



www.stopstanstedexpansion.com
info@stopstanstedexpansion.com

PO Box 311
Takeley
Bishops Stortford
Herts CM22 6PY
Tel: 01279 870558
Fax: 01279 870786

30 May 2008

The Inquiry Secretary
BAA Airports Market Inquiry
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

Dear Sir/Madam

BAA Market Inquiry: Response to Competition Commission's 'Emerging Thinking'

1 Introduction

- 1.1 Stop Stansted Expansion ('SSE') made a submission to the Competition Commission in May 2007 in connection with the BAA Market Inquiry. The essence of that submission is captured in the following extract:

"BAA's current market dominance in the south east, and the complex and bureaucratic system of regulation to which BAA is subject inhibits competition and choice. More efficient use of capacity would be achieved if there were to be effective competition such that the market was able to function as markets should – by setting prices and allocating resources to achieve the optimum balance between supply and demand."

It will therefore come as no surprise to the Commission to hear that SSE welcomes the Commission's Emerging Thinking report ('the Report') and agrees with almost all of the analysis and conclusions therein. In one significant area, however, we are not persuaded by the Commission's position as set out in the Report and that is in relation to '*Features affecting other markets*' (paras 275 and 276).

- 1.2 The Commission's current view is that the concerns that have been expressed about BAA's conduct in relation to certain services to passengers and its use of compulsory purchase order ('CPO') powers arise irrespective of common ownership and are not therefore matters for the current inquiry. However, we would ask the Commission, before taking a final view, to consider the following submissions.

2 Relevance of these matters to the current inquiry

- 2.1 We are familiar with the concerns of local businesses around Stansted Airport about the conduct of BAA in relation to such matters as the provision of taxi services at airports and the provision of accommodation booking services. We are aware that similar concerns

exist in relation to other BAA airports. We are also familiar with the concerns about possible abuse of BAA's CPO powers at Stansted and Gatwick airports.

- 2.2 In our view BAA's dominant market position is a significant consideration which influences the company's conduct towards small businesses providing services to airport passengers and in relation to BAA's use of CPO powers. Because BAA has a dominant position in the market, the business practices it adopts in respect of its own airports tend to become the established industry norm. One of the effects of this is to make it difficult for those who may feel aggrieved with BAA's practices to identify fairer business practices elsewhere.

Turning to some of the specific concerns in more detail:

3 BAA's use of CPO powers

- 3.1 We note that the Commission received a submission from Legal and General Assurance Society Ltd and Hines UK Ltd¹ who own a substantial area of land adjacent to Stansted Airport and who consider that their land, or a substantial part thereof, could be unfairly acquired by BAA through the use of its CPO powers:

"We believe that BAA's ability to acquire land through compulsory purchase and subsequently to exploit its land holdings for purposes that are ancillary to an airport's operational requirements is a structural feature of the UK airports market that relates to the manner in which BAA was privatised and is regulated. Furthermore, for the reasons set out above, we believe this feature prevents, restricts or distorts competition in the UK."

- 3.2 We are aware also of a similar situation at Gatwick where a consortium of landowners comprising The Crown Estate, the Prudential Assurance Company Ltd and Wilky Property Holdings plc ('the Consortium') owns a substantial area of freehold land adjacent to Gatwick Airport. The Consortium has development plans for that land which are not considered to be in conflict with the operational needs of the airport. Nevertheless BAA is seeking to safeguard the land owned by the Consortium for its own future development purposes.

- 3.3 SSE has obtained a copy of a letter from BAA to the Gatwick Consortium² which appears to be seeking to stifle any potential challenge from the Consortium to BAA's CPO powers. A key paragraph in that letter states:

*"Your representations include a variety of points about the nature of operational uses at Gatwick. I should make it clear that we do not accept your proposition that "almost all business activities other than airside maintenance are non-operational and do not need to be located within the airport perimeter". You are consequently incorrect in your interpretation that the outline master plan is seeking to safeguard land which would not be needed for future operational purposes. **Such an interpretation is not borne out by past planning for Stansted Airport's enlargement, or by the approved compulsory purchase of land for that development in the mid-1980s.** Neither, I might say, is it in line with local authority expectations in relation to development supporting the maximum use of Gatwick's single runway." [our emphasis]*

- 3.4 The Consortium may have overstated its arguments in relation to the dividing line between operational and non-operational uses but we very much agree with its general point while BAA's claim (highlighted in bold text above) of a Stansted precedent for the use of its CPO

¹ Submission dated 27 April 2007.

² This letter was provided to us anonymously as part of a bundle of papers relating to the dispute between BAA and the Consortium over the threat of CPO acquisition of land owned by the Consortium. We would be happy to make the letter and other relevant papers available to the Commission upon request.

powers is simply untrue. To the best of our knowledge and belief – and we have made considerable efforts to check the position – BAA has never had to resort to the implementation of CPO powers for the acquisition of land at Stansted. This is because BAA has hitherto had a 100% success rate in persuading local landowners to sell voluntarily, rather than face the inevitability of a lower price at a later date if BAA had to resort to a CPO.

- 3.5 The fact that BAA has used the claim – albeit a false claim – of a Stansted precedent to support its case in a dispute at Gatwick suggests that common ownership *is* a factor in relation to potential abuse of BAA's CPO powers. With both airports owned by BAA, the Gatwick Consortium would be unlikely to question BAA's claim of a 25 year old precedent at Stansted and, even if it did question this, it would be quite a difficult matter to check.
- 3.6 BAA is currently seeking to acquire properties which would be required for a second runway at Stansted. Notices of its intention to seek CPO powers have already been published in the local press including lists of the affected properties and BAA has written to the property owners advising them of its intention to seek CPO powers which would be conditional upon planning approval for a second runway. The affected property owners are being encouraged to believe in the inevitability of a CPO – whether the land is required for core operational purposes or non-core, ancillary, purposes – and encouraged to settle early and on a voluntary basis.
- 3.7 It clearly cannot be fair conduct, for example, for BAA to be able to use its CPO powers – or the threat of using its CPO powers – to acquire land from a farmer who farms land adjacent to Stansted Airport at a price of about £6,000 an acre, develop that land as a hotel site with a land value of about 100 times the price paid, and then subsequently be able to sell that hotel site, as BAA has recently done in respect of many of its airport hotel sites. We believe this practice is an abuse of BAA's CPO powers, all the more so because BAA overstates the extent of its CPO powers and encourages the belief that they apply to all of the land that it seeks to acquire. BAA's dominant position is in our view a significant factor in this regard because it contributes to the perception that BAA is all powerful and unchallengeable.

4 BAA's conduct towards small businesses providing services to airport passengers

- 4.1 Over the years SSE has received a number of reports alleging anti-competitive and/or unfair behaviour by BAA towards local taxi firms and B&B/accommodation establishments. With a view to obtaining better evidence of the true position, or at least the position as perceived by local taxi firms and accommodation establishments, SSE decided to carry out a questionnaire survey of those types of local businesses in the Stansted area. The survey, carried out in May 2008, used the questionnaire and covering letter as shown in Annex A.
- 4.2 A total of 185 questionnaires were sent out to all the taxi firms and small accommodation establishments that we could identify within about a 15 mile radius of Stansted Airport, with roughly an even split between the two types of businesses. As at today's date 27 replies have been received representing a response rate of just under 15%.
- 4.3 Clearly there is a need for caution when considering the results from a sample of just 27 responses and no firm conclusions can be drawn. However the consistency of the issues complained about suggests that some credence should be attached to these complaints.
- 4.4 The quantifiable results of the survey are shown in Annex B. Respondents were also invited to comment upon their answers to the multiple choice survey questions in order to explain and/or expand upon the answers given. Their comments are summarised below.

Taxi firms (15 responses)

- 4.5 The comments from taxi operators centred upon complaints relating to BAA's exclusive agreement at Stansted with 'Chequer Cars' which provides this company with a dedicated pick-up area directly outside the terminal building while all other taxi operators are forced to pick up passengers from the short-stay car park.
- 4.6 The specific complaints from taxi drivers were:
- having to pay for using the short-stay car park;
 - the inconvenience to themselves and their passengers of picking up from the short-stay car park;
 - not being allowed to ply for hire at Stansted Airport even when they have a Hackney Carriage Licence from the local authority; and
 - Chequer Cars charging significantly higher prices than local taxi firms and so passengers being overcharged for the benefit of BAA.

B&B/small accommodation establishments (12 responses)

- 4.7 The main complaints from B&B/small accommodation establishments were not against BAA directly but against the accommodation booking desk at Stansted which (like Chequer Cars) pays BAA for an exclusive franchise. Although only three respondents stated that they pay commissions to this facility, others had paid commissions in the past and were either no longer being offered bookings or no longer willing to pay the set levels of commission.
- 4.8 More specifically, the complaints from B&B/small accommodation establishments were:
- having to pay 15% to 20% commission;
 - preferential treatment given to airport hotels because a more expensive room would provide a bigger booking fee;
 - the airport accommodation desk, when advising passengers looking for a B&B, giving the standard reply that all local B&Bs were fully booked. One local B&B owner had posed as a passenger to check the position and was given the same standard reply;
 - failure of BAA to act on reports about unfair conduct by the airport accommodation desk, even when the issue related to passengers 'not getting a fair deal'.
- 4.9 SSE would be happy to provide copies of the completed questionnaires, upon request, if the Commission wished to review the original individual comments.

We trust that the evidence we have provided in this submission is helpful to the Commission and that the Commission will look again at the question of whether common ownership gives rise to – or at least materially contributes to – the type of unfair conduct that we have evidenced above. We would welcome an opportunity to meet with the Commission to elaborate on any of the above points, or any of the points in our original submission, as required.

Yours faithfully



Brian Ross
for Stop Stansted Expansion

[Standard SSE letter heading]

12 May 2008

Dear Sir/Madam

Investigation of BAA Monopoly by Competition Commission

We are looking for your help in relation to a short questionnaire survey we are carrying out of certain types of local businesses, in particular taxi and car hire companies and local B&B/accommodation establishments. First, let us explain the reasons for this questionnaire.

As you are probably aware the Competition Commission is currently carrying out a market investigation into BAA's ownership of seven of the UK's largest airports including Heathrow, Gatwick and Stansted. Essentially, the Commission is seeking to establish whether BAA is abusing its dominant position in the market in such a way as to prevent, restrict or distort competition. The Commission has the legal power to order BAA to change its business practices when it publishes its final report on BAA, expected by the end of the year.

Stop Stansted Expansion ('SSE') has already provided evidence to the Commission on a number of issues relating to this investigation and intends to provide further evidence. We are also due to meet the Competition Commission on 17 June.

An issue which we have touched upon in our written evidence to the Commission (but have not so far provided detailed evidence) is the behaviour of BAA towards local taxi firms and local B&B/accommodation establishments from whom we have heard a number of reports over the years regarding unfair business practices on the part of BAA at Stansted.

Understandably, small local businesses are often reluctant to make a formal complaint, may simply not have the time to pursue the matter or may take the view that a lone voice will make no difference to the situation. However, we are sending this questionnaire to a large number of local businesses in the vicinity of the airport and, if the overall results show a widely-held view that BAA is not acting fairly, this would be persuasive evidence which we could provide to the Commission. The questionnaire does not ask for your business name or address and so is entirely anonymous.

Whether you are an SSE supporter or not, please take five minutes to complete this short survey and return by 28 May 2008 in the stamped addressed envelope provided. If you have any questions relating to the completion of the questionnaire or any wider questions about BAA's expansion plans for Stansted please do not hesitate to contact us either by telephone or email as shown above. Thank you in anticipation.

Yours faithfully

for Stop Stansted Expansion

STANSTED AIRPORT LOCAL BUSINESS QUESTIONNAIRE

1. Nature of you business (tick appropriate box)

Taxi/car hire Accommodation/B&B Other

If 'other' – please state your type of business

2. How much business do you obtain from Stansted Airport?

A great deal A fair amount Very little Negligible/none

3. Do you pay any fees or commissions for obtaining business from Stansted Airport?

Yes No Not applicable

4. If you ticked 'Yes', in answer to Question 3, please briefly describe and say whether you consider these fees or commissions to be fair and/or reasonable.

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.....
.....
.....

5. Does the way in which BAA runs Stansted Airport have any effect upon the ability of your business to benefit from airport-related business?

Yes No Don't know

6. If you ticked 'Yes', in answer to Question 5, is this effect helpful or unhelpful?

Helpful Unhelpful Not applicable/don't know

7. Please briefly describe why it is helpful or unhelpful (as appropriate):

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.....
.....

8. Are there any changes to BAA's current business practices at Stansted that you would like to see? If so please briefly describe.

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9. Any other comments? (continue on reverse side of questionnaire if necessary)

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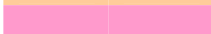
Thank you for taking time to complete this questionnaire. Please return in the stamped addressed envelope provided by 28 May 2008.

Stop Stansted Expansion – 12 May 2008

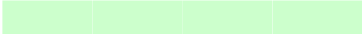

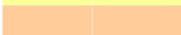
Summary of Questionnaire Survey Results

Taxi firms (15 responses)

Q: How much business do you obtain from Stansted Airport?

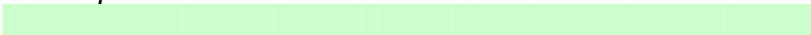
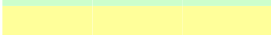
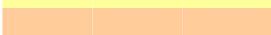
A great deal		1
A fair amount		5
Very little		7
None/negligible		2

Q: Do you pay any fees or commissions for obtaining business from Stansted Airport?


Yes*		4
No		9
Not applicable		2

* In answering this question, some respondents viewed car park charges as "fees" whereas others did not.

Q. Does the way in which BAA runs Stansted Airport have any effect upon the ability of your business to benefit from airport-related business?

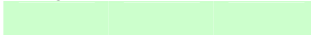
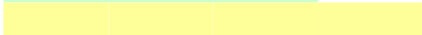
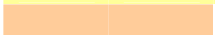
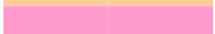
Yes		9
No		3
Don't know		3

Q. If you ticked 'Yes' [above] is this effect helpful or unhelpful?

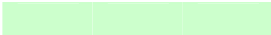


Helpful		0
Unhelpful		9

B&B/small accommodation establishments (12 responses)

Q: How much business do you obtain from Stansted Airport?

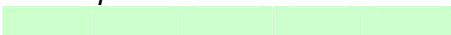
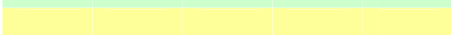
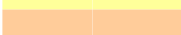
A great deal		3
A fair amount		4
Very little		2
None/negligible		2

Q: Do you pay any fees or commissions for obtaining business from Stansted Airport?



Yes		3
No		8
Not applicable		1

Note: Of the three respondents who stated that they paid commission for obtaining business from Stansted Airport two considered the commission unreasonable and one considered it reasonable.

Q. Does the way in which BAA runs Stansted Airport have any effect upon the ability of your business to benefit from airport-related business?

Yes		5
No		5
Don't know		2

Q. If you ticked 'Yes' [above] is this effect helpful or unhelpful?

Helpful		1
Unhelpful		4