



News Release

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CC MAY REQUIRE BAA TO SELL THREE AIRPORTS

The Competition Commission (CC) has provisionally found that there are competition problems at each of BAA's seven UK airports (Heathrow, Gatwick, Stansted and Southampton in England, and Edinburgh, Glasgow and Aberdeen in Scotland) with adverse consequences for passengers and airlines. A principal cause is their common ownership by BAA. There are also competition problems arising from the planning system, aspects of Government policy and the system of regulation. The detailed provisional findings of its investigation into the market for the supply of airport services by BAA in the United Kingdom are published today at www.competition-commission.org.uk.

The CC has also published its proposed remedies on which it will now consult. If these are implemented, the CC will order BAA to sell two of its three London airports, and also either Edinburgh or Glasgow airport. The CC will reach its decisions on remedies on the basis of responses to its consultation at the same time as it makes its final decisions on the competition issues and publishes its final report in the first quarter of 2009.

The CC is now seeking views on which two of BAA's three London airports should be sold and similarly which of Edinburgh or Glasgow airports should be sold. The CC is also seeking views on improvements to the effectiveness of the current system of regulation. Work by the CC on the regulatory system will take place at the same time as the review of the airports' regulatory system being undertaken by the Department for Transport (DfT), as part of which Professor Martin Cave is heading an advisory panel. The Secretary of State for Transport has stated that the current basis of price controls at Heathrow and Gatwick for the five years from 1 April 2008, and those at Stansted from 1 April 2009 will remain in force. Accordingly they will not be affected by any change in ownership of any of these airports. However, views are also being sought on the most appropriate regulatory framework as competition develops.

The CC is similarly seeking views on those aspects of Government policy which adversely affect competition by restricting or distorting the development of airport capacity. It sees no need to make similar recommendations on the planning system as these are already being addressed by Government.

The full list of remedies options is set out in the notice of possible remedies published today and also available at: www.competition-commission.org.uk.

Christopher Clarke, Chairman of the BAA Airports inquiry group, said:

We have provisionally found that there are significant competition problems arising from BAA's common ownership of seven UK airports (Heathrow, Gatwick, Stansted and Southampton in England, and Edinburgh, Glasgow and Aberdeen in Scotland). This is evident from a large number of factors including its lack of responsiveness to the needs of its airline customers and a lack of initiative in planning capacity. This has resulted in investment that is not tailored to the requirements of airport users and lower levels and quality of service for both airlines and passengers.

We have also provisionally found that there are competition problems arising from the planning system, aspects of Government policy and the system of regulation.

We are now turning our attention to possible remedies and have today also published our consultation document on our proposals. Specifically, we are seeking views on which two of BAA's three London airports should be sold and similarly which of Edinburgh or Glasgow airports should be sold. We do not expect to require the sale of either Southampton or Aberdeen airports. The problems at Southampton would be remedied by the sale of either Heathrow or Gatwick. At Aberdeen, we are seeking views on whether there is a need for behavioural remedies or some form of regulation. Additionally, we are seeking views on the need for additional behavioural remedies or some form of enhanced regulation at Heathrow, whether or not there is a change in ownership, to address the competition problems arising from it being the only hub airport in the South-East. Having completed our consultation, we will decide on the action we will take and if appropriate, impose the necessary orders. Other remedies will be the subject of our recommendations to Government.

While we accept that constraints on runway capacity in the South-East will limit the scope for the benefits of competition in the short-term, we believe that separate owners would be more active than BAA in exploiting existing opportunities. Over time, we would expect these to increase significantly. In Scotland, where there are no similar capacity constraints, we believe separate owners of Edinburgh and Glasgow would similarly improve their offerings.

BAA has argued to us that there is no scope for competition to develop so long as there are capacity constraints. We take the opposite view; unless the market is opened up to competition, there is a serious risk that the current capacity constraints will persist, certainly for longer than in a better functioning market.

When BAA was privatized in 1987, the London airports were deliberately kept in one group to ensure the provision of adequate airport capacity to meet expected growing demand and support airline competition. Over 20 years later there is a serious shortage of capacity, particularly runway capacity, in the South-East. The earliest new runway capacity will become available is 2015 at Stansted with no additional runway capacity possible at Heathrow before 2020. While we accept that Government policy and the planning regime have contributed to the lack of capacity, we have found that BAA as the owner and operator of these London airports has played a major role in not pressing for more capacity sooner and in planning terminal and runway capacity on a conservative and sequential process such that its plans for one airport have been influenced by its plans

elsewhere. We accept, however, that BAA has been more successful in undertaking several smaller projects simultaneously.

In Scotland, BAA has until recently been noticeably slow to develop new routes at Glasgow and Edinburgh, whilst at Aberdeen, its investment plans are regarded as unambitious despite relatively high levels of profitability. At Southampton, it has shown a reluctance to respond to its customers' demands.

We have also been struck by the differences in approach to both airline customers and development between BAA and owners and operators of regional airports. We have identified significant competition between several pairs of such airports with benefits which include lower charges, development of new routes and a far greater responsiveness to customers. In terms of capacity development, we note that both Manchester and London City airports have expanded successfully without explicit Government support.

In terms of remedies, we are also seeking views on improvements to the effectiveness of the current system of regulation and the need for a review of certain aspects of Government policy. In regard to regulation, we have found that the Civil Aviation Authority (CAA) is constrained by the current statutory framework and that consideration needs to be given to bring it closer into line with those of other sectoral regulators such as energy, water and telecommunications with better defined duties, objectives and powers, including the protection of the interests of consumers, the promotion of competition and the ability to impose economic licence conditions. There is also scope for the CAA to play a more active role in facilitating agreement between BAA and the airlines by ensuring an appropriate framework for consultation which is currently seriously lacking. It should also be more active in ensuring agreed investment programmes are adhered to and changed only by agreement with the airlines, with the CAA being prepared to arbitrate where necessary. The aim must be a more effective system of regulation, not a more intrusive one. This work will be taken forward at the same time as the current review of regulation by the DfT.

The significant problems in the BAA airports market will not be solved overnight and changes in ownership would only be a first step in freeing up the market and providing greater scope for more flexible development. Changes to regulation may similarly be important and there could be benefits available from a less prescriptive Government policy on airport capacity development though we recognize decisions on such policies, which are wholly for Government, will be taken in a broader decision framework.

The main provisional findings are as follows:

Common ownership

- (a) Common ownership of Edinburgh and Glasgow airports is a feature which prevents competition between them.
- (b) Common ownership of the three BAA London airports is a feature of the market which prevents competition between them; the effectiveness of competition between them absent common ownership is likely to increase in the longer term, with the increased incentive to invest, although we also see some scope for competition between them in the short term despite existing capacity constraints.

- (c) Heathrow's position as the only significant hub airport in the South-East and indeed the UK is a feature which restricts competition between airports for some airlines.
- (d) Common ownership of Southampton and both Heathrow and Gatwick is a feature of the market which prevents competition between them, as shown in particular by the lack of responsiveness of BAA to developing Southampton to satisfy the requirements of its airline customers.
- (e) Common ownership of the BAA London airports further restricts competition between airports through its effects on capacity constraints; and exacerbates the inadequacies of the regulatory system, reducing the benefit of regulation and distorting competition between airlines.
- (f) Aberdeen's comparatively isolated geographical position relative to other centres of population combined with other general factors that make it unattractive to serve a catchment of Aberdeen's size with more than one airport and so deter entry are features that restrict airport competition.

Other features

- (a) Aspects of planning restrictions are features which restrict competition by contributing to the current capacity constraints at the BAA London airports.
- (b) Aspects of government policy restrict or distort competition by contributing to the current capacity constraints at the BAA London airports.
- (c) The current system of regulation of airports is also a feature which distorts competition between airlines.

Main points from the notice of possible remedies:

Divestitures

- The CC proposes the divestiture of either Glasgow or Edinburgh airport—views are invited on which of the airports would be the most effective solution.
- Aberdeen's strong local monopoly position would not be solved by divestiture so views are sought on what other measures might be appropriate such as behavioural undertakings or regulation.
- The CC proposes the divestiture of two of BAA's London airports (Heathrow, Gatwick and Stansted). Views are invited on which would provide the most effective solution, including whether there are likely to be any obstacles in finding suitable purchasers. The CC's guidelines mean that it is unlikely to require the divestiture of Heathrow unless the sale of Gatwick or Stansted is likely to be impractical or ineffective.
- The CC is not proposing divestiture of Southampton Airport as sale of London airports would address concerns about Southampton.

Changes to regulation

- The CC considers it likely that regulation of Gatwick and Stansted will still be required for some time whilst capacity continues to restrain competition. Heathrow is likely to require continued regulation for a prolonged period given its role as the main hub airport.

- The system of regulation and the role of the CAA should be reviewed with the aim of making regulation more effective without becoming more intrusive by adopting some of the processes used in other regulated sectors. This could include: imposing significant obligations on airport operators as conditions of an economic licence such as standards of service, financial adequacy, ring-fencing and accounting separation, change of control provisions and conditions for revoking the licence and appointing a special administrator; more powers to intervene between quinquennial reviews; alternative approaches to regulatory asset base (RAB) regulation; and a greater role in facilitating agreement between BAA and airlines on service and investment.

Other

- The Government should review the 2003 White Paper with a view to considering its impact on competition particularly in the light of separate ownership of London airports.
- Views are sought on separate ownership of terminals although the CC considers that there are a number of issues which would have to be resolved.

The CC would like to hear views on the provisional findings report and/or statement of remedies from all interested parties, in writing, by 17 September 2008. To submit evidence, please email airports@cc.gsi.gov.uk or write to:

The Inquiry Manager (Airports market inquiry)
 Competition Commission
 Victoria House
 Southampton Row
 LONDON
 WC1B 4AD

Notes for editors

1. The CC is an independent public body, which carries out investigations into mergers, markets and the regulated industries.
2. The Office of Fair Trading (OFT) made the reference to the CC on 29 March 2007. The CC is now determining whether there are any features of the market that prevent, restrict or distort competition and, if so, what remedial action might be taken. When the OFT referred the BAA airports to the CC for investigation, it identified potential adverse effects on competition relating to a combination of features: joint ownership of airports (with very high regional market shares), regulation, development restrictions and capacity constraints. The CC published its Emerging Thinking report into the BAA airports on 22 April; today's provisional findings report takes into account the substantial additional evidence received since then, including the responses to the earlier report. At that time, the CC noted that

BAA dominates the airports markets in the South-East of England and in lowland Scotland, both areas of high economic activity and importance. Currently, there is no competition between BAA's three London airports (Heathrow, Gatwick and Stansted) and only very limited competition from non-BAA airports (including London City and Luton). Similarly, there is no competition between their two airports in lowland Scotland (Edinburgh and Glasgow) although Glasgow does face competition from one non-BAA airport (Prestwick).

This view is confirmed in today's report. The CC is required to publish its final report no later than 28 March 2009.

3. The CC is also carrying out a statutory review of the CAA's proposed price controls for Stansted Airport, which will govern how much the airport's owner, BAA, can charge airlines during the five-year period beginning April 2009. The review is separate from the market investigation into BAA airports and the CC intends to assess the price control options on the basis of the current ownership structure and system of regulation, rather than by anticipating any changes that may result in the future, either from the market investigation or from the Secretary of State for Transport's recently announced review of the economic regulation of UK airports.
4. Enquiries should be directed to Rory Taylor on 020 7271 0242 or rory.taylor@cc.gsi.gov.uk.
5. The members of the Airports inquiry group are Christopher Clarke (Group Chairman and CC Deputy Chairman), Laura Carstensen, Dr John Collings, Professor Jonathan Haskel, Richard Holroyd and Professor Peter Moizer.
6. In 2006 BAA was acquired by Airport Development and Investment Ltd (ADI), a wholly owned subsidiary of FGP Topco Ltd, in which, as of 6 June 2008, Grupo Ferrovial, S.A. (Ferrovial) held 55.87 per cent of the ordinary shares. The other two shareholders in FGP Topco Ltd are Britannia Airport Partners L.P. (26.47 per cent), which is managed by Caisse de dépôt et placement du Québec and Baker Street Investment Pte Ltd (17.65 per cent), a subsidiary of GIC Special Investments Pte Ltd. In the UK, Ferrovial owns Belfast City Airport, which is not subject to this reference by the OFT.
7. Under the Enterprise Act 2002 the OFT can make a market investigation reference to the CC if it has reasonable grounds for suspecting that competition is not working effectively in that market.