
21 have not discussed that with the ACC as to whether that  
22 is likely to happen.

23 Q. So, subject to being told that that is wrong, part of  
24 your justification for the 30 MPPA cap is that the G1  
25 development might prejudice a G2 layout for which BAA

1 will not be applying for planning permission?

2 A. That's correct, but I still don't think that is  
3 a satisfactory position. Simply because BAA is not  
4 going to be applying for planning approval for an  
5 efficient G2 layout doesn't mean that the planning  
6 system should not seek to achieve an efficient G2 layout  
7 and if this application potentially jeopardises the  
8 ability to achieve an efficient G2 layout, it's a bad  
9 decision.

10 MR HUMPHRIES: Ms Congdon, thank you very much. Thank you,  
11 sir.

12 MR PHILLIMORE: Thank you, Mr Humphries.

13 MR HUMPHRIES: I think I'm on time, by my estimate.

14 A. Give or take ten minutes, I think.

15 MR PHILLIMORE: Thank you very much. We will now take the  
16 adjournment. It is 11.35 am. We will take 15 minutes  
17 until 11.50 am. Thank you.

18 (11.35 am)

19 (A short break)

20 (11.50 am)

21 MR PHILLIMORE: Okay, if we can resume, please. I have  
22 received a table of transfer passengers. I'm not quite  
23 sure where that's come from. Can somebody claim  
24 ownership, please?

25 MR ROSS: Yes, I will claim ownership for it. I haven't put

1 a core document number on it, because there is no new  
2 information here. It is really just to save inquiry  
3 time so they don't have to thumb through all the  
4 individual documents. I thought it was simpler if I  
5 just summarised it on a simple sheet of paper.

6 MR PHILLIMORE: I was going to say, I understand there are  
7 some questions, Mr Ross, you want to put on behalf of  
8 SSE.

9 MR ROSS: Some points of clarification.

10 MR PHILLIMORE: Normally you wouldn't question a party on  
11 the same side, but I obviously appreciate there are  
12 differences between the two points of view, so I think  
13 in the circumstances we will allow you to put them.

14 Cross-examination by MR ROSS

15 MR ROSS: Thank you. It is an unusual situation, but  
16 I think it is unusual that we find ourselves bedfellows  
17 with the airlines on this particular issue, and of  
18 course there are some significant differences. But  
19 I wanted to raise three issues. They are points of  
20 clarification. So hopefully I can move through them  
21 quite quickly.

22 Good morning, Ms Congdon.

23 A. Good morning.

24 Q. The first one relates to transfer passengers. I think  
25 in paragraph 5.63 of your proof of evidence, it is on

1 page 49.

2 Are we there?

3 A. Yes.

4 Q. You predict that not only the percentage of transfer  
5 passengers will fall at Stansted, but also the actual  
6 number?

7 A. I have not been specific, as I said to Mr Humphries,  
8 I have not done a specific calculation of transfer  
9 passenger numbers. So, you know, if Stansted was to  
10 grow to 35 MPPA, I certainly would expect the percentage  
11 of transfers to be lower than it is today. I have not  
12 actually done a mathematical calculation to say the  
13 absolute number would necessarily fall. So you might be  
14 right, you might be wrong. I haven't done the  
15 calculation.

16 Q. I'm looking at line 4 of paragraph 5.63 and you say it  
17 is reasonable to expect both the number and the  
18 proportion to fall?

19 A. Yes, but I have not calculated the specific number.

20 Q. No, I understand that. When Mr Humphries questioned you  
21 on this, some numbers were bandied around, and the  
22 reason I circulated this piece of paper was to try to  
23 get the correct numbers. These can be found in the core  
24 documents that are referred to; it just takes quite  
25 a bit of time to go into each of these documents and

1 look at the tables, so it's just for efficiency I have  
2 put them here. But I imagine these numbers look pretty  
3 familiar to you, that in 2003 it was 14.4 per cent, in  
4 2004, 12.5 per cent, and in 2005, 11.3 per cent. So  
5 it's a declining trend?

6 A. Yes.

7 Q. You did say, I think, that it was now about 10 per cent?

8 A. That's right, because we have access to the unpublished  
9 2006 raw survey data. So we have done our own analysis  
10 based on that.

11 Q. Is it possible, I know the CAA don't normally make the  
12 passenger survey information publicly available  
13 until October each year, but you are privy to that and  
14 I think BAA will be privy to that. Is that something  
15 you can share with the inquiry?

16 A. I can't provide the raw data but I'm happy to put a note  
17 in if the Inspectors would find it helpful.

18 Q. I think it would be useful to see the 2006 figure.

19 A. Happy to do so.

20 MR HILL: Sir, can I say, from our perspective that would  
21 also be helpful, because it bears upon the surface  
22 access case, the surface access case is for non-transfer  
23 passengers.

24 MR PHILLIMORE: Thank you. That would be helpful.

25 MR ROSS: You think it is about 10 per cent?

1 A. About 10 per cent, yes.

2 Q. Okay. If it is 10 per cent, I don't know when you wrote  
3 this paragraph, which numbers you were referring to, but  
4 if you were referring to 2005, as a quick calculation,  
5 there were about 2.4 million transfer passengers?

6 A. Yes.

7 Q. If you were referring to 2006, and it's 10 per cent,  
8 then again, it is about 2.4 million?

9 A. Yes.

10 Q. You are saying it will be less than that in the future?

11 A. Potentially, yes. I mean, I have got some rough numbers  
12 in front of me which I will convert to a note for the  
13 inquiry, but it looks to me like the total volume of  
14 transfer passengers at the moment is about static but  
15 the proportion is declining.

16 Q. So about 2.4 million?

17 A. 2.5 I have, but I will check my maths.

18 Q. And BAA are saying it will be almost 6 million?

19 A. Yes, or 6.6 on one table we have recently been sent.

20 Q. Big difference between the two?

21 A. Correct.

22 Q. You acknowledged, I think as Mr Hill pointed out, that  
23 this is quite significant from a surface access point of  
24 view?

25 A. Yes. Just to caveat that, it may of course be that

1 simply the passengers just don't use Stansted at all and  
2 therefore the total volume comes down. But at  
3 35 million it would be significant but it may slow the  
4 rate of growth again.

5 Q. Okay. You might not be aware but BAA this morning has  
6 announced, I think for the third consecutive month,  
7 passenger numbers at Stansted have fallen. To what  
8 extent do you think that is due to the fact that people  
9 like Ryan Air and easyJet are increasingly able to  
10 provide direct services from airports like Dublin or  
11 Edinburgh or wherever, to Europe?

12 A. Well, that will affect the transfer passenger number.  
13 It is certainly a factor when you look at the transfer  
14 passenger number because about 68 per cent, I think  
15 Mr Maiden agreed with this number, of transfer  
16 passengers have as one end of their journey, if not both  
17 ends, a point in the UK and Ireland. So as more direct  
18 routes are offered, those 68 per cent of transfer  
19 passengers will not need to use Stansted because they  
20 will be able to fly direct. In terms of the overall  
21 decline in Stansted's traffic, you are ahead of me.  
22 When I left my hotel room I couldn't get access to  
23 the June figures, but I did look. Whether that's as  
24 a result of a fall in transfer passengers or just  
25 a general fall in passengers, I can't comment.

1 Q. Okay, but you would accept, wouldn't you, that airlines  
2 like Ryan Air and easyJet can quite easily interrogate  
3 their customer databases, or their own databases and  
4 they know customers' addresses. It is fairly easy for  
5 them to see if opportunities arise, for example, to run  
6 direct services from Dublin or Prestwick to places like  
7 Prague if the numbers justify it. We see those people  
8 transferring through Stansted presently?

9 A. I mean, you are right. That is exactly why I would  
10 expect to see a decline in the proportion of transfer  
11 passengers but I'm not entirely sure the airlines  
12 maintain the booking information in a way that records  
13 passengers who are transferring, because of course  
14 Ryan Air specifically advises people not to book  
15 transfer tickets using Ryan Air, so I'm not aware that  
16 they actually capture the data in the form you  
17 suggested, but I still think in effect it will happen,  
18 that people will no longer need to fly from Dublin to --  
19 I'm trying to think of a place -- Warsaw, say. They  
20 will not need to fly that route via Stansted because  
21 that direct service exists. It may be a bad example,  
22 but ...

23 Q. Okay, that is fine with that point. Do you have any  
24 sort of rule of thumb indicator that would suggest that  
25 if the percentage of long haul passengers increased by,

1 say, 5 per cent, what increase that might create in the  
2 percentage of transfer passengers?

3 A. No, because as I said earlier, I think you have to look  
4 at where those long haul flights are likely to go to,  
5 and if those long haul flights are likely to be to  
6 places that are already well served from other UK and  
7 European airports, whether it is New York, Toronto or  
8 Dubai, it is highly unlikely that those flights will  
9 generate large numbers of transfer passengers at  
10 Stansted. What does generate transfer passengers are  
11 flights to destinations that are not served from any  
12 other airports in the UK, Ireland or nearby Europe, so  
13 you have to really look at what sort of flights and what  
14 destinations are likely to develop.

15 Q. So is it possible even to say whether a 5 per cent  
16 increase in long haul passengers would result in more or  
17 less than a 5 per cent increase in transfer passengers?

18 A. I think you need to look at the network in more detail.  
19 It is nice to say, and I remember saying it at  
20 Manchester, if we had more long haul, our transfer  
21 proportion goes to 10 per cent, but it didn't, because  
22 the sort of places that were being served were the sort  
23 of places that were also being served from lots of other  
24 airports and therefore people didn't need to use  
25 Manchester to transfer, and I see that as a perfect

1 analogy for how Stansted may develop.

2 Q. Would you expect Stansted to develop as a hub airport?

3 A. No.

4 Q. Do the Department for Transport expect Stansted to  
5 develop as a hub airport?

6 A. No, they tested a hub option in the build-up to the  
7 White Paper by artificially moving about a third of  
8 Heathrow's long haul traffic to Stansted to see what  
9 effect it would have, but that was a purely theoretical,  
10 supposing we move that traffic, what happens.

11 Q. Would it be fair to characterise or to say there are two  
12 basic models; one is the hub airport model and the other  
13 is the point to point model.

14 A. Yes, I think in some work that is not before this  
15 inquiry that we did for the UK regional development  
16 agencies prior to the White Paper, we characterise  
17 Stansted as an airport like Manchester and Birmingham  
18 with the potential to grow long haul services, but to  
19 serve the needs of its own region, North and East London  
20 and East Anglia, as, if you like, the regional airport  
21 for North and East London to East Anglia, which is why  
22 I base my projections of long haul and to that extent  
23 transfer on what is in that regional market and that  
24 local market.

25 Q. I'm going to get into real trouble if you give me long

1           answers and I carry on after lunch. The basic point  
2           really was, Stansted is not a hub airport, there are two  
3           models, point to point and hub, and Stansted is more  
4           a point to point airport?

5   A. I characterise it more as a regional airport for the  
6           region it serves, rather than as a hub airport.

7   Q. Okay. But point to point?

8   A. Point to point, yes. Serving the needs of its region.

9   Q. Would it be fair to say that within the aviation  
10           industry, there is a debate globally as to whether the  
11           future of airports is going to be on the traditional hub  
12           and spoke model or the point-to-point model?

13   A. I wouldn't characterise it in that way. I think there  
14           is an acceptance that there are two distinct types of  
15           carrier, the network carriers and the point to point  
16           carriers, and they are different types of airports that  
17           are often used by those types of carrier.

18   Q. Different types of aeroplanes, as well, aren't there?

19   A. Yes and no.

20   Q. Let me be more explicit on what I mean. It is not  
21           a trick question. I'm thinking, for example, that  
22           Airbus sees the future in very large aeroplanes, A380s,  
23           superjumbos. Boeing sees the future in a Dream Liner  
24           aeroplane which is point to point, whereas Airbus is hub  
25           and spoke?

1 A. I would not necessarily make the same linkage as you do  
2 between Boeing strategy to serve point to point markets  
3 and Airbus to serve hubs. It is true that the A380  
4 aeroplane is probably only going to work from major hub  
5 airports with a large number of feeder aeroplanes.  
6 Those feeder aeroplanes may be the same aeroplanes that  
7 are flying point-to-point services by other carriers to  
8 other airports.

9 Q. The hub and spoke model generates far more transfer  
10 passengers than the point to point model; would that be  
11 correct?

12 A. Very much so, yes.

13 Q. Okay. Can you turn to appendix B1 in your proof of  
14 evidence, please. I have it marked here, page 4.

15 When you did this analysis, did you look at the  
16 catchment areas where these people would actually --  
17 what the origins and destinations would be?

18 A. Yes.

19 Q. Do you know what proportion of those would be within  
20 driving distance or easy travelling distance of Stansted  
21 Airport?

22 A. Not off my head. I would have to go back to the raw  
23 data we used and actually calculate it. But basically  
24 I used a reasonable catchment area for Stansted based on  
25 where it is drawing passengers from in its existing

1 network of services, so it would be dominated, based on  
2 charts that are in ACC/11, by the area to the north and  
3 east of London.

4 Q. So there would not be a lot of these passengers who were  
5 travelling in from Dublin or Edinburgh or Glasgow by  
6 aeroplane?

7 A. No. Well, I would not expect them to, because there are  
8 flights from Dublin to New York, flights from Dublin to  
9 Toronto, Dublin to Dubai.

10 Q. It would be helpful if you could provide the origin and  
11 destination information later.

12 A. Yes. It would be based on what is in ACC/11, but I can  
13 extract it out.

14 Q. Thank you. Can I move on to regulatory framework, and  
15 there is one document, sir, which I will want to refer  
16 to here. It is the only document I refer to, or the  
17 only core document I need to look up. It is number 221.  
18 We don't need it immediately.

19 A. Someone is just getting me a copy.

20 Q. In the meantime, can we just confirm, and the reason  
21 I wanted to go through this is because I felt there were  
22 some confusing points and confusing terminology over  
23 this yesterday when this was being raised with you by  
24 Mr Humphries. But can we agree that we are presently in  
25 the Q4 regulatory period, which started on

1 1st April 2003, and was intended to run until  
2 31st March 2008 but has been extended for 12 months.

3 A. Yes.

4 Q. Can we agree the terminology? The phrase yesterday was  
5 used, landing charges or airport charges, and you used  
6 the phrase "aeronautical revenues". But it is true,  
7 isn't it, that the CAA doesn't cap any of those. What  
8 the CAA puts a cap on is the yield per passenger.

9 A. Yes, it puts a cap on the yield per passenger from  
10 a defined list of charges which includes landing  
11 charges, passenger charges, security charges.

12 Q. But the yield per passenger is based on the single till?

13 A. Yes.

14 Q. The starting yield per passenger in the Q4 period,  
15 I think, was £4.89. I don't actually think we have got  
16 the core document which shows that, but I can show it if  
17 necessary.

18 A. I can't remember the figure in my head.

19 Q. It is just the principle.

20 A. It sounds a little high. I would need to check it.

21 Q. Well, if need be, I will provide the document, but it is  
22 not crucial. I think it was £4.89 was the cap at  
23 Stansted for yield per passenger, and it was due to  
24 increase, I think you will accept this point, at RPI  
25 plus zero?

1 A. Yes. All I know is that £5.50 is the actual figure of  
2 the cap this year, having taken into account RPI --

3 Q. You are ahead of me?

4 A. -- excluding the correction factor for under-recovery.

5 Q. You are ahead of me, because the figure currently is now  
6 £5.50?

7 A. Correct.

8 Q. Which is the £4.89 inflated year by year?

9 A. Yes, well, I'm not sure whether the £4.89 is right but I  
10 know that the £5.50 is right.

11 Q. Just for clarification, is it possible, is it  
12 technically possible, with the single till, if the  
13 earnings from retail activities were sufficiently  
14 healthy, that there might be no landing charges at all?

15 A. You would have to ask that question of BAA. I can't  
16 possibly --

17 Q. No, I don't need to ask that question of BAA. It is  
18 simply the way in which the regulatory system works.  
19 With the single till, profit generated from retail, from  
20 car parking, cups of coffee and so on, reduces the yield  
21 that BAA is allowed to earn per passenger?

22 A. It is theoretically possible that if the level of  
23 commercial income was so high, that when you put it all  
24 into that regulatory building block approach, the answer  
25 for the amount of aeronautical or the airport charges

1 revenue that is required is zero. It is theoretically  
2 possible. I very much doubt that would ever arise,  
3 but ...

4 Q. So do I. In fact I thought of the example of perhaps  
5 £20 for car parking and £5 for a cup of coffee, and then  
6 realised that happens already. But I wonder if you  
7 could turn to 221. Core document 221.

8 A. I have it now.

9 Q. This is Stansted Airport Limited financial accounts for  
10 the year ending 31st March 2006. It's the latest  
11 available.

12 A. Yes.

13 Q. I am only going through this, actually, just so that  
14 hopefully the Inspectors can understand how the numbers  
15 work out in a bit more detail. Look at page 2 of  
16 the document.

17 A. Sorry, the one I have is not a good photocopy, so I have  
18 some words missing off the left-hand side of the page.

19 Q. It does not matter. We are on the right-hand side.  
20 Just a quick reference, really, it is just page 2.

21 A. Is that the one headed "[something] of the Directors"?

22 Q. Report of the directors. Then there is a heading,  
23 "Review of Business and Future Developments", and then  
24 the second paragraph, first line, 22.2 million  
25 passengers.

1 A. Yes.

2 Q. That is the only number I want you to bear in mind,  
3 22.2 million passengers. That was the number handled by  
4 Stansted in the year ended 31st March last year, 2006.

5 A. Yes.

6 Q. Now, if you could turn to page 32, actually the page  
7 that follows page 32, which is unnumbered.

8 A. Yes, I'm struggling here because I have page numbers on  
9 some pages but not on most, so you may have to help  
10 point me in the direction.

11 Q. Well, we are about seven pages from the end of the  
12 document. Page 32 is the final page of the financial  
13 report. Then the following page, which is unnumbered,  
14 is headed up, "Airports Act 1986 Stansted Airport  
15 Limited. Permission to Levy Charges".

16 A. Right, I'm struggling a bit with this copy of the  
17 document. Sorry.

18 MR BOYLAND: There is only about half a page of text with a  
19 signature at the bottom.

20 MR HOLGATE: I will pass you my page 32, unmarked. It is  
21 the page after 32.

22 A. I don't think the copy I had actually has this which may  
23 be the problem.

24 MR ROSS: Do you have the following page?

25 A. I have this which Mr Hill has very kindly lent me.

1 Q. I just want to point out that this introductory page  
2 relates to the Airports Act 1986. I think you will be  
3 familiar with this from your experience at Manchester.  
4 A. Yes.  
5 Q. Where there is an obligation upon designated airports to  
6 set out what their income was from aeronautical revenues  
7 and non-aeronautical revenues.  
8 A. Yes.  
9 Q. It is a statutory obligation.  
10 A. From the airport charges revenue, yes.  
11 Q. Yes. Turn to the next page and you will see the actual  
12 numbers set out.  
13 A. Yes.  
14 Q. You have got a calculator there if you need it, but take  
15 my word for it: you will see airport charges, the  
16 income, 72.485 million, and other activities, 101,787.  
17 A. Yes.  
18 Q. Then there is expenditure in each of those areas and  
19 then there is the operating profit in each of those  
20 areas.  
21 A. Yes.  
22 Q. Then total operating profit, 43.96.  
23 A. Yes.  
24 Q. I'm going through this because yesterday, and the  
25 transcript confirms, it was said that at one stage 50/50

1 split, at another stage 65/35 split, but the actual  
2 numbers are here. The revenues from airport charges you  
3 will see, divide that by 22.2 million, it is £3.27 per  
4 passenger, from other activities, divide by  
5 22.2 million, it is £4.13 per passenger. That is from  
6 retail, car parking and so on.

7 A. I will take your word for it.

8 Q. A total of £7.40.

9 A. Yes.

10 Q. The calculation on the other side is easier actually in  
11 terms of the profit. 22.2 million passengers,  
12 conveniently it is about £1 loss per passenger  
13 aeronautically and £3 profit from commercial activities?

14 A. Yes.

15 Q. Okay. I just wanted to set the record straight by  
16 correcting these numbers.

17 A. I think we may be at slight cross-purposes because these  
18 are airport charges revenue and other operational  
19 activities revenue. There are some types of revenue  
20 which would normally be called aeronautical revenues  
21 that are not airport charges, and it is possible that  
22 Mr Humphries was putting to me an  
23 aeronautical/non-aeronautical split, not an airport  
24 charges/non-airport charges split. There are  
25 differences.

1 Q. Quite possibly. Quite possibly Mr Humphries also has  
2 the figures for 2007 but they are not due to be lodged  
3 at Companies House, I think until next February. But  
4 the whole of the regulatory framework would disappear,  
5 wouldn't it, on 31st March 2009 if the CAA's  
6 recommendation to dedesignate Stansted is accepted by  
7 the Department for Transport.

8 A. Yes.

9 Q. Presumably the airlines are opposing dedesignation?

10 A. That's what the airlines have said to date, yes.

11 Q. Because if Stansted was to be dedesignated, the cost of  
12 operating Stansted, BAA's investment in Stansted, none  
13 of that would matter. They could charge what the market  
14 would bear.

15 A. They could charge what they would like to charge, yes.

16 Q. If Stansted became an expensive airport, do you think  
17 that NFCs would find it less attractive to the point of  
18 cancelling schedules?

19 A. I think we are already seeing evidence that when prices  
20 rise above what the market will bear, some services are  
21 curtailed.

22 Q. If the NFCs cancelled schedules, that would create  
23 openings for long haul, wouldn't it?

24 A. Not necessarily if the underlying market doesn't exist.  
25 It's not the fact that the airport is being used by NFCs

1           which is deterring long haul airlines from operating.  
2           It is the fact that the market in the Stansted catchment  
3           area is not big enough.

4    Q.    Would it be fair to say that as far as long haul  
5           services are concerned, airport charges are a much less  
6           significant component of the total cost?

7    A.    They can be in the long run, but you have to bear in  
8           mind that a new long haul service is a very high risk  
9           venture for a carrier, so in the early years of a new  
10          long haul service, they can often be just as dependent  
11          upon low airport charges as actually a no frills carrier  
12          can be. I know when I was at Manchester I did some work  
13          looking at profit per slot, and at Heathrow it is true  
14          that the profit per slot from a long haul carrier is  
15          greater than the profit per slot by a short haul  
16          carrier. But at Manchester the converse was true, that  
17          a high density short haul carrier, operating  
18          at 80 per cent plus load factor, might well be making  
19          more money per movement than a long haul carrier  
20          operating a new long haul service in a marginal market.

21                 So I think, yes, it is easy to say airport charges  
22                 are less important to a long haul carrier, but in  
23                 practice, it very much depends on how mature the service  
24                 is, how strong the local catchment area is, whether a  
25                 lot of business passengers are paying high fares, so I

1 don't think --

2 Q. I understand there can be exceptions --

3 A. No, they are not exceptions --

4 Q. -- but as a general principle, would it be fair to say

5 that airport charges are a less sensitive issue for

6 a long haul carrier than a short haul carrier?

7 A. No, not when it is new long haul services in a new

8 market. No, my experience is to the contrary.

9 Q. Okay. Let's leave that and turn to the third and final

10 point, which is on airport capacity. I would like you

11 to turn to table 3 in ACC/11. This is the very final

12 page, I think, in ACC/11, and it is page 345 in

13 bundle 2. I want to speak about or ask you about the

14 fifth column in. I think it is headed up as "Realistic

15 Projection and its Unconstrained Demand". The column

16 runs from 21.991 million passengers in 2005 through to

17 50 million or 50.7 million in 2030.

18 A. Yes.

19 Q. I understand that's demand -- unconstrained demand

20 figure, but I'm interested in whether you might have

21 related that in any way to capacity; in other words, at

22 what point, running down that column, would the ACC

23 consider there to be -- well, the capacity of

24 the existing runway to be reached?

25 A. I think we don't take any issue with BAA on its

1 calculation of the number of ATMs or movements that the  
2 runway is likely to be able to handle in practical  
3 terms. So I think we on balance took a view that their  
4 40 million ultimate estimate for the capacity of  
5 a single runway is probably around right.

6 Q. Okay, about 40 million. And on an unconstrained basis,  
7 that would be reached about 2019 or 2020.

8 A. Correct, yes.

9 Q. Okay. That's all I wanted to know. Thank you very  
10 much.

11 MR BOYLAND: Sorry, can we just check, you said the  
12 40 million, we were talking about the capacity of ATMs,  
13 you mean the equivalent --

14 A. Yes, the equivalent. We didn't particularly dissent  
15 from BAA's view that the capacity of the single runway  
16 will be a given number of ATMs and that was capable of  
17 accommodating around 40 million passengers per annum in  
18 the fullness of time.

19 MR BOYLAND: Thank you.

20 MR PHILLIMORE: Thank you very much, Mr Ross. Are there any  
21 other parties giving evidence at this inquiry who wish  
22 to ask any questions?

23 Cross-examination by MR HILL

24 MR HILL: Sir, I have literally one point of information  
25 which arises from something Ms Congdon said this morning

1           which I hope will help the inquiry. It was on the  
2           subject of the Department for Transport's forecasts and  
3           you will recall that you were asked to contrast your  
4           forecast with BAA's forecast and the Department's  
5           forecast and you pointed out that the Department's  
6           forecasts were based on information that was now some  
7           six years old, going back to 2001. You indicated that  
8           you were aware that the department were going to be  
9           reissuing some forecasts in the relatively near future.  
10          I wondered if you could just help me with the timescale  
11          of that?

12        A. I wish I could. We were in discussion with the  
13          Department before Christmas prior to the progress report  
14          in connection with work we were doing for other  
15          airports, and we were talking to them about forecasts,  
16          whether the forecasts that we were coming up with for  
17          these other airports were consistent with their views,  
18          whether they were likely to be challenging the forecasts  
19          in master plans and so on. What they said to us was  
20          that they intended to publish, like they did in 2003,  
21          a passenger forecast additional analysis type document  
22          after the progress report. We were told that might be  
23          coming out in January, although my colleague sitting  
24          behind me did phone them in January and said: when are  
25          we likely to have this report and we were told it might

1           come out in about April. I have endeavoured to contact  
2           them recently to say where is it and I haven't yet had  
3           a response.

4   MR HILL: Thank you very much.

5   MR PHILLIMORE: Thank you very much. Are there any other  
6           questions? Thank you very much. Mr Holgate, can you  
7           give me an idea of how long you will be?

8   MR HOLGATE: I was hoping to finish before the luncheon  
9           adjournment so we can move on to our second witness.  
10          That is not meant to be presumptuous, because there may  
11          be questions from yourselves which I have not allowed  
12          for.

13   MR PHILLIMORE: If we set those to one side, how long do you  
14          think you will be?

15   MR HOLGATE: We might need to run over a little, but I'm  
16          going to try and curtail the re-examination so we finish  
17          by about 1 o'clock.

18   MR PHILLIMORE: Thank you.

19                                Re-examination by MR HOLGATE

20   MR HOLGATE: I would like to ask, if I may, some questions  
21          arising from this morning to establish some facts and  
22          evidence. Could you take ACC/10 first of all, that is  
23          to say CIP 2007. Roughly when was that made available  
24          to the ACC, please?

25   A. About a week before we had to submit our proofs of

1 evidence. So about the 20-something of April.

2 Q. Yes, that was roughly the date I had in mind. Thank  
3 you. Would you then turn, please, to page 4. What was  
4 the timescale within which ACC were asked to respond to  
5 this document?

6 A. 31st May.

7 Q. On page 4, do we also see a promise within which period,  
8 within a period specified there, by which BAA were going  
9 to respond?

10 A. Yes, two weeks.

11 Q. Did they?

12 A. Not that I am aware of, although I may need to be  
13 corrected if somebody else has seen a response.

14 Q. So far you haven't, and have they responded so far as  
15 you are aware at all since then?

16 A. I'm not aware. You may need to ask Mr Clayton, but I'm  
17 certainly not aware of a response.

18 Q. You talked about what happened on the exercise carried  
19 out by BAA last year, on the 2006 CIP.

20 A. Yes.

21 Q. Was a similar process set out in that document?

22 A. I don't think it was accompanied by a two-week response  
23 promise, but as I recall, and again I think it is in  
24 Mr Clayton's evidence, there was quite a long time  
25 period before any response was received at all.

1 Q. Was any response given?

2 A. I think we did get a response in the end some months  
3 after comments had gone in.

4 Q. Right. Thank you. Then arising out of this, please,  
5 one or two questions about the G2 consultation exercise.  
6 My learned friend Mr Humphries referred you to -- we  
7 don't need to turn it up, I think -- to core document  
8 217, a document published in December 2005. You said to  
9 the inquiry that the ACC have stated to -- sorry,  
10 forgive me, it's my fault, I'm trying to read my  
11 handwriting. I just want to establish one thing: the  
12 ACC's response to that document, is that ACC/13?

13 A. I do not have an ACC document list, but I know it has  
14 gone into the inquiry. I just don't know the number.

15 Q. Yes, again, the chronology please, roughly when, can you  
16 recollect when the ACC put in their response to that  
17 document?

18 A. It was April. We responded slightly late because we  
19 were trying to get more information from BAA.

20 Q. Yes, don't worry. April 2006.

21 A. Yes.

22 Q. Then you went on to say to the inquiry that there were  
23 meetings with BAA, but they only took place some months  
24 later.

25 A. Correct.

1 Q. Roughly when did those meetings take place?

2 A. There was one meeting I think in September, which didn't  
3 get very far because we asked for some further  
4 information to enable us to then take matters forward.

5 Q. When were the main meetings?

6 A. There was another meeting I think in November. Then  
7 there was a follow up meeting to that in early January  
8 followed by a workshop in mid-January.

9 Q. Yes. So the detailed discussions to which my learned  
10 friend referred --

11 A. Were the 15th and 16th January.

12 Q. Then you were asked, has the ACC come off the fence on  
13 G2, and your answer to that question is, well, we have  
14 asked for, have been asking for a digital base map so we  
15 could do some optioneering on G2.

16 A. Yes.

17 Q. And you were refused that?

18 A. Yes.

19 Q. Can you again roughly put that into context for the  
20 timescale? When were you asking for the digital base  
21 map?

22 A. I think it was the same day that Mr Maiden made the  
23 forecasting presentation in January 2006, and we  
24 eventually got it in the lead up to this inquiry.

25 Q. Roughly when?

1 A. It was one of the exchanges of correspondence with CMS,  
2 Cameron McKenna, in April.

3 Q. In April. Then you were asked as to whether ACC was  
4 going to promote alternatives in due course to G2. How  
5 much time has ACC had to use the digital base map?

6 A. Well, in practice, because we have been preparing for  
7 this inquiry, we haven't had any time yet. We will  
8 start to look at the issues further after this inquiry  
9 or after our appearance here concludes.

10 Q. Thank you for putting that into context. Now, one or  
11 two other matters, please, from this morning. ACC/11 is  
12 the York Aviation May 2006 forecast report --

13 A. Yes.

14 Q. -- that you have been asked some questions about,  
15 please. Can I ask you one or two questions about this.  
16 I think the ACC bundle number, page number, will be  
17 page 345, and it is table C3. I think it's the very  
18 last page of the document. You asked a series of  
19 questions as to what assumptions and procedures have  
20 been applied in order to generate this table, and you  
21 explained, you gave a detailed description on that.

22 A. Yes.

23 Q. I don't want to go over that again. My learned friend  
24 then said to you, "We disagree".

25 A. Yes.

1 Q. I assume that means BAA.

2 A. Yes.

3 Q. Have you had a response from BAA to table C3 --

4 A. Not --

5 Q. -- indicating any respects in which they disagree?

6 A. Not explicitly to that table. We did get a response

7 eventually at the end of October 2006.

8 Q. I know, that's why I'm asking you the question.

9 A. But it didn't deal explicitly with this table.

10 Q. Yes. Just so we see -- I don't want to go into too much

11 detail on this. Just go back to the beginning of

12 chapter 6 of your ACC/11, realistic market projections,

13 do you see?

14 A. Yes.

15 Q. Page 61 internal pagination, otherwise page 305 of this

16 bundle, the ACC bundle. Is it within chapter 6 that you

17 set out alternative projections on behalf of

18 York Aviation as opposed to responding to that which BAA

19 have provided?

20 A. Yes.

21 Q. We can dig up if necessary, I don't think it has gone

22 into the inquiry yet, the BAA response --

23 A. Correct.

24 Q. -- to this document overall.

25 A. Yes.

1 Q. Do you recollect how much of a response we had from BAA  
2 to chapter 6?

3 A. No, most of the response was on the criticisms we have  
4 made of their methodology.

5 Q. Well, I think we will put the document into the inquiry.  
6 I have seen one response to paragraph 6.2.

7 A. Yes, I'm not saying there was no response at all, but  
8 there was very little response to the latter part of  
9 this document.

10 Q. Well, there are a whole series of tables which lie  
11 behind chapter 6, starting at page 65. We have table  
12 6.1, and then we have all the detailed calculations that  
13 my learned friend asked you some questions about  
14 yesterday and today, starting at page 324, 325, I beg  
15 your pardon, at appendix B, your table B.1, and all the  
16 elasticity curves and so on.

17 A. Yes.

18 Q. Did you have responses to all that numerical analysis?

19 A. No.

20 Q. Or any of it?

21 A. No, they just basically said they didn't agree the  
22 bottom-up approach.

23 Q. Yes, that was the response to paragraph 6.2 and we will  
24 put that document in. Thank you.

25 A. I have it in front of me, yes.

1 Q. Thanks. Could you help me, please, we can put that  
2 away, if we have the ACC documents to hand, actually,  
3 perhaps I can just go back to ACC/10, to ask about the  
4 Juliet taxiway phase 4, internal pagination 79 of that  
5 document. You were asked about the sentence which  
6 appears about five lines down from the top of the page,  
7 do you see:

8 "The decision to proceed ..."

9 A. Yes.

10 Q. "... with this investment will be made pending the  
11 outcome of the SG2 planning inquiry."

12 A. Yes.

13 Q. Do you understand what that means as a matter of  
14 English?

15 A. Well, it is slightly -- it essentially says basically we  
16 are not going to decide whether to do it until we have a  
17 decision, but that sits slightly at odds with it being  
18 an A list project.

19 Q. I will leave that matter there. If you can go back,  
20 please, to your ACC/1, would you look, please, at  
21 paragraph 5.75 on page 54, where we see that you say to  
22 the inquiry that:

23 "The profile of demand ..."

24 This is in the context of the discussion about busy  
25 hour rates and so on, and the ratios.

1 A. Yes.

2 Q. "The profile of demand throughout the day is highly  
3 material to the consideration of surface access  
4 implications of the development."

5 As far as ACC's case is concerned, who is dealing  
6 with those surface access implications?

7 A. Mr Bird.

8 Q. If we then go back to the earlier material which you set  
9 out on pages 53 to 54, the material to which you speak,  
10 paragraph 5.70, for example, and following, in  
11 a nutshell, what are the points that you are making to  
12 the Inspectors about this topic?

13 A. That there have been changes, unexplained changes, in  
14 the shape of demand projected for Stansted between the  
15 original 2001 application, the ES, and the CIP, and that  
16 those changes have not been explained, and that the  
17 consequences of those changes may have implications for  
18 the impacts of development. It may mean, for example,  
19 that some of BAA's contentions that the impacts of  
20 development are contained within the scope of the  
21 impacts for the original 25 MPPA scheme may in fact be  
22 wrong if their busy day profiles are wrong.

23 Q. Those are matters to which you do speak.

24 A. Yes.

25 Q. Has there been a response from BAA to the points you

1 make?

2 A. No. The only response insofar as there was one was

3 Mr Maiden's explanation which I note in ACC/22, I think

4 it is now ACC/22A or B, where he gave me a little bit

5 more information about how they had now derived the busy

6 day profile.

7 Q. Also, please, one other question on busy hour rates from

8 this morning. I think this arose from your

9 paragraph 5.72 where in fact you are dealing with

10 a ratio between busy hour -- the number of busy hour

11 passengers to annual MPPA?

12 A. Yes.

13 Q. I think my learned friend put to you that last year, he

14 said on instructions, that ratio was about 325.

15 A. Yes.

16 Q. Have you seen any evidence from BAA to support that

17 figure?

18 A. I don't think I have.

19 Q. Then lastly, I think, from the cross-examination this

20 morning by Mr Humphries, towards the beginning of this

21 morning, you were being asked a series of questions

22 about estimates for transfer passengers, and you

23 explained that you have not produced a transfer figure

24 yourself, an estimate for the future, and you went on to

25 explain the method that you would follow --

1 A. Yes.

2 Q. -- if you had produced such an estimate. You remember  
3 all that?

4 A. Yes.

5 Q. Has Mr Maiden followed the method which you described?

6 A. No.

7 Q. What has he done for the purposes of estimating transfer  
8 passengers in the future?

9 A. He says he has used an econometric model based on, as  
10 I understand it, similar parameters as the econometric  
11 model that he uses to do forecasts overall, which is  
12 things like GDP and trade between world zones.

13 Q. Has that model been produced to the inquiry?

14 A. No, but even if he has that model, I don't see how he  
15 gets from that model of an overall number of transfer  
16 passengers that might be passing somehow over the UK  
17 down on to the ground here in Stansted in terms of what  
18 will use Stansted.

19 Q. On the information before the inquiry, is it possible to  
20 test the estimate of transfer passengers that he  
21 produces?

22 A. No.

23 Q. Then lastly from this morning, I think matters raised by  
24 Mr Ross this morning. He, I think, put some figures to  
25 you based on inquiry document CD/221, and I apologise if

1 I use the wrong terminology, but giving a split between  
2 revenue for BAA generated by regulated charges, as  
3 opposed to other sources of revenue, if I can use a very  
4 broad term at the moment. He put this to deal with some  
5 questions put by Mr Humphries which referred to a 50/50  
6 split or latterly it was said a 65/35 split.

7 A. Yes.

8 Q. I think the second figure in each case being the  
9 regulated charges, as I understood the point. Has any  
10 evidence or information been put before the inquiry by  
11 BAA to support those figures that you have seen?

12 A. Not specifically in evidence documents, although  
13 obviously they can be derived from regulatory accounts  
14 and so on, which I think are inquiry documents.

15 Q. Well --

16 A. I'm trying to be fair to BAA.

17 Q. I'm sure you are. Now, a few matters, please, from  
18 yesterday. I want to clarify something, please, that  
19 you said yesterday in relation to lead times for  
20 additional infrastructure needed to support up to 30  
21 MPPA as opposed to a lead time for getting from 30 MPPA  
22 to 35.

23 A. Yes.

24 Q. My learned friend pointed out to you that the present G1  
25 application was submitted in April 2006, and on one

1 view, a decision is hoped for in April 2008, a period of  
2 about two years.

3 A. Yes.

4 Q. Do you remember that?

5 A. Yes.

6 Q. You pointed out that the ACC's case to the Inspectors is  
7 that BAA could apply for a 35 MPPA ceiling, as a second  
8 stage of G1?

9 A. Yes.

10 Q. As a fallback to G2?

11 A. Yes.

12 Q. Could you just make clear, please, at what stage does  
13 the ACC envisage that second stage of G1 being applied  
14 for relative to the G2 process?

15 A. Well, a decision would be required by 2012. So working  
16 back from that, the application would have to go in at  
17 around 2010, at the latest.

18 Q. But as a fallback to G2, when do you say the application  
19 for the second stage of G1 could in fact be made and  
20 considered?

21 A. Well, it could and should on the logic that we are  
22 taking be applied for at the same time as the G2  
23 application.

24 Q. Thank you. Could I then ask you to clarify one matter  
25 on document ACC/25, which was provided to the inquiry

1           yesterday. The question was put to you by my learned  
2           friend Mr Humphries yesterday about the level of  
3           infrastructure -- sorry, I will just go back to the  
4           question again.

5                     "The ACC accepts in broad terms the level of  
6           infrastructure BAA has indicated in the CIP as being  
7           necessary to support 35 MPPA."

8                     And your answer was: "Not entirely, no".

9    A. Yes.

10   Q. I just want to clarify that, please. If we look at the  
11   ACC columns in this document, we can see there are  
12   three.

13   A. Yes.

14   Q. The first is required to meet demand before the 30 MPPA,  
15   then there is a middle column, demand between 30 and  
16   35 MPPA, then the third column is 35 MPPA and beyond.

17   A. Yes.

18   Q. What are the columns in your view which are relevant to  
19   seeing what infrastructure is needed in order to support  
20   development up to 35 MPPA?

21   A. The first two.

22   Q. Thank you.

23                     We can put that document away, thank you, and could  
24   we turn to core document 113, which is the consultation  
25   document published in February 2003, the SERAS document

1           which you were asked some questions about yesterday. Do  
2           you have that, please?

3    A.   Yes.

4    Q.   Could you go to annex A, it's page 159. A series of  
5           questions were put to you on the basis that really the  
6           focus of this document is to consult on the capacity  
7           that should be provided.

8    A.   Yes.

9    Q.   And at one stage you drew attention to question 6:

10                 "What are the relative merits of these alternative  
11                 combinations of possible airport development as set out  
12                 in chapter 14?"

13                 So your answer was to this effect: the focus of this  
14                 document was on capacities as defined by scenarios set  
15                 out in chapter 14. Within chapter 14, what scenarios,  
16                 please, were you referring to?

17    A.   I was referring to the table 14.3, scenarios of demand  
18           at 2030. Table 14.3 on page 124.

19    Q.   Can we just get the reference first of all. Page 124.

20    A.   Then two pages earlier on page 122 there is table 14.2  
21           which also gives figures for maximum use capacity or  
22           maximum use scenario in 2015.

23    Q.   Thank you. That's all I ask on that document.

24                 Could I then ask you, please, about your final  
25                 summary, as it were. ACC/22. Paragraph 7, where you

1 are dealing with the ATWP core document 87.

2 A. Yes.

3 Q. Towards the end of paragraph 7, you say:

4 "The ATWP makes clear the provision of capacity at  
5 Stansted and the achievement of full use of the existing  
6 runway is not a limit(?) in itself but is inextricably  
7 linked to meeting demand."

8 I'm so sorry, I meant to draw your attention to the  
9 second sentence in paragraph 7 about which you were  
10 asked questions:

11 "The ATWP variously uses the expression 'best use of  
12 Stansted's existing runway' and 'full use of existing  
13 facilities'."

14 The question was put to you yesterday: "Well, you  
15 draw a distinction between the two, runway and  
16 facilities, and I wanted to ask you some questions about  
17 that".

18 A simple question to start off with: could the  
19 existing runway at Stansted be used and operated in  
20 isolation from the facilities at the airport?

21 A. No.

22 Q. From a planning perspective, what approach do you say  
23 should be taken to the use of the existing facilities at  
24 Stansted in connection with that existing runway?

25 A. Well, as I understand it, the intention is to achieve

1 best use in terms of meeting demand as it arises of  
2 the totality of the facilities at the airport, ie the  
3 land at the airport, because that is part of  
4 the facility.

5 Q. If it were to be suggested to you that there is no need  
6 from a planning perspective to make best use of  
7 the existing facilities at Stansted other than the  
8 runway, what would you say to that, the merits of that  
9 approach?

10 A. It seems contradictory in land use planning terms given  
11 the requirements in PPS1 of sustainable development.

12 Q. If we go back please to core document 87 briefly,  
13 chapter 11, the ATWP. Do you have page 113?

14 A. Yes.

15 Q. Stansted Airport starts to be discussed at  
16 paragraph 11.24.

17 A. Yes.

18 Q. Can you look at the last sentence, please.

19 A. Yes.

20 Q. Would you like to read that out?

21 A. "However, more terminal capacity would allow passenger  
22 numbers to grow without additional runway capacity up to  
23 about 35 MPPA."

24 Q. So how do you see that paragraph, and you might care to  
25 look at the following one if necessary, relating to the

1 point that you made about making best use of existing  
2 facilities?

3 A. Well, if I read the sentence at the beginning of 11.25:

4 "The development to provide that increase in  
5 terminal capacity would be limited to the current  
6 airport site."

7 I see a clear reference there to making best use of  
8 the whole site.

9 Q. Thank you very much. Those are the only questions  
10 I want to ask on that particular topic.

11 I think there was one other aspect of ATWP I would  
12 like to deal with, please, and it arises from page 118  
13 of that document. The box. In particular, in the  
14 second paragraph, the second line refers to new airport  
15 capacity being paid for by airport users:

16 "We look to the airport operator to take it forward  
17 in a way that is responsive to users and to provide the  
18 necessary funding."

19 The other reference which I ask you to have in mind,  
20 please, was core document 88, the ATPR, paragraph 5.14,  
21 on page 44, and this point was put to you also by  
22 Mr Humphries:

23 "The timing and nature of development at Stansted  
24 remains a commercial decision for the airport operator."

25 This was one of those matters about which there was

1           some disagreement between yourself and Mr Humphries as  
2           to how this should be -- I think you were arguing with  
3           him, possibly. It led at one stage to this proposition  
4           being put to you: that effectively, your interpretation  
5           would lead to the airlines -- your interpretation of  
6           the policy would lead to the airlines having a complete  
7           veto over development at the airport.

8    A. That was put to me, yes.

9    Q. I just want to explore that with you for a moment.

10           Let's assume there is a disagreement between the  
11           airlines and BAA about the development which is to be  
12           provided at the airport.

13   A. Yes.

14   Q. Can the ACC prevent BAA from making a planning  
15           application in the event of such a dispute?

16   A. No.

17   Q. If BAA, in the event of such a dispute, make a planning  
18           application, despite the disagreement of the airlines,  
19           what would the planning authority, initially the local  
20           planning authority, and then the Secretary of State, do  
21           when evaluating the application?

22   A. The planning authority and the Secretary of State should  
23           consider whether or not the airport operator has brought  
24           forward an application which is responsive to users.

25   Q. Is it open to the planning authority to disagree with

1 the stance taken by ACC?

2 A. It may choose to do so. I should add a however,  
3 though: that would put it into conflict potentially with  
4 the White Paper.

5 Q. At a public inquiry, is it open to the parties at this  
6 inquiry to test the stance taken by ACC to see if it's  
7 well merited?

8 A. Yes.

9 Q. And if it's not well merited, are we in a situation  
10 where ACC have a veto over development of the airport?

11 A. No.

12 Q. Thank you. Then could I ask, please, I'm not far off,  
13 one or two questions about core document 392, which is  
14 the CAA's 15th May 2006 document entitled "Airport  
15 Review Policy Update", and the context for these  
16 questions was to do with the approach taken by the  
17 regulator to the inclusion of capital projects in the  
18 RAB. You were asked, please, to look at paragraph 4.53  
19 of this document on page 45.

20 A. Yes.

21 Q. These questions arose in relation to your summary proof,  
22 ACC/22, paragraph 4. Perhaps we just ought to -- you  
23 were being challenged I think about what you say in that  
24 paragraph by reference to this particular passage in the  
25 ACC's material. We just remind ourselves that in

1 ACC/22, paragraph 4, you refer to the link between  
2 planning and regulatory process, in that if planning  
3 permission is granted to increase the passenger cap to  
4 35 MPPA, the CAA is much more likely to allow the cost  
5 of these schemes.

6 When we go back, please, to the source material that  
7 my learned friend put to you, paragraph 4.53, can we  
8 look at the first sentence:

9 "Fourth, the argument is being made that revenue  
10 advancement is not justified where the investment being  
11 pre-funded has not been awarded planning permission."

12 A. Yes.

13 Q. What was the context, please, for that remark?

14 A. I'm not absolutely sure. It will either have been to do  
15 with preliminary expenditure on generation 2 at  
16 Stansted, or in connection I suspect with development at  
17 Heathrow. It may well have been both.

18 Q. Well, you mentioned Heathrow yesterday.

19 A. Yes.

20 Q. And we have a note of that on the transcript. When you  
21 mentioned Heathrow yesterday in connection with this  
22 paragraph, what did you have in mind, please?

23 A. Well, for example, there have been issues around things  
24 like pre-funding of T5, expenditure on Heathrow East  
25 development, the new redevelopment of the central area.

1 Q. And as far as Stansted is concerned, that underlies this  
2 paragraph, what is the context?

3 A. It would be the funding that BAA sought to have included  
4 in the RAB for preliminary expenditure on generation 2  
5 ahead of any application being made for generation 2.

6 Q. Well, you were taken through this paragraph, we read it.  
7 If we can just cut to the last sentence.

8 "All that said, as a matter of principle, the  
9 absence of planning permission is not a reason to  
10 prevent some form of revenue advancement."

11 A. Correct.

12 Q. Does this paragraph deal with the approach taken by CAA  
13 to proposed capital expenditure which already has  
14 planning permission? Does it deal with that topic?

15 A. Not explicitly, although they do say in the sentence in  
16 the middle of the paragraph, "Equally the CAA will  
17 expect to take into account whether an investment has  
18 been awarded or is likely to be awarded planning  
19 permission".

20 Q. Does it go on to indicate the hurdles or tests which  
21 would be applied in that event?

22 A. No, it just says it's a consideration.

23 Q. Do you regard that paragraph as being inconsistent with  
24 the evidence you have given about your understanding of  
25 the approach taken by CAA?

1 A. No, I don't, and it's my experience as well of being  
2 part of the quinquennial review process.

3 Q. Thank you. Then I think we need core document 164.  
4 This is the price control review document published by  
5 the CAA in December 2006. I think this was the initial  
6 suggestion made, as was put to you by my learned friend  
7 yesterday by CAA as to how the review might proceed.  
8 You were asked to look at the executive summary,  
9 paragraph 51 on page (xii):

10 "The CAA proposes to set a price cap at Stansted at  
11 a level unrelated to the level of investment undertaken  
12 by BAA but at a level high enough to avoid [a difficult  
13 word, this] disincentivising investment to meet  
14 anticipated demand, though not so high as to compromise  
15 the reasonable interests of users."

16 Just for clarity, please, does that paragraph at  
17 that stage assume designation of Stansted remaining in  
18 place?

19 A. It must do, because otherwise the CAA would not be  
20 setting a cap.

21 Q. Then we look at paragraph 52. I am now jumping down to  
22 the third line:

23 "However, it would not be free of all disadvantages,  
24 in particular by seeking to regulate Stansted by  
25 reference to an RAB, a key long term feature of

1 the standard regulatory regime would be removed and by  
2 consequence the airport operator would be exposed to  
3 more uncertainty about the long term regulatory regime  
4 than would otherwise be the case."

5 So do they see that suggestion as being advantageous  
6 or potentially disadvantageous to BAA?

7 A. They are suggesting it might disadvantage BAA in the  
8 sense of them not, if you like, having the guarantee  
9 that if they spend money it goes into the RAB and they  
10 automatically get a return.

11 Q. Indeed. These questions were put to you yesterday by  
12 BAA's leading counsel on the basis of paragraph 51. Is  
13 there any document in the public domain from BAA  
14 indicating that they agree with this suggestion from  
15 CAA?

16 A. I believe that their submission to the Competition  
17 Commission may suggest that they are inclined towards  
18 a dedesignation approach --

19 Q. We haven't got to that yet. I'm asking you whether or  
20 not there is anything from BAA in the public domain. It  
21 is suggesting that they agree with that particular  
22 option in paragraph 51 --

23 A. No, I haven't seen it on this particular option.

24 Q. Then we turn, you are slightly ahead of me --

25 A. Sorry.

1 Q. -- to paragraph 53. Against this background, and we see  
2 three bullet points, the third of which is the cost of  
3 regulation in terms of increased regulatory risk and  
4 investment at Stansted could be potentially significant;  
5 they say the CAA is recommending to the Government that  
6 it consider the case for designation of Stansted  
7 Airport?

8 A. Yes, dedesignation.

9 Q. Dedesignation, thank you. Now, one other matter,  
10 please, on this. My learned friend Mr Humphries sought  
11 to derive two points, as he put it, from paragraph 51.  
12 He said:

13 "We can see, can't we, that what the CAA is  
14 proposing to do, and this assumes that Stansted remains  
15 a designated airport, is to set a high level of price  
16 cap but to allow BAA and users to negotiate the airport  
17 charges within that overall cap."

18 So he read this as leading to a high level of price  
19 cap.

20 A. Yes.

21 Q. Could we just go to chapter 24 in this document,  
22 page 224.

23 A. Yes.

24 Q. You see paragraph 24.2, where in fact within  
25 a designated regime, CAA identified two possible

1 alternatives for setting price caps, option 1 and option  
2 2.

3 A. Yes.

4 Q. Can we see that option 2 was in fact the option which  
5 found its way into the executive summary, paragraph 51.

6 A. Yes.

7 Q. Well, this document is obviously best read at leisure,  
8 if that's the right way of putting it. But for brevity,  
9 if we go to page 226, paragraph 24.11, do you see there  
10 is a heading of "Description" for option 2?

11 A. Yes.

12 Q. I ask you this question, in the context of an answer you  
13 gave to my learned friend yesterday, that you saw this  
14 option as breaking what you described as an automatic  
15 link between investment and the price cap; do you  
16 remember?

17 A. Yes.

18 Q. 24.11:

19 "Under this option, the level of the price cap would  
20 not be derived mechanistically from calculations of cost  
21 and would not therefore be linked to the investment  
22 costs incurred."

23 A. Yes.

24 Q. What is that sentence describing?

25 A. It is basically saying that the price cap will not be

1 derived mechanistically from pouring in the costs at one  
2 end and deriving a price cap at the other end.

3 Q. Yes, but what process is it describing, a theoretical  
4 one, an imaginary one or what?

5 A. The mechanistically derived is the existing  
6 regulatory building block approach.

7 Q. Exactly, what is currently being done by CAA.

8 A. Correct.

9 Q. Right.

10 "Instead the price cap would be set by reference to  
11 a judgment of the relative risks of setting it too high  
12 or too low considered in the context of the CAA's  
13 statutory duties."

14 They go on to explain what they mean by that.

15 A. Yes.

16 Q. Do you understand the CAA's option 2 proposal being one  
17 which would enable simply a high level of price cap to  
18 be set?

19 A. Not necessarily, no. I think there is a lot of debate  
20 to be had yet.

21 Q. I think other matters arising from this are now matters  
22 for submission. The last matter I think, if I may, sir,  
23 if you will allow me a few minutes, not many, the last  
24 matter I need to ask you about goes back again to  
25 ACC/11; that is to say the May 2006 York Aviation

1 forecasting report.

2 You were asked about table B1 in that document,  
3 which in the ACC pagination starts at page 326. Table  
4 B1, which sets out data on the usage of Stansted by  
5 route over a ten-year period, I think you said.

6 A. Yes.

7 Q. You explain how you have used that material to make  
8 projection looking forward ten years route by route.

9 A. Yes.

10 Q. You said at one stage to my learned friend, if I could  
11 just check the reference, that you had carried out  
12 supply side modelling, and this was an approach which  
13 had been applied by the Department for Transport to  
14 NFCs.

15 A. Yes.

16 Q. In which document did the Department for Transport apply  
17 that approach?

18 A. CD/232, the passenger forecast additional analysis  
19 document.

20 Q. That, thank you, is enough for my purposes. It is  
21 helpful to have that identified.

22 A. I can give you a page if it helps. Page 18.

23 Q. That does help. Thank you. Then the point was put to  
24 you that you had not carried out any econometric  
25 modelling in order to do that particular exercise.

1 A. Yes.

2 Q. Your answer was:

3 "This did not include any econometric modelling at  
4 this stage."

5 A. Correct.

6 Q. Could you just indicate, please, tell the Inspectors,  
7 what you were implying by those words "at this stage"?

8 A. Because what I did was look at the first ten years on  
9 the bottom-up basis, taking into account the supply of  
10 airline services, then applied DfT's econometrically  
11 calculated growth rates thereafter. So accepting the  
12 limitations of doing the bottom-up exercise over a very  
13 long term, I then extrapolated them forward to 2030  
14 using DfT's econometrics rather than my own.

15 Q. Then could I lastly ask you one or two questions about  
16 elasticities, also by reference to ACC/11. You were  
17 asked to go to page 298 of the ACC bundle, internal  
18 pagination 54, paragraph 5.25. The questions focused on  
19 the facts that some of the data that has been analysed  
20 produces R squared coefficients of about -- we see here,  
21 0.31.

22 A. Yes.

23 Q. Then we read on in the paragraph:

24 "To reflect the fact that the derived relationship  
25 may only explain about 32 per cent of the changes in

1 growth rates, accepting that other factors such as  
2 capacity constraints overall may be at work in the  
3 London system over the period, we have also looked at  
4 a more moderate partial impact of charges, assuming  
5 a slowing of demand growth of only 50 per cent of that  
6 derived from the analysed relationship to allow for  
7 other mitigating growth factors."

8 A. Yes.

9 Q. Well, what was put to you by my learned friend was this,  
10 looking at that text: as a result of that, because the  
11 data was so weak, what you had to do was moderate those  
12 elasticities by quite simply arbitrarily saying, well,  
13 let's look at what happens if demand growth was only  
14 50 per cent of that derived from the curves.

15 A. Yes.

16 Q. Did you only look at demand growth corresponding to  
17 50 per cent of that you get from the curves?

18 A. I mean, we actually calculated this a number of  
19 different ways using different curves. What we actually  
20 presented was the two extremes and said it might be this  
21 or it might be that, or it could be a point in between.

22 Q. So do you accept that what you had to do was to just  
23 look at what would happen if demand growth was only  
24 50 per cent of that predicted by the curves?

25 A. No, what we said is that there is a range of possible

1 outcomes, and that is a band within which we would  
2 expect the outcome to lie, so we didn't simply look at  
3 one end or the other end. We said there is a range. We  
4 are not attempting at this stage to ascribe probability  
5 to an individual point within that range.

6 Q. Then you went on to employ the term "sensitivity" to  
7 describe the process you had undertaken.

8 A. Yes.

9 Q. What I would just like to understand is this: there is  
10 not agreement, as I understand it, between you and  
11 Mr Maiden about elasticities.

12 A. No.

13 Q. In relation to price change.

14 A. Yes.

15 Q. Do we know where he derives his elasticities from and  
16 how he did it?

17 A. Well, he told me at the meeting that he derived it from  
18 some CAA stated preference work at Stansted carried out  
19 in, I think, 2005.

20 Q. But do we have that material before the inquiry?

21 A. I don't think it's before the inquiry, no.

22 Q. Do we know what relationships can be derived from that  
23 data and what R squared coefficients would apply to that  
24 material? Has that been presented?

25 A. I don't think CAA presented it in that form, and they

1 did actually talk about a range of elasticities in that  
2 report, some of which were considerably higher than  
3 those used by Mr Maiden. I think it went from a range  
4 of minus 0.3 to minus 2.7. He has adopted minus 0.7.

5 Q. What I want to ask you is this: the sort of questions  
6 that were put on your exercise, testing the choice of  
7 elasticities which you have presented, on the material  
8 which is before the inquiry, is it possible to put the  
9 same sort of questions in relation to Mr Maiden's work?

10 A. No, we are told a figure and it is take it or leave it.

11 Q. Exactly. Thank you.

12 Examination by THE PANEL

13 MR PHILLIMORE: Thank you, Mr Holgate. Can I just ask you,  
14 in relation to that topic of the impact of higher  
15 airport charges which you deal with in paragraph 5.67 of  
16 your proof. That is ACC/1. You say there a more likely  
17 scenario is a significant slowing of growth to below the  
18 levels of growth projected by BAA.

19 A. Yes.

20 MR PHILLIMORE: In terms of that scenario you set out, in  
21 paragraph 5.31 of the same document, the proof, you deal  
22 with change as a result of the growth of Polish routes  
23 in that paragraph.

24 A. Yes.

25 MR PHILLIMORE: You say 46 per cent of all growth in

1 passenger numbers in 2006 came from growth on those  
2 routes.

3 A. Yes.

4 MR PHILLIMORE: I just wondered how you deal with that type  
5 of change in relation to the scenario you set out in  
6 paragraph 5.67.

7 A. Well, that is one of the reasons why when I am  
8 projecting a new route I try not to be too specific. It  
9 is -- apologies to the transcript writers -- the  
10 Bydgosz/Lodz problem again, about speculating where the  
11 next destination might be, but you can form some general  
12 view about how many new routes might be introduced over  
13 time by reference to things like number of aircraft that  
14 are likely to come into the fleet, how many might be  
15 based at an airport. There is a rule of thumb we often  
16 use which is one based aircraft by a low fares carrier  
17 generates about 350,000 passengers a year, for example.  
18 So we can put some relativity to it in terms of scales  
19 of growth. But the point about the Polish example, to  
20 show really there was a massive expansion of Polish  
21 routes. Those routes are going to mature. What we are  
22 looking for is where is the next Polish market that is  
23 going to add another step change of growth.

24 MR PHILLIMORE: So in terms of the scenario you set out in  
25 5.67, do I understand from that, that's not the whole --

1 that's based on change in relation to charges, it is not  
2 the whole picture you are setting out within that  
3 scenario?

4 A. What I'm saying at 5.67 is the effect that I believe  
5 increases in charges will have on the airlines'  
6 decisions to put on routes as well as on the passengers'  
7 decision whether to book on those routes. It is  
8 a compound effect on both the airlines' route  
9 decision-making and on the passengers, where it is  
10 a composite elasticity, rather than a simple elasticity  
11 of passenger demand.

12 MR PHILLIMORE: Thank you. Just a different area, one  
13 question in relation to -- it's paragraph 5.6 of your  
14 proof, where you refer to the existing terminal, and it  
15 is towards the end of that paragraph you say:

16 "The terminal is over-designed for its current  
17 primary purpose."

18 Can you just explain what you mean by that, please?

19 A. I understand, and this is hearsay, I appreciate it is  
20 hearsay evidence and you have to put less weight on it,  
21 but I understand from what I have been told by former  
22 senior BAA executives that the original decisions around  
23 the design of Stansted when it was built in the 1980s  
24 was to design an airport terminal so special and  
25 wonderful that the airlines would want to leave Heathrow

1 and move here, so it was deliberately designed to a high  
2 prestigious standard in the expectation that major  
3 network carriers, long haul carriers, would move from  
4 Heathrow to Stansted and create some breathing room at  
5 Heathrow.

6 So the terminal was designed around long haul  
7 traffic, wide-bodied aircraft stands, large spaces  
8 between taxiways, in a way in which has not been  
9 required for the short haul traffic using it.

10 Furthermore, low fares airlines, because of their  
11 business models and the way they operate, make  
12 particular efficient use of airport terminal capacity.  
13 So we have the terminal design for long haul and short  
14 haul, one level of efficiency, and a second level of  
15 efficiency of use, because we have low fares airlines  
16 and their operating practices. So basically we have  
17 a terminal that was designed too big for what eventually  
18 happened.

19 MR PHILLIMORE: Thank you very much. I think there are  
20 a couple of other questions.

21 The indication I'm getting is that the other  
22 questions may take a little bit of time, so perhaps we  
23 will take the luncheon adjournment now. It is 1.15 pm.  
24 If we adjourn for an hour, please, until 2.15 pm.  
25 (1.18 pm)

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(The Luncheon Adjournment)

(2.15 pm)

MR PHILLIMORE: Good afternoon. The inquiry is now resumed.

We will deal first with the remainder questions for Ms Congdon.

MR BOYLAND: Thank you. I wanted to ask you a few questions about the ACC's proposed 30 MPPA cap condition. First of all, am I right in my understanding of your or the ACC's position that it's that such a condition will overcome its objections to the G1 proposals?

A. Yes, it's a proportionate response, we think, to the current circumstances.

MR BOYLAND: Thank you. If there were no such limit, then presumably its position is that the appeal should be dismissed, is that correct?

A. Yes.

MR BOYLAND: In which case the 25 MPPA cap would remain.

A. Yes.

MR BOYLAND: I understand that.

A. That is my understanding of the position, but you may want to clarify that with Mr Clayton.

MR BOYLAND: I may well ask him some of the same questions but I just wanted to be sure of the position. Do I take it that you are the most appropriate person to ask about the tests for conditions in the -- the circular

1 conditions? I'm sure you may not be entirely familiar  
2 with them but you know of them?

3 A. I suppose of the ACC's witnesses, I am probably the more  
4 appropriate. But I am not a town and country planner;  
5 I am a transport planner.

6 MR BOYLAND: I understand that, that is why I raise it with  
7 some diffidence. There are six conditions set out in  
8 the circular conditions, six tests which as a matter of  
9 policy the Secretary of State considered conditions  
10 should only be imposed if they meet those tests.

11 A. Yes.

12 MR BOYLAND: I think there are three of them that I want to  
13 draw your attention to in particular. The first one is  
14 necessity.

15 The second is relevance to planning, and the other  
16 is relevance to the development to be permitted. The  
17 others, just for completeness, are that the condition  
18 would be enforceable, which I don't think is a question;  
19 that it's precise, which is simply a matter of  
20 the wording of the condition; and that it's reasonable  
21 in all other respects, and others may argue about that,  
22 but I don't think you argue that point. So it is really  
23 the first three.

24 I wanted to look in particular at the first two  
25 together, really, necessity in terms of relevance to

1 planning.

2 A. Yes.

3 MR BOYLAND: So can we look first of all, I know you have  
4 indicated various ways in which the 30 MPPA cap would be  
5 necessary. Can we just look at a summary of the reasons  
6 for that, why it is absolutely necessary, in your view?

7 A. I think we consider the cap is necessary in order to  
8 ensure the proper planning of the airport site, and the  
9 airport site as it may need to be extended for the  
10 longer term. So we think it's a necessary interim cap  
11 to allow and enable that proper planning to be brought  
12 forward, and to be the result of the planning inquiries  
13 that are forthcoming into G2.

14 MR BOYLAND: Right. Is that the sole reason?

15 A. That's the primary reason. The primary objective is to  
16 try and make sure that the development of Stansted  
17 proceeds in a manner consistent with the White Paper to  
18 produce an ultimate development that does meet the needs  
19 of users.

20 MR BOYLAND: Yes. I will come back to that in a moment.

21 You also referred, though, to the fact that if there  
22 were a higher cap rather than no cap at all, then that  
23 would, through the route we have explored on a number of  
24 occasions, have an impact on charges and therefore might  
25 reduce the rate of growth of passenger traffic.

1 A. Correct --

2 MR BOYLAND: Is that part of the justification for the 30  
3 MPPA cap in your --

4 A. Yes, part of it. It is the link between capacity and  
5 demand, so we see very much that you have to work out  
6 what the demand is, what the capacity required is,  
7 whether that can be afforded, whether that then has an  
8 effect on demand. So we see them as a continuum,  
9 a circle that would have to be looked at together.

10 MR BOYLAND: Right, thank you. Just going back to the first  
11 point about the proper planning of the airport in the  
12 longer term and with particular reference to G2. The  
13 third test which I referred you to is relevance to the  
14 development to be permitted.

15 A. Yes.

16 MR BOYLAND: In other words, relevance to this proposal  
17 rather than to any other future proposal.

18 A. Yes.

19 MR BOYLAND: How do you square what you have said with that  
20 test?

21 A. Well, that is a test I am familiar with, from other  
22 inquiries, and my understanding was you could not  
23 retrospectively impose a condition unrelated to what has  
24 actually been applied for. In this case what has been  
25 applied for originally was the complete lifting of

1 the cap altogether, so I don't see that suggesting that  
2 actually the complete lifting of the cap is  
3 inappropriate and a cap at another figure is  
4 appropriate, ie in our case 30 MPPA, I don't see that as  
5 being any different than BAA coming forward later in the  
6 day and saying, actually 35 MPPA is an appropriate cap.

7 MR BOYLAND: Yes, thank you. Is the ACC set on a simple  
8 limit of 30 MPPA at this stage, requiring BAA to come  
9 back later if it was to go beyond that; or would  
10 a condition which limited to 30 MPPA, say, at 2011/2012,  
11 we can debate precisely when, but an interim limit with  
12 an ultimate limit of 35, would that meet the ACC's  
13 concerns?

14 A. I think it might, but not if it was by reference to  
15 a year, but by reference perhaps to a demand threshold.  
16 In other words, if a condition was put on that then  
17 said, "You can only go to the next stage once it is  
18 clear that demand is materialising", because then that  
19 will incentivise BAA to make sure that those conditions  
20 were reached, perhaps not develop out some of the  
21 unnecessary facilities, and not put up charges.

22 MR BOYLAND: Thank you. Following on from that, if there  
23 were to be a limit on passenger air movements, at  
24 whatever level, be it 30 or 35 or some other level, is  
25 there also a need for in addition to limit the number of

1 ATMs?

2 A. We believe you need both, because there is an  
3 interrelationship between the two, and the concern that  
4 the ACC has is not simply about terminal facilities, but  
5 also about airside infrastructure.

6 MR BOYLAND: Okay. Thank you very much indeed.

7 MR PHILLIMORE: Thank you very much, then, Ms Congdon.

8 (The witness withdrew)

9 MR PHILLIMORE: I would like to confirm while we are waiting  
10 for Mr Clayton to take the stand, we have received  
11 ACC/26.

12 MR HOLGATE: Yes, sir, I was going to introduce that to the  
13 inquiry. It arose out of re-examination and I asked a  
14 question about the response to ACC/11, the May 2006  
15 forecast. This is it. There was one paragraph, 6.2, at  
16 the end, to which the witness referred, which is the  
17 totality of the comment on chapter 6 of the May 2006  
18 report.

19 MR IAN CLAYTON (called)

20 Examination-in-chief by MR HOLGATE

21 MR HOLGATE: Sir, for this evidence we will need ACC/40,  
22 Mr Clayton's proof. It is, of course, supported by the  
23 ACC documents which have been provided in those blue  
24 folders. We won't find it necessary, I think, to go  
25 into those at this stage.

1 MR PHILLIMORE: Can I just say, I think you indicated that  
2 examination-in-chief would be fairly brief.

3 MR HOLGATE: Yes.

4 MR PHILLIMORE: I think in particular with respect to the  
5 scope of the evidence that Mr Clayton says or summarises  
6 in paragraph 4.3 of his proof, I think from a planning  
7 point of view, are the issues relevant to the inquiry.  
8 I think we would certainly encourage you to be brief.  
9 It would seem to us it is less related to the planning  
10 evidence than some of the other evidence we are hearing.  
11 That is the context we would like you to approach it  
12 with.

13 MR HOLGATE: I have taken on board that point, thank you.

14 If I may introduce Mr Clayton first of all by  
15 reference to his main proof, ACC/40; then we will go to  
16 the summary, ACC/41. Your full names are Ian Clayton,  
17 is that right?

18 A. Yes.

19 Q. Thank you. Since May 2005 you have been employed by  
20 easyJet in the capacity of airport regulatory affairs  
21 manager, is that right?

22 A. Yes.

23 Q. You told the inquiry in 1.1 of your proof that that role  
24 involves all aspects of airport regulation, including  
25 the economic regulation of the four airports designated

1 by the Secretary of State for price control?

2 A. That's correct.

3 Q. EasyJet as an airline, its interest is restricted, you  
4 say, to Stansted and Gatwick. It doesn't operate at  
5 Heathrow or Manchester.

6 A. Yes.

7 Q. Then you also go on to say in 1.2 that your involvement,  
8 so far as your proof is concerned, has included numerous  
9 meetings, discussions and consultations in connection  
10 with airport regulation, and therefore you are well  
11 versed to -- well able, sorry, to explain how the scheme  
12 works insofar as is relevant to this inquiry.

13 A. Yes.

14 Q. In 1.4 you refer to your education and in 1.5 your  
15 career in the army. Leading up to 1.6, in January 1991,  
16 when you left the army, held a number of positions in  
17 administration, supply chain and general management with  
18 companies throughout the world. Then you attained  
19 a degree, a Masters degree in Business Administration  
20 from the Open University which you completed  
21 in December 2000?

22 A. That's correct.

23 Q. 1.7, please, in August 1998 you returned to the UK. You  
24 at that stage were working for  
25 Alpha Flight Services Limited, and you first joined that

1 company as a customer services manager, and then  
2 progressed through that company, and then you left it in  
3 2005 to join easyJet.

4 A. Yes.

5 Q. Thank you very much. There is actually a very useful,  
6 we needn't read it, but 2.1 of your main proof, very  
7 useful dramatis personae list of those who are involved  
8 in the event which you describe in some detail on the  
9 following pages.

10 A. That's correct.

11 Q. Can we go, please, to your summary, section 2, airport  
12 regulation. I think we can take the introduction as  
13 read. I would ask you, please, to read from 2.1.

14 A. "Airport regulation. Because of BAA's dominant position  
15 and to prevent it abusing its customers by fixing  
16 excessive airport charges, such charges are limited by  
17 a price cap. Price caps allow BAA a fair return on its  
18 regulated asset base, the RAB, which incorporates the  
19 capital expenditure that was forecast but not  
20 undertaken. During the current review period, BAA  
21 forecast capital expenditure for £394 million, but  
22 expects to have invested only £236 million. It is  
23 consequently receiving revenues that incorporate  
24 a return on forecast capital expenditure that it did not  
25 and will not undertake. Regulation provides incentives

1 for BAA to forecast capital expenditure in support of  
2 a 35 million passengers per annum passenger limit which,  
3 if delivered, might subsequently either have to be  
4 disposed of or could drive further inefficient capital  
5 expenditure. A 30 million passenger per annum limit  
6 will protect airlines and passengers from further  
7 excessive airport charges and will prevent inefficient  
8 capital expenditure, while any future development of  
9 Stansted will not be prejudiced by decisions that do not  
10 yet need to be made."

11 Q. Section 3 of your proof summarises your evidence on the  
12 constructive engagement process that was instituted by  
13 the CAA. Could you just read 3.1, please?

14 A. "The ACC has consistently and unsuccessfully sought  
15 legitimate information from BAA but BAA has consistently  
16 declined to provide it or denied that it existed or  
17 provided something different or provided only partial  
18 information or provided information too late for it to  
19 be properly considered. This has meant that BAA has  
20 provided insufficient information to enable the ACC to  
21 take an informed position on BAA's Stansted generation 1  
22 application."

23 Q. In section 4 you deal with the central business plan.  
24 You mention that in 4.1. Where does that term come  
25 from, please?

1 A. The central business plan is referred to in annex 4 to  
2 the CAA's 2003 regulatory decision on enhanced  
3 information disclosure by BAA.

4 Q. Is that the term the CAA itself used in that document?

5 A. Yes.

6 Q. All right. Would you read 4.1 and carry on, please.

7 A. "The enhanced disclosure required of BAA states that  
8 consultation should take place around the central  
9 business plan and that the plan should form the basis of  
10 an effective consultation process, designed to provide  
11 airport facilities to best meet the needs of future  
12 airport users. BAA has never disclosed to the ACC the  
13 business plan containing the basic information required  
14 to enable effective consultation to take place. BAA's  
15 revenues at Stansted flow from two sources: aeronautical  
16 revenue, the charges made to airlines, and other  
17 revenues. Aeronautical revenue is a product of  
18 the price cap and the number of passengers passing  
19 through the airport. It is self-evident that any  
20 business plan must be influenced by four interdependent  
21 factors: higher traffic forecasts, leading to more  
22 capital expenditure; and more capital expenditure  
23 leading to higher airport charges; and higher airport  
24 charges, leading to higher fares for passengers; and  
25 higher fares for passengers, leading to lower traffic

1 forecasts. There is no evidence that BAA has taken into  
2 consideration the knock-on effects of such higher  
3 charges, particularly on its own traffic forecasts."

4 Q. Then over the page, chapter 5, you deal with traffic  
5 forecasting, please, from paragraph 5.1.

6 A. "Traffic forecasts are essential to airport planning.  
7 They ... an integral element of future revenues and  
8 provide the benefits against which capital and  
9 operational costs must be weighed. However, the  
10 approach to traffic forecasting advanced by BAA has been  
11 fragmented and its consultation with airlines has been  
12 piecemeal and ineffective. BAA has made presentations  
13 on methodology assumptions and outcomes to each of which  
14 it has sought to secure agreement before moving on to  
15 the next stage. Never has the ACC been provided with  
16 a holistic view of BAA's approach to forecasting or the  
17 relationships between assumptions and outputs, and so it  
18 has never been able to test these. BAA has told the ACC  
19 that its approach to forecasting required massive slabs  
20 of judgment and gut instinct and that it had just  
21 50 per cent confidence in the outcomes."

22 Q. The part of your proof which is being summarised there,  
23 I think is 8.6 of ACC/40, and that goes back, does it,  
24 to a meeting in October 2004 --

25 A. Yes.

1 Q. -- when you referred to two statements made by  
2 Mr Stan Maiden?

3 A. Sorry, could you give me the paragraph reference again?

4 Q. It is 8.6 on page 17 of ACC/40.

5 A. Yes.

6 Q. Thank you. 5.4, the summary, please?

7 A. "BAA's approach assumes passengers will in some way  
8 spill between airports, but BAA has not demonstrated  
9 that this assumption is reasonable. The ACC has,  
10 since October 2004, repeatedly and unsuccessfully tried  
11 to engage with BAA in relation to forecasting. The  
12 information requested includes an explanation of BAA's  
13 methodology and assumptions. The ACC is still awaiting  
14 key information."

15 Q. Then in chapter 6 you turn to deal with the capital  
16 investment plans, please. 6.1.

17 A. "CIPs list and outline BAA's forecast capital  
18 expenditure and are intended to form consultation. They  
19 are not business plans. However, the ACC has an  
20 essential interest because airlines underwrite BAA's  
21 forecast capital expenditure and airlines underwrite  
22 inefficient capital expenditure as well as reimbursing  
23 BAA the fully depreciated asset value. The ACC has a  
24 reasonable expectation that BAA's forecast capital  
25 expenditure is a fair reflection of its intentions and

1 BAA's intentions are reasonable. However, BAA confines  
2 users to commenting after decisions have been taken and  
3 where this reduces actual capital expenditure, only BAA  
4 stands to benefit, because forecast capital expenditure  
5 will already have been added to the RAB. CIPs are at  
6 best a statement of intent; at worst a regulatory device  
7 used for facilitating maximum revenues."

8 Q. Then in chapter 7 you summarise your evidence on the  
9 annex 4 review which you mentioned a moment ago.

10 A. Yes.

11 "On 18th May 2006 the CAA launched a review of BAA's  
12 compliance with the requirements for information  
13 disclosure. While this levelled some criticism at the  
14 ACC for its insistence on the business plan, it judged  
15 that BAA had failed to meet a number of guidelines for  
16 enhanced information disclosure."

17 Q. Chapter 8 deals with G1 and the lack of consultation  
18 information from BAA. Could you read 8.1, please?

19 A. "The ACC has repeatedly and unsuccessfully sought basic  
20 information about BAA's proposals for Stansted  
21 generation 1, for which project the capital expenditure  
22 proposed by BAA is around £600 million. This basic  
23 information has included passenger forecasts, proposed  
24 development and the likely effect of capital expenditure  
25 on airport charges."

1 Q. Then you turn to the 2006 CIP.

2 A. "Despite requests for information and adequate time for  
3 consultation, there has been little meaningful  
4 consultation or further information provided by BAA in  
5 relation to the 2006 CIP, which was recently superseded  
6 by the 2007 CIP."

7 Q. Could I just ask you a supplemental question there. We  
8 were looking with Ms Congdon this morning at the 2007  
9 CIP issued in response from the airlines in late April  
10 of this year.

11 A. Very late April.

12 Q. Yes. You are the secretary, are you not, of the ACC?

13 A. I am.

14 Q. As far as you are aware, has there been a response from  
15 BAA to the material provided by the ACC?

16 A. I have not seen one.

17 Q. Would you have seen one if there had been?

18 A. I would certainly expect so, yes.

19 Q. Could we go back then to 2006. Was there a similar  
20 exercise undertaken by BAA on the 2006 CIP?

21 A. Yes.

22 Q. Did the ACC make a detailed response on that document?

23 A. We did, yes.

24 Q. Did you ever get a response from BAA to your material?

25 A. My recollection is that we had a very minimal response

1           which was quickly superseded by the Ferrovial takeover  
2           of BAA, which was then followed by a period of silence,  
3           effectively. Consultation was effectively ended while  
4           BAA and Ferrovial compared plans.

5   Q.   In fact it is that matter you turn to next in 9.2, is it  
6           not? Perhaps I could ask you then to read from that  
7           paragraph.

8   A.   Yes.

9   Q.   Thank you.

10  A.    "In the summer of 2006 BAA was acquired by ADI [that is  
11           Airports Development International]. The ACC sought to  
12           engage directly with ADI to see if the change in  
13           ownership might bring about better consultation and  
14           a more productive relationship. Following the takeover,  
15           however, there was a period of several months where in  
16           BAA's disclosure of information, such as it had been,  
17           was effectively stalled. When ADI eventually responded  
18           to the ACC, it was to say that unless the desired  
19           regulatory incentives were created by the CAA, there  
20           would be no investment to Stansted. In September 2006  
21           BAA closed off any potential discussions on the 2006  
22           CIP, which was effectively superseded by the 2007 CIP."

23  Q.    That is the subject of your chapter 10. Would you read  
24           from 10.1, please.

25  A.    "Following repeated requests, BAA had stated that the

1           2007 CIP would be published the week ending  
2           20th April 2007. It was eventually issued on  
3           25th April 2007, less than three working days before  
4           proofs of evidence were due to be served at this  
5           inquiry. The late publication of the 2007 CIP  
6           epitomises the BAA's approach to consultation. It  
7           states that it contains important information, yet it  
8           takes the view that it is unnecessary to disclose it  
9           until the last minute."

10    Q. Chapter 11 of your summary deals with the relationship  
11       between G1 and G2. Would you read from 11.1, please?

12    A. "BAA's application supposes that Stansted generation 1  
13       is independent of Stansted generation 2. However, it is  
14       self-evident that these two projects are inextricably  
15       linked, such that they are part and parcel of a single  
16       continuous development. There has been the same lack of  
17       consultation on the part of BAA in respect of Stansted  
18       generation 2 as there has been in relation to Stansted  
19       generation 1. The most striking example of this lack of  
20       consultation occurred recently when the ACC attended  
21       workshops in January 2007 with BAA to enable the ACC to  
22       discuss its suggested option for Stansted generation 2,  
23       in circumstances where BAA had already made the final  
24       decision that it would be pursuing its preferred wide  
25       spaced option in any event, regardless of any proposals

1           made by the ACC."

2    Q.   At the time when those workshops were taking place, did  
3           the ACC have any idea that BAA had already taken that  
4           decision?

5    A.   No.

6    Q.   Were you expecting at the time of those workshops an  
7           announcement to be made on G2?

8    A.   No.  I mean, from our point of view, the workshops  
9           were -- we felt it was the first time that we had had  
10          any kind of real consultation, and we felt that we were  
11          for the first time making some limited progress, so it  
12          was very disappointing when events turned out the way  
13          they did.

14   Q.   Then you referred to that decision in 11.3, please, if  
15          you could read from there.

16   A.   "At the end of January 2007, BAA confirmed its decision  
17          to press ahead with its preferred wide-spaced option.  
18          At a meeting on 12th April 2007, BAA offered to reopen  
19          consultation on Stansted generation 2.  However, it  
20          added that whatever the outcome, it would not change its  
21          proposals."

22   Q.   Yes, in fact the material you have just been summarising  
23          goes back in the main proof, ACC/40, to page 38.  
24          I think you told the inquiry at 14.26 that the  
25          workshops, lasting some two days, took place on 15th and

1           16th January 2007.

2    A.   Yes.

3    Q.   At 14.27 you told the inquiry that on 23rd January, BAA

4           arranged a follow-up meeting with the Stansted ACC for

5           29th January.

6    A.   That's correct.

7    Q.   And had been adamant that this had to take place before

8           30th January?

9    A.   That's correct, I took the call myself, in fact.

10   Q.   Again, on 23rd January, did you have any idea that BAA

11           was about to make an announcement about G2?

12   A.   No, I took a call from a BAA secretary who said that the

13           BAA were keen to have a follow-up meeting, but it must

14           take place before 30th January. I wasn't told why.

15   Q.   That was going to be my next question. That's the way

16           it happened?

17   A.   Exactly, yes.

18   Q.   Then on 25th January, a Mr Nelson, Mr Nelson, could you

19           just remind us, he is --

20   A.   Stephen Nelson is the chief executive office of

21           BAA Limited.

22   Q.   Right. Perhaps I ought to have known that. Informed

23           Mr O'Leary, I think we know who that gentleman is?

24   A.   I'm sure we do.

25   Q.   On 30th January BAA would announce its decision to press

1 ahead with its preferred wide-spaced option for Stansted  
2 G2?

3 A. Yes.

4 Q. Then, if we could turn to chapter 12, please, of your  
5 summary, preliminary expenditure for extra for G2,  
6 paragraph 12.1?

7 A. "BAA has forecast to spend around £105 million between  
8 2004 and 2008 of preliminary expenditure.  
9 Significantly, since 2004, BAA has been incurring blight  
10 costs in respect of a wide-spaced runway option but not  
11 in respect of a close parallel option. This suggests  
12 that it had predetermined the outcome of its December  
13 2005 consultation or at least it had resolved to realise  
14 a return and recover depreciation whether or not this  
15 was subsequently required. BAA has already spent  
16 approximately £103 million on preliminary expenditure,  
17 including some £43.4 million on consultants and  
18 professionals. Despite frequent requests for  
19 documentation and outputs relating to this work, no such  
20 documentation or work product has been produced. BAA  
21 has not consulted before preliminary expenditure has  
22 occurred. Rather, it merely informs users of the level  
23 of expenditure after the fact."

24 MR HOLGATE: Thank you very much, sir.

25 MR PHILLIMORE: Thank you, Mr Holgate. Mr Humphries.

1 Cross-examination by MR HUMPHRIES

2 MR HUMPHRIES: Good afternoon.

3 A. Good afternoon.

4 Q. Mr Clayton, the ACC I think was created in early 2004,  
5 is that right?

6 A. I believe that's correct, yes.

7 Q. I think that was shortly following the publication of  
8 the Air Transport White Paper, although I think that may  
9 be a coincidence. I think the ACC may have been created  
10 for other reasons.

11 A. Yes.

12 Q. As I understand it, but correct me if I'm wrong, it's  
13 not a corporate legal entity; there isn't a company  
14 called ACC or anything like that. It is a name given to  
15 a grouping?

16 A. Yes, that's correct.

17 Q. It was created as an umbrella organisation for  
18 consultation with BAA, not just at Stansted but there  
19 are other ACCs at other airports?

20 A. Yes, and I believe not only with BAA. It is an IATA, an  
21 International Air Transport organisation.

22 Q. In relation to the Stansted ACC, does it have a formal  
23 constitution or anything of that sort?

24 A. No.

25 Q. I know it has a chairman, Mr O'Brien, I think, from

1 Ryan Air and you from easyJet are the secretary. Are  
2 there any other officers of the ACC?

3 A. No.

4 Q. Is there a formal membership; does an airline have to  
5 join the ACC, submit an application, be accepted,  
6 something of that sort?

7 A. No, the ACC is open to and represents -- it's open to  
8 all airlines operating at Stansted and represents the  
9 majority of airlines have either come to meetings or  
10 been involved in the correspondence. And that covers  
11 cargo airlines, charter airlines, all different business  
12 models.

13 Q. So is there a formal membership, is there a sort of  
14 membership list as such?

15 A. There is a list attached to our evidence of all the  
16 airlines who have corresponded with or been involved  
17 with and have agreed to be represented by the ACC, yes.

18 Q. That is at ACC/105. Could we just look at that? Sir,  
19 do you have the blue bundle, or at least what I have got  
20 as the blue bundle, it's towards the end.

21 MR PHILLIMORE: Yes.

22 MR HUMPHRIES: This document says that it's a list of  
23 Stansted ACC members, and it is certainly right, insofar  
24 as I can tell, those airlines or certainly many of them  
25 have been involved over the years in ACC activities.

1 A. Yes.

2 Q. I will come back to the list in a moment, but can I just  
3 take you to -- keep that open, and just take you to the  
4 statement of case. ACC's statement of case.

5 A. Yes.

6 MR PHILLIMORE: Sorry, Mr Humphries, do you have a number  
7 for that one, please?

8 MR HUMPHRIES: I'm not aware that there is a number; I have  
9 put it on the list just as ACC statement of case,  
10 because I didn't know if it had a number. I don't  
11 believe it does but I may be wrong.

12 MR PHILLIMORE: Sorry, I think you missed that one on your  
13 list. Is there a spare copy perhaps that we can --  
14 rather than hunting through our file? (Handed)

15 Thank you.

16 MR HUMPHRIES: Mr Clayton, at paragraph 1.2, it is said  
17 that:

18 "The Stansted ACC represents passenger airlines,  
19 freight carriers and other operators at Stansted  
20 including ..."

21 Then a slightly different list from the list at  
22 ACC/105. But if we look at that first footnote, it  
23 tells us:

24 "The views communicated by the Stansted ACC  
25 represent a general perspective and do not necessarily

1 reflect the precise positions of individual members."

2 It is that I'm interested to understand. That same  
3 text and that same list appears in your proof ACC/40 at  
4 paragraph 3.7. Have that open as well, if you will.

5 Sorry to --

6 A. No, that's fine.

7 Q. -- invite you to have so many things open at the same  
8 time. Paragraph 3.7.

9 You have what is in essence the same paragraph, but  
10 this time the footnote is missing. Am I right in  
11 thinking that the views expressed by the ACC at the  
12 inquiry are again representative of a general  
13 perspective and not necessarily the views of  
14 the individual members?

15 A. Yes. I mean, the members of the -- if I could address  
16 your first points first: the lists are different, for  
17 example, in the case of Britannia Airways is rebranded  
18 as Thompsonfly.com, so I do apologise for that.

19 Q. No need to apologise at all and there may be other  
20 changes. I notice in paragraph 3.7 there is Jet 2, and  
21 I think that one doesn't appear --

22 A. That's correct, and I think ACC/105 is out of date.  
23 I think the membership has grown since then.

24 Q. Also Air Berlin?

25 A. Yes, indeed.

1 Q. Is Air Berlin a member of the ACC?

2 A. Yes, we have corresponded with Air Berlin, it is aware  
3 of the position we have taken and it is in support of  
4 those.

5 Q. I will come back to that. You say you have corresponded  
6 to them. Is there a note of an ACC meeting where  
7 a number of airlines signed up to the case? I have  
8 looked through all the ACC minutes, because you publish  
9 them, that I can see. I don't find that anywhere, but  
10 you may tell me I have not seen all the minutes?

11 A. I have no idea whether you have or not. There has been  
12 no ACC meeting where we have circulated a document for  
13 airlines to sign. What we have done is represent and  
14 discuss the issues at hand in the meetings, sent out  
15 minutes of those for approval to the membership.

16 Q. You sent out minutes of the meeting?

17 A. Yes.

18 Q. And so --

19 A. And positions and all correspondence of all members.

20 Q. So what members have seen have been minutes of meetings  
21 at which things have been discussed?

22 A. Yes. All those members that have not' sent  
23 a representative, yes.

24 Q. Of course we know that at Stansted, there are some --  
25 well, you told me, I think, over 30 airlines, aren't

1           there?

2    A.   That may be true.  I do not know the exact number.

3    Q.   As I understand it, the list of those who are in some

4           way involved with the ACC is a small proportion of

5           the total airlines that fly from the airport?

6    A.   You could characterise it in that way, but what I would

7           say is it represents almost all the traffic and all the

8           business that goes through the airport.

9    Q.   It certainly represents, a point I will come to, the two

10           dominant carriers, Ryan Air and easyJet, who dominate

11           the peak hour slots at Stansted?

12   A.   It also represents the view of the charter carriers who

13           have specifically endorsed that position, and also the

14           cargo carriers as well.

15   Q.   Yes, or at least the ones that are listed in ACC/105?

16   A.   ACC/105 is out of date.  We have a broader list, a wider

17           list than that.

18   Q.   Of course the ACC does not represent the views, does it,

19           of those other 20 or so airlines that are not shown in

20           the list?  I can read them all out and you can confirm

21           it but that may be a waste of time?

22   A.   Read me one or two and maybe I can comment.

23   Q.   I will go through the list: Air Moldova, Air Malta,

24           Atlantic Airways, Aurigny, Blue1, Centralwings, Cyprus

25           Airways, CSA, El Al, eos, Flyglobespan, Germanwings,

1           Iceland --

2    A.   Eos --

3    Q.   Eos is a member?

4    A.   I'm sorry, I'm wrong, I'm thinking ...

5    Q.   Germanwings, Iceland Express, Kibris Turkish, Norwegian,

6           Pegasus, SunExpress, Transavia, Turkish Airways,

7           Wizzair?

8    A.   I have had no correspondence on ACC business with those

9           companies, that is true. That is correct.

10   Q.   The ACC does not of course represent the views of

11           potential new entrants to the airport?

12   A.   I wouldn't agree with that. If you are talking about

13           future users, I would say three things. First of all,

14           future -- well, current users are a subset of future

15           users. There is no way we could know what the

16           requirements of future users are, if indeed they are

17           different to current users, but I would suggest that at

18           Stansted, particularly, the views of current and future

19           users and indeed all airlines are very aligned.

20   Q.   Mr Clayton, with respect, you cannot possibly know that

21           because you don't represent those other potential new

22           users. You don't represent American Airlines, do you?

23   A.   No.

24   Q.   Or any other potential new user?

25   A.   No.

1 Q. We know of course that some of the existing airlines,  
2 including some of the -- well, we know some of  
3 the existing airlines support the application, don't  
4 they?

5 A. I don't know that. Which ones are those?

6 Q. Can you have a look at a document called CD/33.2.

7 A. Yes, I have it.

8 Q. It is a document, sir, I hope I have the correct  
9 numbering in my list. I said new numbering because the  
10 numbers have changed.

11 MR BOYLAND: Yes, there has been a radical restructuring of  
12 our file. We hope it's now correct.

13 MR HUMPHRIES: 33.2. Turn to page 60.

14 MR PHILLIMORE: The summary response to --

15 MR HUMPHRIES: That's right. Page 60, halfway down, we can  
16 see Air Berlin, which is Stansted's third largest  
17 carrier, and I think you told me just now was an ACC  
18 member?

19 A. Yes.

20 Q. Wrote in support of the application?

21 A. Well, I can see this -- I haven't seen that letter, but  
22 I can see what's written in front of me. I did have  
23 correspondence with Air Berlin subsequent to this, and  
24 my understanding is that they were not appraised of  
25 the full implications of the application and what it

1           might mean.

2    Q.   Perhaps you will supply me with that letter.

3    A.   I do not have it with me, but I would have to have

4           a look, yes.

5    Q.   When was the date of that letter?

6    A.   I don't recall.

7    Q.   Over the page, page 61, Max Jet, another ACC member,

8           again a supporter of the application.

9    A.   Indeed, I hadn't seen this before.

10   Q.   So it would be wrong, wouldn't it, for the Inspector to

11          go away with the view that either, (a), the ACC

12          represents most of the airlines at the airport, it

13          clearly doesn't, for the reasons we have agreed?

14   A.   Yes, I can accept that.

15   Q.   It would be wrong even for the Inspector to go away with

16          the view that the ACC represents in this case the views

17          of all its members? Again, we can see two members that

18          are supporters?

19   A.   I'm not sure I agree with that because I think the

20          position of those two airlines has subsequently changed.

21          But what the ACC does represent is the views of

22          the majority of the traffic, cargo and passenger

23          traffic, at Stansted.

24   Q.   When one looks at the meeting notes, the ACC's meeting

25          notes, one sees that typically, the same small group of

1 airlines are represented. Ryan Air is represented.

2 A. Yes.

3 Q. EasyJet is represented.

4 A. Yes.

5 Q. BA Cargo is represented.

6 A. Yes.

7 Q. FedEx is represented.

8 A. Yes.

9 Q. Typically at meetings, one or two others. There may be  
10 more on occasions but typically one or two other  
11 airlines.

12 A. Yes, I think that reflects two things. I think that  
13 reflects first of all that the other members of the ACC  
14 are happy with the way that the ACC's business has been  
15 handled; secondly, I think it is a reflection of  
16 the resources available to airlines to attend meetings  
17 of this type, and the impact for individual airline  
18 businesses.

19 Q. But we simply don't know. We don't have the views of  
20 those airlines, Air Moldova, Air Malta and all the rest.  
21 We simply don't know.

22 A. Yes.

23 Q. Which airlines --

24 A. Sorry, can I add a caveat to my yes? Yes, but I would  
25 be extremely surprised if their views differed from

1           those put forward by the ACC. They certainly have not  
2           expressed a view on those issues either way. In the  
3           same way that I can't say absolutely definitively that  
4           this would support the ACC, I don't think BAA can say  
5           absolutely definitively that they wouldn't, but I know  
6           what I would expect.

7    Q. Now, it may be that ACC members or some of them have  
8           signed up to a strategy which seeks to reduce airport  
9           charges, but how many of them were shown and have signed  
10          up to the detailed forecasting data presented to the  
11          inquiry on the ACC's behalf?

12   A. The York Aviation --

13   Q. Yes.

14   A. All the members were forwarded that.

15   Q. Right. How many wrote saying that they explicitly  
16          supported that data?

17   A. Again, I don't have that information. What I can recall  
18          is that all the responses we had were favourable. I  
19          didn't have any negative responses.

20   Q. How many responses did you have?

21   A. I can't recall, but it would be maybe around half  
22          a dozen.

23   Q. Half a dozen.

24   A. Yes.

25   Q. Perhaps you could let me have those letters?

1 A. I will, again, have to search my -- I mean, it was done  
2 by e-mail, so I will have to search for that.

3 Q. You don't have to answer this next question. Apart from  
4 Ryan Air and easyJet, has any other airline contributed  
5 to the cost of the case being presented by the ACC?

6 A. I do not have to answer it, but I will, and the answer  
7 is no.

8 Q. Move on slightly. Paragraph 3.4.

9 A. Of my main proof?

10 Q. Yes, please. You tell us that your evidence is  
11 primarily concerned with BAA's failures to provide  
12 adequate information on a timely basis, and its failures  
13 to adequately and effectively consult.

14 A. Sorry, am I looking at the right paragraph?

15 Q. Paragraph 4.3.

16 A. 4.3, sorry.

17 Q. Did I give the wrong reference? I have, Mr Clayton,  
18 a very slight number dyslexia, as you will notice,  
19 I swap numbers, and you will understand the importance  
20 of this, which was fine until I was a safety officer in  
21 an artillery regiment where such things mattered.

22 A. Ah, we do have some common ground!

23 Q. We do have common ground, and there were many villages  
24 around Lark Hill which were concerned when our regiment  
25 was firing.

1 MR BOYLAND: Is this why you are not a safety officer any  
2 more?

3 MR HUMPHRIES: I had to check very carefully. I do  
4 apologise, paragraph 4.3. Now, the evidence we can see  
5 there, and we can see it when we go through the proof  
6 itself, is largely directed towards the regulatory  
7 regime under the Airports Act 1986 and the information  
8 being requested under that Act. All right. I'm going  
9 to come obviously and deal with a lot of those points.  
10 Can I just take you to something slightly different  
11 first; I'm trying to orientate you so you know what we  
12 are dealing with. Just deal with the ACC's overall  
13 position on growth at Stansted, and I asked Ms Congdon  
14 a little bit about this, and the Inspector asked her  
15 some more questions that I was also going to ask you.  
16 I think we are agreed, aren't we, that the ACC supports  
17 the expansion of Stansted in principle.

18 A. Yes.

19 Q. You seek the imposition of a 30 MPPA condition, but the  
20 ACC wants the airport to continue to grow to meet demand  
21 as it arises.

22 A. Yes.

23 Q. We can agree also that the ACC wants to see the full use  
24 of the existing runway, and indeed other infrastructure,  
25 I believe?

1 A. Yes, it makes absolute sense, if you have very  
2 expensive, costly infrastructure, it is a commercial  
3 reality that the most effective use is almost always the  
4 maximum use, yes.

5 Q. The point that the Inspector asked which I wanted to put  
6 to you as the ACC representative: if the Secretary of  
7 State was minded not to impose a 30 MPPA condition, what  
8 then would be the ACC's position? Would it want the  
9 current 25 MPPA condition lifted so that the airport  
10 could continue to grow, or would it want that condition  
11 left in place?

12 A. In principle, in general, most airlines are in favour of  
13 growth. They need capacity. I mean, certainly, the  
14 majority of the traffic at Stansted comes from airlines  
15 that have significant aircraft orders in the pipeline.  
16 It is of no benefit whatsoever for those airlines not to  
17 be able to place those aircraft. So in general terms,  
18 airlines and the ACC support growth in principle. As  
19 you know, they want it to be delivered in a cost  
20 efficient way.

21 Q. I'm not going to ask you to go back to it, but when we  
22 were looking at the consultation summary of responses,  
23 CD/33.2, apart from the representations of the ACC, I  
24 didn't note any other airline which opposed the lifting  
25 of the 25 MPPA condition. Is that your understanding

1           too?

2    A.   Sorry, could you repeat the question?

3    Q.   Of course.  I am very sorry.  Putting aside the

4           representation of the ACC, I don't believe there is

5           recorded in the summary of responses, all the responses

6           to BAA's application, any objection from any airline to

7           the lifting of the 25 MPPA condition.

8    A.   I believe that's -- I have no reason to doubt that.  I'm

9           not aware of any.

10   Q.   So would it be fair for the Inspector and the Secretary

11           of State to conclude that if a 30 MPPA condition were

12           not to be imposed, if you lost that argument, the

13           airlines would want the 25 MPPA condition which

14           currently exists to be lifted to allow the airport to

15           grow?

16   A.   I think that is a hypothetical question that I'm going

17           to find very difficult to answer because of

18           the regulatory context in which the debate is taking

19           place.  I'm genuinely trying to answer it as well as

20           I can.  If you are asking me if the ACC would like to

21           see the airport constraint at 25 million passengers per

22           year, the answer is no.

23   Q.   Right.

24   A.   If you are asking me if the ACC would like to see the

25           airport expand to 35 million passengers per year with

1 all the negative regulatory implications that entails,  
2 the answer is also no.

3 Q. I see. What about something in between? What if the  
4 Secretary of State was to impose a 35 MPPA condition,  
5 but the ACC was able to make its arguments to the  
6 regulator on the RAB, and those things that should go  
7 into the capital expenditure, and allow the CAA to make  
8 its decision? What then? Would you prefer the airport  
9 was constrained at 25 MPPA or would you prefer to have  
10 an opportunity to make your arguments on cap ex to the  
11 CAA?

12 A. Well, it's not a position -- it's not a hypothesis that  
13 the ACC has discussed. You have just put it to me now.  
14 But if you are asking me to make a judgment, I think the  
15 ACC would prefer to see expansion without the -- in the  
16 way that you have described without the, if you like,  
17 carte blanche ability of BAA to manipulate the  
18 regulatory system that it currently has. So I can only  
19 answer your question in the context of the regime as it  
20 exists.

21 Q. Mr Clayton, that's of course understood. Thank you.  
22 Now, you tell us a little bit about the justification  
23 for the 30 MPPA cap in paragraph 5.12 of your proof of  
24 evidence. You say there that:

25 "If BAA were to forecast to deliver inefficient

1 capital expenditure in support of a 35 MPPA passenger  
2 cap, it would subsequently have a choice between ..."

3 Then you set out two alternatives. One is disposing  
4 of any inefficient assets, and the other is retaining  
5 any inefficient assets and continuing to realise  
6 a return on and recovered appreciation of these.

7 A. Yes.

8 Q. I want to try and understand that justification for  
9 the -- for imposing the lower cap, because you tell us  
10 in the next paragraph, 5.13:

11 "This is the fundamental regulatory justification  
12 behind the ACC's suggested interim cap of 30 MPPA."

13 So it's important that we understand this  
14 justification. What did you have in mind in relation to  
15 the first alternative, disposing of any inefficient  
16 assets?

17 A. If BAA was to build something in support of a 35 million  
18 passenger cap --

19 Q. Such as?

20 A. Some kind of terminal infrastructure, for the sake of  
21 this argument.

22 Q. All right. Bay 9?

23 A. Pardon?

24 Q. Bay 9? That is terminal infrastructure, the  
25 additional --

1 A. I don't think that is a good example.

2 Q. Okay.

3 A. I mean, this is an argument about the regulatory system,  
4 not specific planning issues or not specific  
5 infrastructure issues.

6 Q. Sorry, Mr Clayton, I don't want to cut across you, but  
7 this is obviously, you have told us, fundamental.

8 A. Yes.

9 Q. You told me such as terminal infrastructure, and there  
10 are two bits of terminal infrastructure that we are  
11 aware of: one is the new arrivals bay, the other is the  
12 departures bay, which is bay 9. So that's why  
13 I mentioned one of those. Now, I want to understand  
14 this, generally: what inefficient asset might be  
15 disposed of by BAA?

16 A. Well, sorry to go back to what I was saying before, but  
17 this is a regulatory argument. It's a position that is  
18 brought forward by the system. So maybe if I go through  
19 my answer, that might be helpful.

20 If BAA were to develop an asset that would cater for  
21 35 million passengers per year, with, let me say, an  
22 asset life of, let's say for the sake of argument  
23 25 years; subsequently, if it goes ahead with its  
24 second -- Stansted's generation 2 plans, that asset may  
25 be insufficient to meet the needs of Stansted generation

1           2 and would have to be disposed of and replaced by, for  
2           the sake of argument, a bigger asset.  However, BAA,  
3           because it would have been added to the regulated asset  
4           base, will continue to receive the fully depreciated  
5           value of that through the charges mechanism, and, of  
6           course, of whatever it built to replace it.

7    Q.  We know, don't we, Ms Congdon confirmed, and there is  
8           nothing, I think, in your evidence which says the  
9           opposite, that there is no -- certainly no  
10           significant -- conflict between BAA's G2 proposals and  
11           its proposed G1 infrastructure.

12   A.  That really is a question for -- I mean, I'm not  
13           a planning expert, not an infrastructure expert; that's  
14           why we employed one.  So it's a question I don't feel  
15           qualified to answer.

16   Q.  This particular problem, which is the justification for  
17           the 30 MPPA cap, certainly on Ms Congdon's evidence,  
18           doesn't arise in relation to BAA's G2 layout, for the  
19           reasons she explained.  There is no conflict.

20   A.  You are putting that to me, but I have to come back and  
21           say, I'm not an expert in this area.

22   Q.  Well, this is obviously a point that you are making at  
23           2.12; that is why I'm trying to understand it.  The  
24           second alternative was retaining any inefficient assets.  
25           Is there any evidence, again in relation to BAA's G2

1 layout, that there would be any inefficient assets  
2 retained? Do you want to again point to any --

3 A. Let me give you some examples; maybe that would be  
4 helpful, but they are not from Stansted, they are from  
5 Heathrow and Gatwick.

6 Q. Well, would you mind actually keeping to Stansted?

7 A. Well, the difficulty with keeping to Stansted is  
8 Stansted is an airport which has only just achieved  
9 a price cap, and therefore the regulatory incentives  
10 have only just changed to these. That was the whole  
11 point of my evidence.

12 Q. You know, for something very important I don't want to  
13 cut you off, but on the other hand I want to keep it  
14 relevant to these points and the justification for the  
15 30 MPPA cap.

16 A. Maybe if I could give the examples very quickly and  
17 briefly, that would be useful. At Heathrow I am told by  
18 associates in British Airways, BAA about eight years ago  
19 undertook the refurbishment of terminals -- I believe it  
20 was 1 and 2, which is now forecast to be replaced by  
21 Heathrow East terminal. So there was a large amount of  
22 expenditure expended on that, which is now not going to  
23 be needed.

24 At Gatwick BAA --

25 Q. But in relation to that one, first of all, that needed

1 to be done, it was done, as you say, a few years ago,  
2 that needed to be done at that time. And Heathrow East  
3 terminal is a proposal again for a future replacement of  
4 part of that, there is no indication that that is  
5 inefficient. It is just whatever your mates at Heathrow  
6 said ... that's not evidence. Go on, you had a point at  
7 Gatwick?

8 A. Yes. I mean, at Gatwick, you know there is a bridge  
9 being built to pier 6 at the north terminal which was  
10 built to -- was the only bridge, I believe, in the world  
11 that a 747 can pass under. But of course now BAA  
12 Gatwick is planning to deliver stands for the A380, the  
13 development of which was known about at the time that  
14 the bridge was built, and consequently has to undergo  
15 a process of widening of taxiways development to stands  
16 around that bridge to allow the A380 into Gatwick north  
17 terminal.

18 Q. Are there any examples you want to draw my attention to  
19 relating to Stansted and the future of Stansted?

20 A. No.

21 Q. Okay.

22 A. I can't because the situation at Stansted, it's only  
23 recently become constrained so the incentives have only  
24 just arrived.

25 Q. I understand. Now, at the end of 5.13, you tell us:

1            "If it is granted permission to increase the  
2            passenger cap to 35 MPPA, BAA will find it easier to  
3            incorporate forecast capital expenditure into the RAB  
4            and so deliver inefficient assets."

5            Now, we have had a certain amount of discussion on  
6            this before, and we looked at paragraph 4.53 of CD/392.  
7            We don't need to go through all of that again unless you  
8            particularly want to. But are you able to point to any  
9            CAA policy document or other CAA document which  
10           justifies the position that it will be easier to  
11           incorporate the forecast capital expenditure if it had  
12           a 35 MPPA cap?

13        A. No, I don't -- I'm not aware that such a document  
14           exists.

15        Q. Okay.

16        A. But I think Louise Congdon in her evidence this morning  
17           answered the same question, and very thoroughly.

18        Q. Certainly I think we can agree, can't we, the ACC is not  
19           putting forward any environmental justification for a 30  
20           MPPA cap?

21        A. That's correct.

22        Q. Whereas BAA has advanced a justification for the 35 MPPA  
23           cap, that being that that is the level of throughput  
24           that has been assessed in the environmental statement?

25        A. Yes, that's BAA's position, yes.

1 Q. Now, we touched on before the point in your  
2 paragraph 4.3 that your evidence is directed to the  
3 provision of adequate information. Can we just touch  
4 then on a few related concepts. There has been a lot of  
5 discussion in the evidence in the cross-examination of  
6 annex 4, and annex 4 information, and the annex 4  
7 review. Can you just confirm for me: annex 4 was an  
8 annex to the CAA's 2003 regulatory decision which we  
9 have in your ACC documents.

10 A. Yes.

11 Q. I can't remember the precise number.

12 A. Yes.

13 Q. The BAA produces annex 4 information in the form,  
14 amongst other things, of its annual capital investment  
15 plans, and we have two of those at ACC/9 and ACC/10.

16 A. Yes. The annex 4 agreement, or the first sentence of  
17 the annex 4 to the CAA's decision, says that the CAA  
18 envisages that the provision of information will develop  
19 around a central business plan document covering  
20 a period of at least ten years. My contention is that  
21 the CIP is not a business plan, because it doesn't  
22 address the issue of revenues.

23 Q. We will come to that in a minute. The CIP looks ten  
24 years ahead, doesn't it?

25 A. Yes.

1 Q. The ACC is critical of the amount of information  
2 contained in the CIPs?

3 A. Yes. And the type of information.

4 Q. We know BAA has not accepted those criticisms.

5 A. That's correct, yes.

6 Q. That's a matter that the regulator has looked at.

7 A. Indeed.

8 Q. Not a matter for the Inspector, is it?

9 A. Well, I think that the environment in which this  
10 planning application is made, and -- I mean, this  
11 process is to look -- one of the things this process is  
12 going to look at is need, so I think it is important  
13 that the Inspectors fully appreciate the regulatory  
14 environment in which it's made.

15 Q. I appreciate the regulatory environment is one thing.  
16 But the Inspector isn't going to determine, is he,  
17 whether the CIP is or is not sufficient to satisfy  
18 annex 4?

19 A. I'm not aware specifically that he is going to do that,  
20 no.

21 Q. I would be staggered if he did, but I -- life is full of  
22 surprises.

23 MR PHILLIMORE: Is that a convenient moment to take a break?

24 MR HUMPHRIES: Sir, I can lie down in cases of surprise.  
25 Yes, it is.

1 MR PHILLIMORE: Okay, it has just gone 3.30 pm. Break until  
2 3.45 pm, please. Thank you.

3 (3.32 pm)

4 (A short break)

5 MR PHILLIMORE: We now resume, thank you. Just before we  
6 continue, can I draw attention to the fact the inquiry  
7 will start at 9.45 am tomorrow, not 10 o'clock. I will  
8 give another reminder at the end. Mr Humphries.

9 MR HUMPHRIES: Mr Clayton, we were just going through some  
10 different concepts, if I can call them that, in relation  
11 to information, and we talked a little bit about annex 4  
12 information, what that was, what it meant.

13 A. Yes.

14 Q. I just want to move on now to another term which has  
15 been bandied around quite a lot, which is constructive  
16 engagement.

17 A. Yes.

18 Q. Constructive engagement is a process which in May 2005,  
19 the CAA asked BAA and the airlines at the South East  
20 airports to engage in, by way of dialogue on regulatory  
21 issues?

22 A. Not only regulatory issues, but yes.

23 Q. We have that document, you don't need to look it up, but  
24 ACC/107 is the document in which the CAA started the  
25 process of constructive engagement. In relation to that

1 process, both parties again were critical of each other,  
2 weren't they?

3 A. Sorry, could you -- at the start of the process?

4 Q. Yes. Mr Clayton, there is no need, unless you want to,  
5 to look up ACC/107. As I said, I'm doing that really as  
6 a reference for the Inspectors and others so they know  
7 where the documents are. I know you know where they are  
8 and I know where they are. The process started  
9 in May 2005 prompted by that document at ACC/107. What  
10 happened was the dialogue didn't really take off, both  
11 parties were critical of each other, and then  
12 in December 2005, the CAA called an end to constructive  
13 engagement, didn't it?

14 A. Effectively, yes. The first stage of constructive  
15 engagement, the CAA put out a diagram of how this should  
16 take place, and the first stage was traffic forecasts.  
17 I think you have heard a lot of evidence about the  
18 difficulty we have had with that, so yes, that's true.

19 Q. Again a reference, no need for you to look it up, but  
20 the end of constructive engagement is contained in  
21 ACC/112, paragraph E45. Again, that is a reference for  
22 the inspectors just so they can see that. I know you  
23 are familiar.

24 Again, all of that, and what did or did not, what  
25 should or should not have happened during constructive

1 engagement was a matter for the regulator, but again,  
2 it's not a matter that the Inspectors can do anything  
3 about, can they? The process ended in December 2005,  
4 a long time ago now?

5 A. Yes, formally ended, although the CAA did encourage the  
6 airport and the airlines to try to discuss and  
7 potentially agree wherever possible, and we certainly  
8 tried to do that.

9 Q. The next concept, the CAA annex 4 review, that's  
10 ACC/115, we will need to come back to that in a minute,  
11 that was a review undertaken between May 2006  
12 and December 2006?

13 A. Yes, I believe so. Yes.

14 Q. It was a detailed review of BAA's compliance with  
15 annex 4?

16 A. Yes.

17 Q. It took into account specifically the ACC's  
18 representations; we have got those at ACC/114?

19 A. Yes.

20 Q. Those ACC representations made substantially the same  
21 points on lack of information as the ACC is now making  
22 to the Inspector?

23 A. Yes. It all comes down to the question of what is  
24 a business plan. If I can refer to the document you  
25 have just taken me to, I refer you to --

1 Q. Which one?

2 A. The annex 4 review.

3 Q. Yes, we will be looking at that, but you take me there  
4 now by all means. Let me just get it out.

5 A. Paragraph 4.1.

6 Q. Sir, what you have to do when you look at this document,  
7 you may have seen it already. You have the initial  
8 proposals, December 2006, at the front, in ACC/115, and  
9 then when you turn to page 1084, you have the annex 4  
10 review. So page 1084.

11 Mr Clayton, sorry, you were taking me to  
12 a paragraph.

13 A. Sorry, I was trying to make the point --

14 Q. Just give me the reference again?

15 A. Paragraph 4.1, scope.

16 Q. Yes.

17 A. There's a quote, and to me this is the fundamental  
18 difficulty. It says that, second sentence:

19 "The CAA's February 2003 decision stated that the  
20 basis for information disclosure and consultation will  
21 be BAA's capital investment plan."

22 But when I actually look at the decision, the  
23 annex 4 agreement --

24 Q. Please give me the reference again where you are going  
25 to?

1 A. This is ACC/106.

2 Q. Thank you.

3 A. The first sentence says:

4 "The CAA envisages that the provision of information  
5 will develop around a central business plan."

6 I think that's the fundamental difficulty that this  
7 has driven, because a business plan and a capital plan  
8 are not the same thing. A capital plan is about  
9 investment and what a company is going to spend, and  
10 a business plan includes that, but also includes what  
11 the benefits of that investment are going to be.

12 Q. Well, we can see therefore the seeds of the dispute. We  
13 will come on in a little bit to examine that in more  
14 detail. The point I put to you, which you agreed with,  
15 these points you are now making about lack of  
16 information were made, weren't they, to the CAA?

17 A. Yes.

18 Q. Again, that is a matter for the regulator, not for the  
19 Inspector. The Inspector can't determine whether BAA's  
20 CIP should in fact be a central business plan.

21 A. I agree, but I think the Inspector needs to take a view  
22 of need, and need should relate to the needs of  
23 customers.

24 Q. That is --

25 A. And we are the customers.

1 Q. That is a different point. Now, I'm moving on again,  
2 and I am going to come back, as I promised I would, to  
3 some of these points on business plans and so on.  
4 Airport regulation. You are, as you tell us, the  
5 easyJet airport regulatory affairs manager.

6 A. Yes.

7 Q. You tell us in your paragraph 1.2 that over the past two  
8 years, you have come to understand the UK airports'  
9 regulatory mechanism?

10 A. I believe so, yes.

11 Q. I think, as you have very fairly told us before the  
12 break, you have little familiarity with the planning  
13 system?

14 A. That's absolutely true.

15 Q. Not a criticism; some might carry that as a badge of  
16 honour. But you have told us that. Therefore you are  
17 not someone who seeks to give evidence as to what  
18 matters are properly for the regulator or what matters  
19 are properly for the -- sorry, what matters are properly  
20 for an inspector in the regulatory context. Your  
21 context is regulation, as I understand it; your  
22 expertise.

23 A. Yes.

24 Q. Now, am I right in thinking that the ACC has made  
25 representations to the CAA on all the issues it

1           considers relevant to the Q5 regulatory review, so far?

2    A.   I believe so.

3    Q.   Also you have made all the representations you think

4           relevant to the OFT on its regulatory matters?

5    A.   Again, I believe so, yes.

6    Q.   Again, the planning inspector has no power, does he, to

7           determine the outcome of those reviews?

8    A.   If you tell me he doesn't.

9    Q.   Well, from the regulatory context, I think those are

10           matters for the OFT and the CAA, aren't they?

11   A.   Yes.   Yes, they are.

12   Q.   Now, constructive engagement, let's return to that, we

13           touched on it as a concept, but let's just understand

14           what the CAA actually did about it.  Can you have again,

15           you took us to ACC/115.  Let's have that out.  We know,

16           don't we, that constructive engagement broke down

17           between -- sorry, took place between April 2005

18           and December 2005, and it broke down, didn't it, for

19           reasons which related to the central business plan?

20   A.   Fundamentally, that was one of the key -- the key

21           drivers behind that.  I mean, I think to say that it

22           broke down, it's kind of treating it in a very black and

23           white manner.  I mean, it became apparent that it

24           wouldn't deliver the results in a suitable time because

25           the progress had been so slow.

1 Q. If I take you to a slightly different reference first,  
2 ACC/112, the same bundle, and you look at page 10.27,  
3 that is E39.

4 A. Yes, I'm looking at that.

5 Q. We can see there has been a lack of progress in the six  
6 months since the formal starting point for constructive  
7 engagement. We see right at the bottom of that page it  
8 says:

9 "The Stansted ACC noted that users at Stansted were  
10 more than happy to engage constructively once they had  
11 been given sight of an overall business plan."

12 A. Yes.

13 Q. And E40, September 26th, 2005:

14 "... CAA responded to the ACC proposal stating that  
15 some of the information identified for the central  
16 business plan to be provided as a prerequisite to their  
17 participation in constructive engagement fell outside  
18 the scope of the airport/airline discussions that  
19 the CAA had identified in the documents."

20 A. Yes, I mean --

21 Q. We know, don't we, that the CAA didn't agree with the  
22 ACC's view of what was needed in a central business  
23 plan?

24 A. I think that's true. I think the point is, the annex 4  
25 agreement specifies a central business plan. BAA had

1 variously declined to provide one or said they didn't  
2 feel they needed to or said at one time it didn't exist  
3 in the format we suggested. Because we made no progress  
4 on that, we did suggest a format. If that format went  
5 over and above what was required by annex 4 or what BAA  
6 thought was reasonable, which clearly it did, or clearly  
7 it went above what BAA thought was reasonable, we would  
8 have expected a counter proposal. So we don't think  
9 that this is reasonable, but here is a business plan.  
10 We didn't get that at all.

11 Q. That is of course what the CAA did, paragraph E41. If  
12 I start four lines in, it said:

13 "Stansted ACC's alternative proposal for  
14 constructive engagement in that letter seeks to expand  
15 the remit of airport/airline discussions to issues that  
16 go beyond the boundary identified by the CAA for  
17 constructive engagement. The CAA is of the view that  
18 extending the remit of constructive engagement to topics  
19 defined for the CAA to lead on would be very unlikely to  
20 deliver results material to the Q5 reviews and that  
21 therefore the CAA is best placed to undertake its own  
22 scrutiny of the matters previously defined for  
23 constructive engagement."

24 So what happened was constructive engagement as  
25 defined by the CAA broke down, because the ACC insisted

1 on a central business plan. That's right, the first  
2 step, isn't it?

3 A. Well, it broke down, I suppose because the ACC insisted  
4 on a central business plan, and BAA insisted that it  
5 would not provide one.

6 Q. The ACC then came forward with a proposal to widen the  
7 constructive engagement to something different and  
8 the CAA rejected that as well. That is paragraph E41.

9 A. I don't think that is really fair. I think what the ACC  
10 did was suggest a format for a central business plan  
11 that would be similar to a process that a company in  
12 a commercial environment would use, which potentially  
13 did go beyond what had been defined by the CAA, but  
14 nobody came back to the airlines and said: well, okay,  
15 this goes beyond the scope of constructive engagement  
16 here and here, but the rest is reasonable. We simply  
17 didn't get a response.

18 Q. Well, that is a matter for you and the CAA.

19 A. And BAA.

20 Q. But E45 is the paragraph in which the CAA terminate  
21 constructive engagement and take matters back into  
22 normal regulatory review process.

23 A. Effectively, yes. I think what it says is there is  
24 a significant risk that the process will fail to  
25 provide CAA with the information it needs.

1 Q. Let's then come to just examine the central business  
2 plan. You deal with this in your section 7, but let's  
3 look at the annex 4 review, just to see what was said  
4 about it. So that's ACC/115 starting at page 1084.  
5 I want to take you to the beginning of section 8 in the  
6 document. That's a section that deals with analysis and  
7 assessment.

8 A. Yes.

9 Q. Paragraph 8.6 is the issue you have been drawing to the  
10 Inspector's attention:

11 "The issue directly relevant to the current review  
12 concerns the appropriate scope of information disclosure  
13 under annex 4. Citing the wording of the first sentence  
14 of annex 4, the Stansted ACC and Ryan Air argue that BAA  
15 was required to provide a central business plan going  
16 beyond the information that had been provided. The CAA  
17 explained its understanding that based on paragraph 363  
18 of its February 2003 decision document, which included  
19 the sentence, 'BAA has undertaken to produce a revised  
20 capital investment plan consistent with the agreement  
21 in April 2003', the basis for information disclosure and  
22 consultation would be BAA's CIP."

23 So the CAA's position was that BAA's CIP did meet  
24 what it had meant by a central business plan.

25 A. Yes, that's what it says in this paper, yes.

1 Q. The next paragraph, 8.7:

2 "In the context of its response to the constructive  
3 engagement initiative, the Stansted ACC put forward in  
4 early September a proposal for a central business master  
5 plan. In its summary under its proposal, the Stansted  
6 ACC said it would be prepared to engage in constructive  
7 engagement following the provision by BAA of a CBM  
8 covering passenger forecast, passenger movements, cargo  
9 movements, cargo tonnes, the asset base at the beginning  
10 of the year, capital expenditure, the cost of capital,  
11 return on capital, depreciation, operating expenditure,  
12 tax, commercial revenue, commercial revenue prescribed  
13 charges, aeronautical income passengers, aeronautical  
14 income cargo, aeronautical income charge per passenger."

15 So that is what the ACC wanted, and of course that  
16 differed, didn't it, dramatically from what the CAA  
17 required?

18 A. Yes, I think I made the point before that that is  
19 perhaps what I would expect to see as a minimum in a  
20 central business plan put for an organisation in  
21 a commercial setting, but I also said that if what we  
22 asked for went beyond what the CAA had envisaged and  
23 what BAA was prepared to provide, I wouldn't expect  
24 a counter proposal. We didn't have one.

25 Q. Mr Clayton, whatever the negotiations, you are repeating

1 the allegations in your evidence, and I just want the  
2 Inspectors to know not only that the CAA dealt with it  
3 but what they concluded. Turn on to paragraph 8.16.  
4 Just see what the ACC had in mind by a central business  
5 master plan. 8.16 records the CAA as saying:

6 "However, as written, the Stansted ACC central  
7 business master plan proposal went significantly wider  
8 than the CAA specification for constructive engagement  
9 information disclosed to airline users. It had  
10 important elements which were clearly identified in  
11 the CAA's May 2005 document as being for regulatory  
12 scrutiny and decision."

13 So again, very clearly, the concept which you put in  
14 your proof, section 7 of your proof, was one that  
15 the CAA rejected as appropriate under annex 4, didn't  
16 it?

17 A. Yes, they said the scope was too wide and incorporated  
18 elements that were not appropriate, that's correct, yes.

19 Q. At 8.18 they give us a flavour of how wide. They say:

20 "However, on the face of it, the scope of  
21 the information disclosure proposed by the Stansted ACC  
22 in its letter of 8th August 2005 was more in line with  
23 that required by the board management and airport or in  
24 a regulatory setting, of a sole or major user seeking to  
25 negotiate with a company possessing substantial market

1 power, a long term contract for the provision of goods  
2 or services with contractually specified quantities,  
3 service levels and prices over the term of the contract.  
4 While such a model might require some kind of external  
5 oversight or dispute resolution mechanism, the framework  
6 for such external arrangements would differ considerably  
7 from the regulatory framework under the Airports Act.  
8 Certainly it would not appear to require a regulator to  
9 set maximum airport charges the CAA is legally obliged  
10 to do under section 40."

11 So once again, the Inspector should be left in no  
12 doubt, should he, that the CAA has grappled with this  
13 issue of the central business master plan, and has  
14 rejected it?

15 A. Clearly, yes, the CAA has rejected the extent of ACC's  
16 suggestion, yes.

17 Q. Now, section 8 of your evidence turns on to another  
18 issue of information. That is forecasting. Again, this  
19 was an issue that you raised in relation to the annex 4  
20 review. If I just give you some references, starting on  
21 6.30, we see a long section there which deals with  
22 traffic forecasting issues, and complaints from the ACC.  
23 That's on page 42 of the original numbering in  
24 the document.

25 A. Yes, I have that.

1 Q. Then if we turn on to look at just some of  
2 the conclusions in relation to that, turn on to  
3 paragraph 8.26, which deals with guideline 2, which is  
4 forecast demand. I'm not going to take you all the way  
5 through that, but just turn if you would to paragraphs  
6 8.34 and 8.35. There, in 8.34, there are set out in  
7 quotations a number of the ACC's allegations on BAA's  
8 forecasting evidence. We can see what each of them  
9 says. Then this conclusion from the CAA at  
10 paragraph 8.35:

11 "The Stansted ACC's argument and evidence in support  
12 of these statements was discussed in section 5 above.  
13 The evidence does not seem to support these extreme  
14 allegations from the ACC. It would seem reasonable to  
15 argue that BAA has met at least the minimum requirements  
16 of this guidance from the outset. However, the more  
17 difficult questions are those surrounding the extent to  
18 which it has engaged fully and proactively with the  
19 airlines in explaining and debating its forecast  
20 methodologies and outputs."

21 So again we can see, can't we, that these extreme  
22 allegations, that we have not provided information  
23 required under annex 4, were rejected?

24 A. Yes, in fact I sit on the Gatwick ACC also, and on the  
25 forecasting group at Gatwick, and the issue at that

1 airport was that as the airport is constrained, even  
2 though the airlines didn't necessarily agree with BAA's  
3 methodology and assumptions, the constraints on the  
4 airport meant that the outputs were relatively accurate  
5 and were acceptable for the purposes of the ACC.

6 Q. Again, I'm not going to read through the two paragraphs,  
7 but 8.37 and 8.38 points out that BAA was initially  
8 rather slow to engage fully. It makes the point that on  
9 balance, it seems to have been at least as much the  
10 fault of the ACC as BAA that there wasn't more dialogue.

11 A. Yes.

12 Q. Then:

13 "BAA seems more recently to have tried quite hard in  
14 generally difficult circumstances to meet the ACC's  
15 request for information."

16 A. Well, that is a point of view. What I would say is that  
17 in CAA's definition of constructive engagement, the  
18 traffic forecasts are the first thing that needs to be  
19 discussed. Of course it is. That is the market driver  
20 for everything we are doing. So the fact that BAA may  
21 have come to the table rather late in the day is  
22 irrelevant -- well, it's not irrelevant; is of far less  
23 value than if it had done that earlier on in the  
24 process.

25 Q. Well, it says of course it supplied the minimum

1 information from the outset, "the required minimum  
2 information".

3 A. Well, that's not the view of the ACC and I think you  
4 have had evidence from Louise Congdon.

5 Q. I know it's not, and I know BAA and the ACC disagree on  
6 this. But the point I'm trying to get across to you and  
7 to the Inspectors is that again, the regulator has  
8 looked at this and has made a decision, hasn't he?

9 A. He has expressed his opinion, yes.

10 Q. Really, the Inspector can't be expected to second-guess  
11 that opinion. The regulator has come to a conclusion  
12 opinion on this; the Inspector has no role, does he, on  
13 whether we supplied information under annex 4?

14 A. I think, as you said, I'm not a planning expert, so it  
15 is very difficult for me to answer that question.  
16 I think it's important that the Inspectors understand  
17 the context of the discussions that have taken place.

18 Q. Your section 9 moves on to capital investment plans.  
19 Again, let's just -- BAA's capital investment plans.  
20 Let's just see what the CAA tell us about that. 6.55 is  
21 where the section starts. I'm not going to look at all  
22 of the text, but let me just take you to 6.59 and 6.60.  
23 In 6.59, the CAA is dealing with the ACC's second and  
24 third arguments. Those are the second and third  
25 arguments in the bullet points at paragraph 6.55.

1 MR HOLGATE: Can you repeat that?

2 MR HUMPHRIES: Of course I can. 6.59 is what we are going  
3 to look at. There is a reference there to the second  
4 and third arguments, which are the second and third  
5 bullet points in 6.55. Those relate to consultation  
6 being confined to commenting after a decision has been  
7 taken, and BAA not providing the full cost benefit or  
8 business plans, so let's see what the CAA said in  
9 relation to these criticisms. 6.59:

10 "The ACC second and third arguments are addressed in  
11 part in the analysis and assessment in section 7  
12 below ..."

13 In fact I think that is a typo. It should be  
14 section 8 below:

15 "... at least insofar as the requirements of annex 4  
16 are concerned. BAA is expected to inform users at the  
17 formative stage of the high level options for  
18 development of the airport including details of cost and  
19 output trade-offs involved in each option."

20 So that's what annex 4 requires. Section 6.60 then  
21 says this:

22 "That said, it is perhaps difficult to understand  
23 fully the ACC's argument with respect to individual  
24 projects in the context of annex 4. The individual  
25 projects are primarily addressed under guidance 6, which

1 says alternatives considered may be provided in  
2 individual project consultations rather than in an  
3 overall plan. Moreover, many, although not all projects  
4 are B list before BAA puts them on the A list in the  
5 CIP, and for these it is made clear that it is open to  
6 users to take a view at an early stage as to whether or  
7 not they should proceed. In any event it cannot  
8 reasonably be argued that merely by being in the CIP,  
9 a project has become part of the basis of the price cap  
10 for the next quinquennium. It will be open to users to  
11 comment to the CAA and the Competition Commission as  
12 they [I think that is a typo, it should be "see fit"]  
13 during the current regulatory review on what proposed  
14 capital spending should and should not be included."

15 Again, it is made abundantly clear there, isn't it,  
16 that just because a project is in the CIP does not mean,  
17 1, that the airlines cannot object to it or make  
18 representations; and 2, it says it cannot reasonably be  
19 argued that it will therefore become part of the price  
20 cap for the next quinquennium.

21 A. Well, that's true, I mean, the CIP is ten years and the  
22 quinquennium is five years. So projects in the CIP for  
23 the last five years clearly wouldn't be included.

24 Q. Yes, but also, of course, for the five years that are in  
25 the quinquennium?

1 A. I'm not aware, and I have been told, and this is  
2 caveated by the fact I'm not a planning expert, that no  
3 projects that BAA has delivered have ever been excluded  
4 from the regulated asset base.

5 Q. That will depend, won't it, on what representations are  
6 made and whether or not those are convincing?

7 A. It should do, yes.

8 Q. What of course the ACC's arguments in relation to these  
9 regulatory matters show is lack of confidence in your  
10 own case before the regulator?

11 A. Could you explain that? I don't understand why you say  
12 that.

13 Q. If the ACC thought it had reasonable arguments on these  
14 very specialist regulatory matters, then it wouldn't  
15 matter what this planning Inspector decided by way of  
16 condition. It is because you know your case isn't very  
17 good in front of the regulator that you are concerned to  
18 try and achieve a planning condition to achieve that  
19 end.

20 A. No, I don't accept that. The reason we were trying to  
21 do that is to simply get the planning issues discussed  
22 in a holistic way while at the same time not  
23 constraining the growth of the airport.

24 Q. We can agree, can't we, though, that it can't be  
25 reasonably argued that merely because something is in

1 the CIP, it will become part of the price cap for the  
2 next quinquennium?

3 A. I think there's every incentive on BAA to deliver the --  
4 or certainly deliver the forecast capital expenditure  
5 that is in the CIP, and therefore it will be  
6 incorporated in the price cap.

7 Q. Mr Clayton, we have been doing so well, but actually  
8 that is the answer to a different question, not the one  
9 that I asked.

10 A. I'm sorry. I thought it was an answer to the one you  
11 asked.

12 Q. Don't worry, not a problem at all. We can agree, can't  
13 we, based on the CAA's clear guidance in paragraph 6.60,  
14 that it cannot reasonably be argued that merely by being  
15 in the CIP, a project has become part of the basis for  
16 the price cap for the next quinquennium?

17 A. Well, in all the negotiations I have been involved with  
18 in Gatwick, the CIP is exactly the basis that we are  
19 calculating the price cap in the next quinquennium.

20 Q. Because, as the CAA say, it will be open to users to  
21 comment to the CAA and the Competition Commission to the  
22 effect that the proposed capital expenditure should and  
23 should not be included.

24 A. Yes, it is open to us to comment, that we should take  
25 every opportunity to make our views.

1 Q. Yes, and if you have a good argument --

2 A. Which we have.

3 Q. -- those will be taken into account?

4 A. I would hope so.

5 Q. Therefore your concerns on inefficient expenditure will

6 be removed?

7 A. There is a potential for that to happen.

8 Q. Right. There is the potential for that to happen. If

9 the CAA is performing its regulatory functions properly

10 and doing as it says it will do, the reasons for your

11 wanting the 30 MPPA cap disappear, don't they? If they

12 are doing it properly.

13 A. Not -- no, they don't, and I will explain my answer.

14 BAA may bring forward capital plans which it may justify

15 to the regulator, and this is an expert aviation

16 regulator, not an expert planning regulator. Well, they

17 may be included, that doesn't mean they will be

18 delivered at the same cost or at the same time or indeed

19 at all. In Q4, as I mentioned in my evidence, BAA

20 itself is forecasting to spend 40 per cent less than the

21 capital that went into the regulated asset base and

22 therefore into airport charges.

23 Q. Yes, but insofar as you have this argument about traffic

24 forecast and the costs of capital expenditure, it is

25 the CAA as regulator which is equipped as an expert

1 regulatory body to scrutinise those matters, far better,  
2 with the greatest respect, than a planning inspector at  
3 a planning inquiry?

4 A. That is the role of the CAA. I do agree that.

5 Q. The rest of your proof, I think for the most part we can  
6 take fairly quickly. Section 10 deals with the annex 4  
7 review again and the various guidelines and we have  
8 touched on those points. We have looked at that.  
9 Section 11 deals with the lack of consultation on G1.  
10 Now, let's just deal with that very briefly. In  
11 relation to G1, there were two documents on which the  
12 ACC was able to comment, obviously in relation to  
13 capital costs and investment programme, the CIP.

14 A. Yes.

15 Q. And in relation to any environmental or other impacts,  
16 the environmental statement.

17 A. Yes, but I don't think the ACC did, unless I am  
18 mistaken, comment on the environmental statement.

19 Q. As far as the CIP is concerned, as you have said, you  
20 have made comments. Yes?

21 A. Yes.

22 Q. And obviously in due time you will make any further  
23 comments you want to the CAA?

24 A. Yes.

25 Q. Section 12 looks at the 2006 CIP, dealt with a lot of

1 the points there about provision of information, when we  
2 were looking at the annex 4 review. Section 13 is  
3 dealing with the 2007 CIP, and your principal point  
4 there seems to be that the CIP was published three  
5 working days later than you had expected.

6 A. I don't think that is the principal point. That is  
7 a point. I think the principal point is it was -- even  
8 the expected date was far too late for us to take an  
9 informed view and any kind of analysis on it. But even  
10 that date wasn't met.

11 Q. But the CIP was delivered months before you would need  
12 to make any representation to the regulator, because the  
13 CIP is a regulatory document. It's not a planning  
14 document. It's mere coincidence that the timing came  
15 out near the time the Inspector had set for exchange of  
16 proofs.

17 A. I can't -- I'm not qualified to comment on the timing of  
18 when a BAA document came out or whether it's  
19 a coincidence or not. That's a question for BAA.

20 Q. The CIP 2006 came out in May of that year, didn't it?

21 A. Yes, it did.

22 Q. In fact the CIP 2007 came out slightly earlier,  
23 in April.

24 A. That's true.

25 Q. The timing of the CIP had absolutely nothing whatsoever

1 to do with the timetable the Inspector had set, had it?

2 A. I'm not saying there was a direct link; I'm saying it  
3 was very unfortunate, because we didn't have time to  
4 comment on it. We had been promised it earlier. It is  
5 quite reasonable to assume that BAA had had it for some  
6 time, and it didn't disclose it. That was the point  
7 I was trying to make in my evidence.

8 Q. Then sections 14 and 15 in this evidence, you deal with  
9 two aspects of the generation 2 development. Section 14  
10 is dealing with generation 2 and its relationship with  
11 generation 1, and I have asked Ms Congdon some questions  
12 on that. I don't need to go over that again.  
13 Section 15 is dealing with preliminary expenditure for  
14 generation 2. Again, that matter, the treatment of  
15 preliminary expenditure, is a matter of which the CAA is  
16 seized, isn't it?

17 A. Yes, we are currently awaiting a decision on that.

18 Q. That's document ACC/108, just for the Inspector's note.  
19 We know that the ACC has made representations to the CAA  
20 on preliminary expenditure?

21 A. Yes.

22 Q. That's ACC/111.

23 A. Yes.

24 Q. The matter is still under consideration by the CAA.

25 A. Yes.

1 Q. Not a matter, is it, for the planning inquiry? The  
2 Inspector can't make any determination on preliminary  
3 expenditure, can he?

4 A. I do not believe he can, but I think it's an important  
5 matter of context.

6 Q. Now, the G2 development as well. I asked Ms Congdon,  
7 because of one of the answers she had given as to  
8 whether the ACC was proposing or indeed any of its  
9 members were proposing to make an application for G2  
10 development, and she referred that to you, sorry. Is  
11 the ACC or any of its members intending to make any  
12 application for second runway development?

13 A. Sorry, I don't understand the question.

14 Q. Planning application?

15 A. No. I don't believe they are. No.

16 Q. I didn't think they were --

17 A. Let's just say it would surprise me.

18 Q. It would surprise me as well. Some final points: if  
19 the CAA and the Competition Commission delivered  
20 a regulatory framework that produced efficient capital  
21 expenditure in support of a 35 MPPA throughput, would  
22 that then satisfy the ACC and remove the need for a 30  
23 MPPA condition?

24 A. Again, I think you referred to this earlier. I think --  
25 well, it certainly isn't something that has been

1 explicitly discussed with the ACC, but if you are asking  
2 me to take a view on it, I believe it probably would.

3 Q. Okay. We can conclude, can't we, that the CAA and the  
4 Competition Commission will impose a framework that it  
5 thinks, they think appropriate?

6 A. Sorry, forgive me for being pedantic. I don't know what  
7 you mean by "appropriate", but bearing in mind the  
8 current framework that allows BAA to achieve a return on  
9 forecast but not delivered investment, I would suggest  
10 that isn't appropriate.

11 Q. Yes. I will put the question again, very fair of you to  
12 ask for clarification. We know the CAA and the  
13 Competition Commission are going through their statutory  
14 processes, and this is on the basis that the airport  
15 obviously remains a designated airport.

16 A. Yes.

17 Q. We can assume, can't we, that they will perform their  
18 statutory functions properly?

19 A. I think we have to do that.

20 Q. And that therefore they will come up with a regulatory  
21 framework and a set of charges which, in the case of  
22 the CAA, satisfies section 39 and its legal duties?

23 A. I would hope so.

24 Q. Obviously if the airport is deregulated, then that's  
25 a matter where the market will determine --

1 A. Indeed, to come back to the question you have just asked  
2 me, could I add something to that?

3 Q. Of course you can.

4 A. I mean, one of the issues that has been discussed at  
5 Gatwick particularly is the issue of capital triggers;  
6 that is allowing BAA to recover a return on the capital  
7 it has invested when the circumstances that underpinned  
8 that forecast investment are achieved. This is  
9 something that CAA is in favour of and that airlines  
10 generally are in favour of.

11 MR HUMPHRIES: Mr Clayton, thank you very much.

12 A. Thank you.

13 MR PHILLIMORE: Thank you, Mr Humphries. Are there any  
14 questions from other parties? Thank you very much.  
15 Mr Holgate.

16 Re-examination by MR HOLGATE

17 MR HOLGATE: Thank you. Just a few questions, Mr Clayton,  
18 to rehearse with you. Now, membership of the ACC, first  
19 of all, do you remember some questions being asked of  
20 you?

21 A. Yes, I do remember it.

22 Q. I mispronounce it, but IATA --

23 A. Yes.

24 Q. -- is that a member and has for some time been a member  
25 of ACC?

1 A. Yes, I have had regular conversations with the IATA  
2 representative.

3 Q. It was put to you by my learned friend that there are a  
4 number of airline companies operating at Stansted who  
5 are not themselves members of the ACC; do you remember  
6 that?

7 A. I certainly do remember that, yes.

8 Q. What would be their relationship with IATA?

9 A. They would almost certainly be members of IATA, and if  
10 I can just add something to that, most of the members of  
11 the ACC fly to a number of airports throughout Europe,  
12 but the quantum of their investment, if you like, at  
13 that airport, is small enough that it probably wouldn't  
14 justify somebody from head office going over to attend  
15 all those meetings. You know, it occurs to me that the  
16 same may be true of Kibris Turkish; I have no idea what  
17 their flying programme at Stansted is, but I would  
18 suggest it is relatively minimal and it probably simply  
19 isn't cost-effective for them to send a head office  
20 manager to attend the ACC. They are happy to be  
21 represented through IATA.

22 Q. Would Stansted be the only airport they were operating  
23 from, a company like that?

24 A. No, no. They would be based in -- Kibris Turkish is  
25 based in Cyprus, I believe.

1 Q. On a different matter, please, would you be good enough  
2 to take ACC/115, that is to say the December 2006 CAA  
3 airports price control review document. You were asked  
4 some questions about some parts of supporting paper 9 --  
5 A. Yes.  
6 Q. -- for review on the annex 4 requirements.  
7 A. Yes.  
8 Q. Could we just look first of all to understand what  
9 supporting paper 9 is. Do you know how it was produced?  
10 A. It was produced by Bob Cotterill, who I believe is an  
11 independent consultant. He is an ex-director of -- I'm  
12 not sure of his title; he was an ex-director of  
13 the economic regulation -- within the economic  
14 regulation group of the CAA.  
15 Q. If we could find please within our copies of ACC/115  
16 supporting paper 9, I'm doing this from a document which  
17 doesn't form part of the ACC bundle. I have a different  
18 version. I think --  
19 MR BOYLAND: It starts at page 1084, I think.  
20 MR HOLGATE: Indeed, sir, thank you. Could you then go to  
21 paragraphs 2.2 and 2.3, please. Under the heading  
22 "Introduction", it is page 10 internal pagination.  
23 A. Yes, I have it.  
24 Q. Just glance -- I don't want to read it all out. Will  
25 you just glance at those two paragraphs.

1 A. Yes. (Pause)

2 Yes, previously the CAA's director of economic  
3 policy and regulation.

4 Q. But does this tell the inquiry about the status of  
5 the document and what it is?

6 A. Can I just have a moment to read?

7 Q. Yes, please. Thank you. (Pause)

8 A. Sorry, I have read it. Can you repeat the question,  
9 please?

10 Q. Yes, if you look for example at 2.3, are we given some  
11 help as to what is the status of supporting paper 9.

12 A. Yes, it is preliminary conclusions.

13 Q. Yes, it says:

14 "This report sets out the results of the review."  
15 The review by whom, please? Who did the review?

16 A. The CAA. I'm sorry, the review of --

17 Q. The review which is in supporting paper 9 was carried  
18 out by the CAA or by whom?

19 A. It was done by Bob Cotterill.

20 Q. Right. That is what I wanted to understand.

21 A. I do apologise, I didn't understand.

22 Q. Thank you. Lastly on this document, you were taken to  
23 some passages by my learned friend, not exclusively but  
24 primarily concerned with guideline 2. How many  
25 guidelines did the CAA itself originally set when

1 defining the requirements of annex 4?

2 A. Seven.

3 Q. Seven. Was this review satisfied with regard to BAA's  
4 performance in relation to all seven guidelines?

5 A. No.

6 Q. I don't want to spend too much time on this, because no  
7 doubt the document is best read as a whole and fairly,  
8 but if you turn, please, to guideline 3, I mean, the  
9 analysis and assessment I think starts at internal  
10 pagination 60, chapter 8 of this note, do you see?  
11 General issues, I think are there set out.

12 A. Yes.

13 Q. If you turn to page 62, there is reference at 8.14 to  
14 the seven guidelines which you have mentioned. That  
15 crops up again on page 63 at paragraph 8.19. Do you  
16 see?

17 A. Yes.

18 Q. I think at the top of page 64, the author starts to deal  
19 with the first guideline, number 1.

20 A. Yes.

21 Q. Dealing with the principal business drivers. Then  
22 page 65, do we see guideline 2 is set out in bold above  
23 8.26?

24 A. Yes, we see that.

25 Q. If we then turn to guideline 3 at page 68, internal

1 pagination, just above paragraph 8.39, in a nutshell,  
2 what was that dealing with?

3 A. Again, can I have a moment to read it?

4 Q. Yes. (Pause)

5 A. It addresses allowing users to understand the facilities  
6 that airports intend to supply, and the extent to which  
7 these will meet demand forecasts.

8 Q. How important a topic was that?

9 A. I think to the airlines, that is the most important  
10 topic.

11 Q. What was the conclusion of this author with regard to  
12 BAA's performance under that guideline? I know you have  
13 dealt with this in your evidence but can you just  
14 summarise the position, please?

15 A. Yes, he said there was further work still to do.

16 Q. I see. Are you there quoting from paragraph 8.44?

17 A. Yes.

18 Q. If one reads carefully through this, does he indicate  
19 what has been missing to date?

20 A. Could I have a moment? (Pause)

21 Q. I'm not seeking to go through at this stage the detail,  
22 but my question was simply: has he taken the trouble to  
23 set out matters which are unsatisfactory?

24 A. Well, yes. I mean to some extent, yes, he says he  
25 identifies what is missing and it is the testing of

1 proposed future facilities against demand forecast.

2 Q. Do you know, that was the one I was going to ask you

3 about, but you did it yourself.

4 A. Right.

5 Q. It just goes to show, doesn't it? 8.42:

6 "What seems to be missing here is the testing of

7 proposed future facilities against demand forecasts that

8 are at a sufficiently broken down level to make the

9 comparison meaningful."

10 A. Yes.

11 Q. Guideline 4, what is that about, please?

12 A. Options for the development of the airport around the

13 central plan. High level options for the development of

14 the airport and details of the cost and output

15 trade-offs involved in each option and the likely impact

16 on user charges.

17 Q. Was the author of this document satisfied with regard to

18 that?

19 A. No.

20 Q. Where do we find some help, please, on that? I'm sorry

21 to make you do this.

22 A. Paragraph 8.50:

23 "It is difficult to discern any real high level

24 options being put forward."

25 Q. Guideline 5, page 71, what is that about?

1 A. "Resource implications behind the development plan and  
2 giving users an overall picture of the estimated total  
3 cost of the plan and pricing implications informed where  
4 appropriate by the price control formula imposed by  
5 the CAA and any longer term pricing policies laid out by  
6 the CAA."  
7 Q. Again, did BAA get a tick for that guideline?  
8 A. No.  
9 Q. Where do we get some help, please, as to what the author  
10 thought about that?  
11 MR HUMPHRIES: Sir, we can go through all these things --  
12 MR HOLGATE: Yes, we can, and I am.  
13 MR HUMPHRIES: I didn't cross-examine on these points.  
14 I cross-examined on those parts of this document that  
15 related to the chapters in Mr Clayton's evidence, and in  
16 each occasion where he raised a point in a particular  
17 chapter heading, I went to that. We can go through  
18 this, but this is not actually re-examination arising  
19 out of anything I have asked.  
20 MR HOLGATE: No, I'm sorry, I don't accept that. That is  
21 called cherry picking. There have been some questions  
22 asked about this document and indeed my learned friend  
23 at one stage went so far, and we can see it on the  
24 transcript in due course, he went as far as to say that  
25 extreme allegations which have been made by ACC that the

1 information required by annex 4 requirements in the  
2 plural, ie all seven, had been rejected, and that is why  
3 I am entitled to do this.

4 MR HUMPHRIES: That was on forecasting and it was on a  
5 particular paragraph.

6 MR HOLGATE: We will see it on the transcript.

7 MR PHILLIMORE: Can we continue, fairly briefly, please.

8 MR HOLGATE: If I am not interrupted, it will be brief. I'm  
9 almost finished. We were looking at guideline 5 and you  
10 were just about to tell us before we were interrupted  
11 where that is dealt with, please?

12 A. I'm sorry --

13 Q. The comment of the author.

14 A. It says:

15 "As regards to pricing implications of BAA's capital  
16 plans ..."

17 Q. You are taking us to 8.54, are you, at the bottom of  
18 page 71?

19 A. Yes.

20 Q. Sorry, I interrupted you.

21 A. "There has been no systematic provision of these within  
22 the CIPs."

23 Q. Thank you. We obviously read the paragraph and the  
24 other text as a whole. Guideline 6, is that dealt with  
25 on page 72?

1 A. Yes.

2 "Cost estimates of individual projects within the  
3 capital expenditure programme providing users with  
4 information to an appropriate level of detail of total  
5 capital expenditure and subsequent operating costs."

6 Q. Again, I don't want to read it all out, just more  
7 a summary of what is in there. Was the author satisfied  
8 with BAA's performance on that?

9 A. No, he says there has been virtually no quantification  
10 of the implications of capital expenditure on subsequent  
11 operating costs either for the airport or for the  
12 airlines in any of the three airports' CIPs over four  
13 years.

14 Q. Forgive me, please, where do you take that from?

15 A. That is paragraph 8.63.

16 Q. Thank you. Lastly, guideline 7:

17 "The outputs expected from individual projects,  
18 wherever possible, to be quantified and provided on an  
19 incremental basis."

20 Was he satisfied as regards to that?

21 A. No, he says:

22 "Generally speaking these have been provided in a  
23 narrative form and from an engineering driven  
24 perspective with the information presented in terms of  
25 assets to be delivered rather than the resulting

1 business benefits to the airport and to the airport  
2 users."

3 Q. As I say, best read as a whole. I will leave it there,  
4 if I may. Thank you.

5 On a different point, please, it was later on  
6 suggested to you that the CAA as a regulator in this  
7 field is equipped to review the efficiency of BAA's  
8 capital investment programme and the timing of capital  
9 investments. Do you remember that point being  
10 discussed?

11 A. Yes, I do.

12 Q. Can you just remind the inquiry, what has been the  
13 recently expressed view of OFT on that proposition as to  
14 whether in fact the CAA are well-equipped to do that?

15 A. I have --

16 Q. The context, we can turn to the document if necessary.  
17 Can you just remind the inquiry, have the OFT  
18 recommended the Competition Commission should  
19 investigate these matters?

20 A. Yes, they have.

21 Q. Now, is that inside the normal quinquennial price review  
22 or outside?

23 A. No, that is completely separate.

24 Q. Completely separate. When did they suggest that there  
25 would be a full investigation by the Competition

1 Commission, roughly?

2 A. It was earlier this year, I'm not sure of the exact  
3 timing.

4 Q. I think the inquiry has that document as CD/324. It may  
5 not be before the Inspectors at the moment and I can  
6 return to it later towards the end of the inquiry. But  
7 can you help at all at this stage as to the stance being  
8 taken by OFT on the ability of CAA to deal with this  
9 question of the timing of investment?

10 A. Well, in a nut shell, the OFT has concluded that the  
11 existing regulatory mechanism creates perverse  
12 incentives, I think was the phrase it used, on the  
13 airport operator in terms of capital investment.

14 Q. Thank you. Then the last matter I need to ask you  
15 about, I think it is the last matter. Two other  
16 matters, I'm sorry.

17 I don't know if in fact you can help on this point,  
18 it may be a matter for submission at the end of the day,  
19 but you were asked whether or not the ACC would be  
20 intending to make a planning application itself --

21 A. Yes.

22 Q. -- to cover G2. I mean, what sort of undertaking does  
23 that involve, making a planning application for  
24 a development of that nature?

25 A. Well, it would seem like a -- I mean, unless

1 I misunderstood it, it seemed like a strange question.  
2 I mean, you make a planning application for a runway if  
3 you are an airport operator and you own the land, not if  
4 you are a customer of that airport. I didn't really  
5 understand what the question was driving at.  
6 Q. Neither did I. Can you cast your mind forward to the  
7 anticipated G2 planning inquiry, yes?  
8 A. Yes.  
9 Q. Do you anticipate participants of that inquiry to be  
10 making objections, first of all?  
11 A. It's -- potentially, yes. It is possible, yes.  
12 Q. Do you think some of those objections might include  
13 alternatives to BAA's proposal?  
14 A. I would hope so, if options are going to be considered,  
15 then clearly there must be alternatives, yes.  
16 Q. Is it your understanding that in order to present  
17 alternatives, someone promoting alternatives has got to  
18 make a planning application? Can you help me on that?  
19 A. Presumably, yes. I don't know. I'm moving into  
20 areas --  
21 Q. You don't know.  
22 MR HUMPHRIES: It's absolutely fine, sir, I'm not suggesting  
23 for one moment that the ACC has to make a planning  
24 application. The question merely arose out of something  
25 Ms Congdon had said where she said that airlines often

1           make applications for development, and I was interested  
2           to know what it was. I think Mr Holgate got the answer  
3           he didn't want, but I accept that --

4   MR HOLGATE: From someone that said he couldn't answer.

5   MR HUMPHRIES: Exactly. All I am saying is I accept that  
6           they can pursue an objection without making an  
7           application.

8   MR BOYLAND: My recollection was that the question was  
9           whether ACC or any of its members may make an  
10          application.

11   MR HOLGATE: Well, we have that cleared up and I am grateful  
12          for that. Cooperation of the Bar, as the Inspector  
13          referred to yesterday, is most helpful. The last matter  
14          I do need to ask you about. In the run-up to this  
15          particular inquiry, and the exchange of evidence between  
16          the parties, do you remember, I think it was about four  
17          weeks before the inquiry was due to start.

18   A. Yes.

19   Q. Was the ACC asking through its solicitors for  
20          information to be provided in order to enable it to  
21          produce its evidence?

22   A. Yes.

23   Q. Some of those letters, in fact probably all of them,  
24          have been included in the ACC documents.

25   A. Yes, I believe --

1 Q. You might like to have a quick look, please, at ACC/7  
2 and ACC/8, being letters written by Cameron McKenna on  
3 13th April this year, and 19th April this year.

4 A. Yes, I can see those.

5 Q. I don't want to go through it exhaustively, but can you  
6 just refresh your memory: where were they suggesting  
7 some of the questions we were asking were going to be  
8 answered?

9 A. I'm afraid I'm not familiar with these. I do need to  
10 read them.

11 Q. No. This is all in the context of whether the CIP 2007  
12 had anything to do with the timetable set for this  
13 inquiry by the Inspectors, at the pre-Inquiry meeting.  
14 If you look, for example, at question 1, or the answer  
15 to question 1, the letter of 13th April 2007.

16 A. Yes.

17 Q. Where was it being suggested that we would find answers  
18 to the questions that were being raised?

19 A. It said:

20 "The draft CIP will reflect BAA's views on APD  
21 and ... EU emissions trading scheme in line with DfT's  
22 thinking."

23 Q. Yes, in the CIP.

24 A. Yes.

25 Q. Thank you. That is all I have to ask. Thank you.

1 MR PHILLIMORE: Thank you, Mr Holgate. We have no  
2 questions, so thank you very much, Mr Clayton.

3 MR HOLGATE: Thank you, sir. That completes our evidence at  
4 this stage. I have one other witness, Mr Bird, who is  
5 not going to be reached at this point in time. My  
6 learned friend Mr Humphries yesterday referred to two  
7 recent documents, ACC/23 and 24, which arose out of the  
8 additional information Mr Maiden produced following his  
9 cross-examination, core document -- I think it was 541  
10 and 543, from memory. I think my learned friend at that  
11 stage said that he would need more time to take  
12 instructions on our two documents, ACC/23 and 24. As  
13 I understand it, it isn't necessarily being said that  
14 BAA will produce anything further on those two  
15 documents, and I think my learned friend was in fairness  
16 reserving his position. Clearly I need to reserve my  
17 position, if anything additional should be produced.  
18 After all the subject matter that we are talking about  
19 is a description of the promoters' own forecasting  
20 techniques, something in support of the planning  
21 application to which we are seeking to react. So if the  
22 promoter decides to adduce more information on that  
23 aspect, then I must reserve our position. I would hope  
24 that we are not going to have some iteration on this  
25 because it becomes rather difficult to manage.

1           I had mentioned this rather briefly to my learned  
2           friend earlier this afternoon: obviously if BAA are  
3           intending to put or do decide to put anything in, the  
4           sooner they do so, the better. If it could be done this  
5           side of the summer holidays, that would be preferable,  
6           because we would then endeavour to respond efficiently  
7           and in good time. But I appreciate Mr Maiden and indeed  
8           others, including Ms Congdon, have very considerable  
9           commitments outside this inquiry. Thank you.

10   MR PHILLIMORE: Mr Humphries, any response on that?

11   MR HUMPHRIES: Simply, sir, to say I think Mr Holgate has  
12           summarised the position probably fairly well. I think  
13           it is necessary for us just to reserve our position.  
14           There was clearly very technical comment on very  
15           detailed modelling points, and interpretation of  
16           the note from Mr Maiden; I don't even know if he has  
17           seen those responses, I suspect he has not, because he  
18           is doing other things. It seemed to me that if there  
19           were issues, that it would be right for him to comment  
20           on, sir, so that you had his side of it, then we ought  
21           to find a way of dealing with that. I can quite endorse  
22           the point that that needs to be sooner rather than  
23           later. I also endorse the point we simply don't know  
24           where the particular people are and how soon they can do  
25           it. But, sir, you can be assured that I will not want

1 to have it hanging around longer than necessary.

2 MR PHILLIMORE: I think while we are all reserving our  
3 positions, if we make the point sooner rather than later  
4 and try and avoid going around in an endless cycle.

5 MR HUMPHRIES: Sir, I think Mr Holgate and I are both agreed  
6 on that.

7 MR HOLGATE: I have just taken instructions; I haven't  
8 mentioned this to my learned friend, but I will mention  
9 it publicly. To that end, if there is anything  
10 troubling Mr Maiden or something he wants to comment on,  
11 he may feel, for example, as my learned friend has said,  
12 one possibility, he may feel we have misinterpreted  
13 something. I would have thought it might be helpful to  
14 circulate anything of that nature in draft first of all,  
15 and we might accept the point, or alternatively I do  
16 offer a meeting, Ms Congdon is willing to take part in  
17 a meeting to see if we can hammer anything out. We did  
18 have quite a useful exchange previously which did result  
19 in an agreed note following the meeting in April. So  
20 that might be a way of stopping the circular process.

21 MR PHILLIMORE: I think that suggestion can be taken on  
22 board. Anything else today of a procedural nature?  
23 Just a reminder, we will be starting at 9.45 tomorrow  
24 morning with the third parties' session. Until 9.45  
25 tomorrow morning, we are now adjourned.

1 (5.02 pm)

2 (The inquiry adjourned until 9.45 am on Thursday,  
3 12th July 2007)

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