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The Inquiry Manager (BAA Airports)
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

Dear Sirs

Market Investigation of BAA

This further submission by Stop Stansted Expansion ('SSE') relating to your market investigation of BAA is in response to your 'Provisional Findings' report and 'Notice of Possible Remedies'. We wish only to make four points:

1. Divestiture

- 1.1 In our original submission to the Office of Fair Trading on the adverse effects of BAA's market dominance of UK airports (18 August 2006) which was attached, as Annex B, in our submission to you of 31 May 2007, we concluded:

'If competition is to be encouraged, ownership of both Gatwick and Stansted would need to be separated from ownership of Heathrow.' (para 7.1)

- 1.2 We note that the Commission has, in effect, reached the same conclusion¹ and we would urge you to confirm this in your final report. We again highlight the importance of assessing the ownership of airport capacity in the London area 10-15 years from now as well as today. If, for example, Gatwick alone were to be sold by BAA, and the airport expansion policies set down in the Air Transport White Paper ('ATWP') were to be delivered, BAA's market dominance 10-15 years from now would be unchanged compared to today.

2. Airport expansion

- 2.1 We note the Commission's focus upon the expansion of airport capacity as providing a significant means of stimulating competition, but this is not a precondition for stimulating competition between airports. It is also important to recognise that airport expansion has serious adverse social and environmental impacts upon local communities, such as those whom we represent, and upon the wider environment. It is therefore vital that any decisions relating to airport expansion are made in the light of a full examination of all the issues.

¹ 'Notice of Possible Remedies', CC, Aug 2008, para 14.

- 2.2 The competition implications are only part of the overall decision-making context regarding expansion. While we are aware that the Commission's role concerns the competitive structure of the market, we would respectfully ask that, in making any recommendations relating to the expansion of airport capacity, you explicitly state that such recommendations take no account of the social and environmental impacts of airport expansion, these matters being outside the remit of the Commission's jurisdiction, and at least to acknowledge that in the final analysis social, environmental and other implications also require to be taken into account.

3. Air Transport White Paper

- 3.1 In Annex B of our May 2007 submission we criticised the prescriptive nature of the ATWP with regard to any future expansion of airports in the UK. We are therefore pleased to note that the Commission takes a similar view and is *'minded to recommend that the Government should take the opportunity to review the White Paper in the light of market developments, particularly the proposed separate ownership of London airports'*.²
- 3.2 BAA has, in effect, used the White Paper as both a sword and a shield in developing and seeking to justify its expansion plans. In this context, it is instructive to consider statements made in its public consultation documents about the manner in which it has approached expansion at Stansted: for example (SSE emphasis added):

Existing runway

'It is Government policy to make best use of Stansted's existing single runway.'³

'To enable us to make better use of our existing runway in accordance with 'The Future of Air Transport White Paper' we will be seeking planning permission...'⁴

Second runway

'Getting to this point [in the G2 project] has been a challenge, but one we readily accepted from the start when the Government set out its clear policy direction and invited us to bring forward plans for a second runway at Stansted.'⁵

'In December 2003 the Government published 'The Future of Air Transport White Paper' ... identifying Stansted as the location for the first new runway in the South East and invited BAA to bring forward plans for the development of the airport.'⁶

'The Future of Air Transport White Paper provided a strategic framework within which public bodies, airport operators (such as BAA) and airlines could plan ahead and which would guide decisions on future planning applications made by airport operators.'⁷

'As well as selecting Stansted as the location for the first new runway in the South East, the White Paper...'⁸

² 'Notice of Possible Remedies', CC, Aug 2008, para 44.

³ 'Public Consultation: An invitation to inform our plans to make better use of the existing runway', BAA Stansted, July 2005, pages 2 and 6.

⁴ Ibid, page 7.

⁵ 'Stansted Generation 2: December 2005 Consultation', BAA Stansted, Dec 2005, page 3.

⁶ Ibid, page 9.

⁷ Ibid, page 15.

⁸ Ibid, page 16.

*'The Executive Summary of the White Paper (page 13) sets out the strategic framework for the development of airport capacity in the UK over the next 30 years. It concludes, among other things, that in south-east England...the first new runway should be at Stansted airport to be delivered as soon as possible (around 2011/2012)...In response to the White Paper's first priority to make best use of existing runway capacity...'*⁹

- 3.3 The above extracts from BAA consultation and planning documents lend strong support to the Commission's view that BAA has been a follower, rather than an initiator, of airport development, being reliant on the Government to lead. And even after the Government has taken the lead, as in the case of the ATWP, BAA has continued to play the role of follower, portraying itself as a mere instrument of Government policy as if it were still state-owned.
- 3.4 To the casual observer (a term which must include the great majority of residents in the locality of Stansted Airport likely to be affected) repeated statements by BAA in its public announcements and consultation documents that its expansion plans are simply the enactment of Government policy have had the not surprising (and doubtless intended) result of creating the impression that the final decisions on expansion have already been taken, that opposition is all but futile and that the planning procedures to be followed are a mere formality. Indeed, BAA sought, during the course of the 2007 Stansted Public Inquiry, to suggest that the ATWP itself provided the economic justification for its proposed development. BAA told the Planning Inspector that since the Government had already published its policy framework for aviation and had selected Stansted as its first priority choice there was no need for him to question further the economic case for such expansion at Stansted, or for BAA to call any evidence in that connection.
- 3.5 The outcome of BAA's G1 planning appeal is still awaited and so we do not yet know whether BAA's efforts to curtail economic evidence at the Planning Inquiry were successful. However, we view BAA's stance on this issue as a clear example of BAA seeking to game the planning system in the same way as BAA seeks to game the regulatory system, as evidenced in submissions to you from a number of airlines.
- 3.6 SSE submits, therefore, that the ATWP has not only had an impact on competition in the manner indicated in the Commission's Provisional Findings report, but has also been improperly relied upon by BAA to avoid justifying the case for its expansion plans and has thus contributed to the distortion of the market. The ATWP may thus also be an obstacle to proper economic evaluation of airport expansion plans.
- 3.7 SSE considers that there is a compelling case for a review of the ATWP, not only because the market circumstances will be very substantially changed through the ending of common ownership of the three main London airports but also because there have been significant changes in the market for air travel since 2003. Moreover, we question the rationale for a Government-imposed timetable for airport expansion and for location-specific policies. In any event the timetable for airport expansion in the south east as set down in the ATWP is now seriously out-of-date – which is perhaps testimony to the folly of a Government-imposed timetable in a private sector market environment, noting (as the ATWP itself records) that Governments do not build runways.
- 3.8 It plainly makes little sense for the Commission to apply remedies aimed at addressing the restrictions to competition it has identified unless the other serious adverse effects it has identified (but where it has no direct powers itself to apply remedies) are addressed at the same time, including, as the Commission notes in its report all relevant aspects relating to

⁹ 'Stansted Generation 2 Planning Application, Non-Technical Summary, BAA. March 2008, page 13.

common ownership, aspects of Government policy and the system of regulation.¹⁰ SSE therefore considers that the Government should review the ATWP as a matter of urgency, and, as proposed by the Commission, remove from it any prescriptive statement as to the timing, location, type and scale of airport development. These matters should be left to be decided by the market and by the planning system in the normal way.

4. Traffic Distribution Rules ('TDRs')

4.1 We note that, in addressing '*Other restrictions on competition*', the Commission states:

'6.27 We have also considered a number of other factors that may limit the ability or willingness of separately-owned airports to compete if they restrict the ability of airlines to switch or threaten to switch between airports, and which themselves could be regarded as features affecting competition between airports:

*... (b) The DfT's Traffic Distribution Rules, which prevent new freight-only ATMs at Heathrow and Gatwick and generally exclude business aviation from Heathrow and Gatwick. An airline has raised with us the concern that these Rules restrict, prevent or distort competition, by limiting large cargo aircraft wishing to serve the London area to Stansted, as other airports are either full, too far away, or have runways which are too short. We consider that it is possible that this is the case, and recommend that the DfT look again at whether these Rules are still justified.'*¹¹

4.2 The TDRs plainly amount to a restriction on competition. The evidence presented to the Commission by British Airways World Cargo ('BAWC') in their two submissions and at the hearing on 18 June 2008 clearly demonstrates that the TDRs give rise to unnecessary inefficiencies which have a significant adverse impact on BAWC's competitiveness. We note that BAWC is a UK company which needs to compete in a global market place.

4.3 From an environmental standpoint also the TDRs would appear to be very difficult to defend because they give rise to a significant number of unnecessary road transport movements by HGVs with resultant implications for vehicle emissions and road congestion.

4.4 We note your recommendation that the DfT should '*look again at whether these Rules are still justified.*' We believe that the archaic and restrictive nature of the TDRs merits a more strongly worded recommendation in this case. We also believe that this is not only a matter for the DfT but for the Government as a whole since the TDRs have implications in relation to the responsibilities of other government departments, notably DEFRA, BERR and HMT.¹²

Yours faithfully



Peter Sanders

¹⁰ Provisional Findings Report, Competition Commission, Aug 2008, para 9.7.

¹¹ Provisional Findings Report, Competition Commission, Aug 2008, para 6.27.

¹² DEFRA in relation to the environmental implications; BERR in relation to business competitiveness and less and better regulation; and HMT in relation to the international competitiveness of the UK economy.

Chairman