

THE SUPPLY OF AIRPORT SERVICES BY BAA

Notice of acceptance of Purchaser Undertakings pursuant to section 159 and Schedule 10 of the Enterprise Act 2002

On 29 March 2007 the Office of Fair Trading made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 (the Act) concerning the supply of airport services by BAA in the UK.

The CC published its report titled *BAA airports market investigation: a Report on the supply of airport services by BAA in the UK* on 19 March 2009 (the Report). In the Report, the CC concluded that:

- (a) there are a number of features of the markets for airport services supplied by BAA, which each (and, in certain circumstances, in combination) prevent, restrict or distort competition, and thereby have an adverse effect on competition (AEC) between airports and airlines;
- (b) the CC should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them and to that end Undertakings should be given to give effect to the CC's decision on remedies specified in the Report; and
- (c) BAA must sell Gatwick, Stansted and Edinburgh or Glasgow Airports to Approved Purchasers, according to the criteria identified in the Report, in order to remedy, mitigate or prevent the AECs and detrimental effects identified in the Report:
 - In order to approve a purchaser the CC will assess whether the proposed purchaser meets the purchaser criteria: independence from BAA and ADI/Ferrovial; appropriate expertise; appropriate financial resources; and absence of further competitive concerns.
 - A condition of our approval of the purchaser will be an undertaking from the purchaser preventing the onward sale of the airport within a given period unless the CC is satisfied that the same criteria required on the initial divestiture are fulfilled by the new purchaser.

On 20 October 2009 the CC accepted interim purchaser Undertakings from Global Infrastructure GP, LP, for itself and on behalf of the GIP Entities and Global Infrastructure Investors Limited and Global Infrastructure Management, LLC in accordance with section 157 of the Act to prevent action being taken which might impede the taking of any action by the CC under section 138(2) of the Act in relation to the reference (the Interim Purchaser Undertakings).

In accordance with section 183(4)(d) of the Act the reference is not finally determined until the making of the last decision or the taking of the final action necessary to effect all of the CC's decisions on remedies specified in the Report.

The CC published a notice of proposal to accept Purchaser Undertakings on 21 October 2009. No representations were received and the CC has decided to accept Purchaser Undertakings in the form consulted on.

In accordance with section 159 of the Act the CC may accept from such persons as it considers appropriate, Undertakings to remedy, mitigate or prevent the AECs and detrimental effects flowing from them identified in the Report.

The CC under section 159 of the Act now accepts the Purchaser Undertakings given Global Infrastructure GP, LP, for itself and on behalf of the GIP Entities and Global Infrastructure Investors Limited and Global Infrastructure Management, LLC, a copy of which is set out in the attached annex. The Purchaser Undertakings come into force accordingly.

Undertakings accepted by the CC may be varied, superseded or released by the CC in accordance with section 159 of the Act.

Christopher Clarke
Group Chairman
On behalf of the CC
5 November 2009

THE SUPPLY OF AIRPORT SERVICES BY BAA

Final Undertakings given by Global Infrastructure GP, LP, for itself and on behalf of Global Infrastructure Partners-A1, LP, Global Infrastructure Partners-B, LP, Global Infrastructure Partners-C, LP, GIP-B Ivy Acquisition Partners, LP and GIP Tuscany Acquisition Partners, LP and Global Infrastructure Investors Limited and Global Infrastructure Management LLC under section 159 of the Enterprise Act 2002

1. On 29 March 2007 the Office of Fair Trading made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 concerning the supply of airport services by BAA in the UK (the Reference).
2. The CC published its Report titled *BAA Airports Market Investigation* on 19 March 2009 (the Report). In the Report, the CC concluded that:
 - (a) there are a number of features of the markets for airport services supplied by BAA, which each (and, in certain circumstances, in combination) prevent, restrict or distort competition, and thereby have an adverse effect on competition (AEC) between airports and airlines;
 - (b) the CC should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them and to that end undertakings should be given to give effect to the CC's decision on remedies specified in the Report; and
 - (c) BAA must sell Gatwick, Stansted and Edinburgh or Glasgow Airports to Approved Purchasers, according to the criteria identified in the Report, in order to remedy, mitigate or prevent the AECs and detrimental effects identified in the Report:
 - In order to approve a purchaser the CC will assess whether the proposed purchaser meets the purchaser criteria: independence from BAA and ADI/Ferrovial; appropriate expertise; appropriate financial resources; and absence of further competitive concerns.
 - A condition of our approval of the purchaser will be an undertaking from the purchaser preventing the onward sale of the airport within a given period unless the CC is satisfied that the same criteria required on the initial divestiture are fulfilled by the new purchaser.
3. On 20 October 2009 the CC accepted interim purchaser undertakings from Global Infrastructure GP, LP, for itself and on behalf of the GIP Entities and Global Infrastructure Investors Limited and Global Infrastructure Management, LLC in accordance with section 157 of the Act to prevent action being taken which might impede the taking of any action by the CC under section 138(2) of the Act in relation to the reference (the Interim Purchaser Undertakings).
4. In accordance with section 183(4)(d) of the Act the reference is not finally determined until the making of the last decision or the taking of the final action necessary to effect all of the CC's decisions on remedies specified in the Report.
5. Now Global Infrastructure GP, LP, for itself and on behalf of the GIP Entities and Global Infrastructure Investors Limited and Global Infrastructure Management, LLC give the CC the following Undertakings pursuant to section 159 of the Enterprise Act 2002:

1. Conditions precedent to sale

1.1 Each of the Parties undertakes that it will not, and that it will procure that none of its Affiliates will, enter into any transaction or arrangement referred to in paragraphs 1.1(a) to 1.1(f) or any transaction or arrangement which would, in relation to Gatwick Airport Limited, have the same commercial effect as, or a substantially similar commercial effect to, any of the following:

- (a) divestment of Gatwick Airport or a substantial part of Gatwick Airport;
- (b) divestment of a shareholding or interest in Gatwick Airport Limited or any Affiliate of the Parties that results in a change of control of Gatwick Airport Limited;
- (c) divestment of a shareholding or interest in Gatwick Airport Limited or any Affiliate of the Parties that creates a position of material influence in relation to Gatwick Airport Limited;
- (d) divestment of any material shareholding or material interest in Gatwick Airport Limited or any Affiliate of the Parties that affects or could reasonably be expected to affect the provision of management services to Gatwick Airport or Gatwick Airport Limited;
- (e) divestment of any material shareholding or material interest in Gatwick Airport Limited or any Affiliate of the Parties that results or could reasonably be expected to result in a material adverse change to the overall financial position of Gatwick Airport or Gatwick Airport Limited; or
- (f) divestment of any shareholding or interest in Gatwick Airport Limited or any Affiliate of the Parties or any of the Parties to any of FGP Topco Limited, ADI Finance 2 Limited, BAA Limited, BAA Airports Limited, BAA (AH) Limited, BAA (Non Des Topco) Limited or their Affiliates,

other than where the Parties have received prior Notice from the CC permitting the transaction or arrangement.

1.2 The first signatory, Global Infrastructure GP, LP, hereby confirms that it is the general partner of each of the GIP Entities, it has entered into these Undertakings for itself and on their behalf, and that it has the power to bind the GIP Entities to these Undertakings and to procure the compliance by the GIP Entities and their Affiliates with these Undertakings.

1.3 The second signatory, Global Infrastructure Investors Limited, hereby confirms that it is the general partner of Global Infrastructure GP, LP, it has entered into these Undertakings for itself and on its behalf, and that it has the power to bind Global Infrastructure GP, LP to these Undertakings and to procure the compliance by Global Infrastructure GP, LP, the GIP Entities and their Affiliates with these Undertakings.

1.4 The third signatory, Global Infrastructure Management, LLC, hereby confirms that it provides management services to Global Infrastructure GP, LP and the GIP Entities.

2. Consent

2.1 The Parties each undertake that where the Undertakings or any one of them require the consent or approval of the CC (however that requirement is expressed in these Undertakings) they will seek the consent or approval in writing.

- 2.2 The Parties each undertake that any application by them for the CC's consent or approval shall make full disclosure of every fact and matter that is relevant to the CC's decision.
- 2.3 The Parties recognize that where the CC grants consent or approval on the basis of misleading or incomplete information, the consent or approval is voidable at the election of the CC.
- 2.4 In the event that any of the Parties discover that an application for consent or approval has been made without full disclosure and is therefore incomplete the parties undertake to:
- (a) inform the CC in writing identifying the particulars in which the application for consent is incomplete within three working days of becoming aware that the application is incomplete; and
- (b) at the same time or as soon as possible thereafter provide to the CC an application for consent that is complete.
- 2.5 The Parties shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CC at least five working days, or such lesser period as the CC may allow, before the day on which the CC's consent or approval is necessary to avoid a breach of these Undertakings.
- 2.6 The Parties recognize that the CC shall use all reasonable endeavours to grant or refuse any consent or approval within the five-working-day period referred to in paragraph 2.5.
- 2.7 The Parties recognize that, whilst the GIP Entities have the ability to syndicate a proportion of their initial equity holding, consent or approval is required for such syndication under paragraph 1 as for any other transaction or arrangement requiring consent under these Undertakings, and that such consent or approval shall be given where the CC is satisfied that the criteria identified in paragraph 10.142 of the Report are met.

3. Directions

- 3.1 The Parties will, insofar as they are able, comply with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.

4. Commencement

- 4.1 These Undertakings shall come into force on the day on which these Final Undertakings are accepted by the CC.

5. Termination

- 5.1 These undertakings shall remain in force until five years from the Commencement Date of the Interim Purchaser Undertakings, or such earlier time as the CC and the Parties shall agree.

- 5.2 The variation, termination, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights arising prior to such variation, termination, release or supersession.

6. Effect of invalidity

- 6.1 The Parties undertake that should any provision of these Undertakings be held by any court or tribunal to be contrary to law or invalid for any reason they will continue to observe the remaining provisions.
- 6.2 The Parties undertake that they shall not rely on any default or want of authority on the part of any signatory or any officer or employee thereof in the execution of these Undertakings unless directed to do so by the CC.

7. Interpretation

- 7.1 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in these Undertakings.
- 7.2 These Undertakings are to be interpreted and applied so as to give effect to the conclusions of the CC as to the need for a purchaser undertaking stated in part 10 of the Report.
- 7.3 A notification under these Undertakings may be given to the CC by giving it to Remedies Manager, Competition Commission, Victoria House, Southampton Row, London, WC1 4AD.
- 7.4 A notification under these Undertakings may be given to the parties by giving it to The General Counsel, Global Infrastructure Partners, c/o Global Infrastructure Management UK Limited, Cardinal Place, 80 Victoria Street, London, SW1E 5JL.
- 7.5 For the purposes of these Undertakings:

'ADI Finance 2 Ltd' means the company of that name incorporated in England and Wales with the number 5723973 and having its address for service in the UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'Affiliate' means with respect to any person, any other person directly or indirectly controlled by such person;

'Approved Purchaser' means any person approved by the CC as a purchaser of a Protected Airport Company;

'BAA (AH) Limited' means the company of that name incorporated in England and Wales with the number 6458657 and having its address for service in the UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'BAA Airports Limited' means the company of that name incorporated in England and Wales with the number 1970855 and having its address for service in the UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'BAA Limited' means the company of that name incorporated in England and Wales with the number 5757218 and having its address for service in the UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'BAA (Non Des Topco) Limited' means the company of that name incorporated in England and Wales with the number 6636117 and having its address for service in the UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'CC' means the Competition Commission;

'change of control' means where any person, taken together with its Affiliates, ceases to be able to direct or cause the direction of, whether directly or indirectly, the activities, management and/or policies of another person, including without limitation by that person:

- (a) ceasing to hold more than 50 per cent of the then outstanding securities issued by, or economic interests in, such person;
- (b) ceasing to hold or be able to exercise more than 50 per cent of the voting rights in such other person; or
- (c) ceasing to be able to appoint and remove a majority of the directors or management of that other person;

'Commencement Day of the Interim Purchaser Undertakings' means 20 October 2009, the day on which the Interim Purchaser Undertakings were accepted by the CC;

'divest' means sell, transfer, convey, or agree to sell transfer or convey, or grant or agree to grant any right or interest legal or equitable in or over, or allot, issue or create, or agree to allot, issue or create, any interest or securities or otherwise in whole or part dispose of or relinquish control over, agree to dispose of or relinquish control over, whether through a single transaction or a series of transactions, provided that the creation, or agreement to create, or subsistence of, any security interests (whether by way of mortgage, charge, pledge, assignment, transfer or otherwise) by any of the Parties or any of their Affiliates is not a divestment for the purposes these Undertakings, and **'divestment'** shall be construed accordingly;

'FGP Topco Limited' means the company of that name incorporated in England and Wales with the number 5723961 and having its address for service in the UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'Gatwick Airport Limited' means the company of that name incorporated in England and Wales with the number 1991018 and having its address for service in the UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'GIP Entities' means Global Infrastructure Partners-A1, LP, Global Infrastructure Partners-B, LP, Global Infrastructure Partners-C, LP, GIP-B Ivy Acquisition Partners, LP and GIP Tuscany Acquisition Partners, LP;

'material adverse change to overall financial position' means a change that, in all the circumstances at the relevant time, would or could reasonably be expected to have a material adverse effect on the overall financial position of Gatwick Airport or Gatwick Airport Limited;

'material influence' means beneficial ownership of or the ability to control more than 30 per cent of ordinary share capital or voting rights in the company concerned or (in the case of a person which is not a company) beneficial ownership of or an entitlement to more than 30 per cent of the economic interests and/or voting rights in, or issued by or in respect of, that person;

'material interest' means an interest of 5 per cent or greater;

'material shareholding' means a shareholding of 5 per cent or greater;

'Notice' means a written communication sent by post, fax, personal delivery, or with the prior approval of the CC, email;

'Notification Day' means the day on which acceptance of these Undertakings is notified to the Parties;

'Parties' means the GIP Entities, Global Infrastructure GP, LP, Global Infrastructure Investors Limited and Global Infrastructure Management LLC;

'Protected Airport Company' means Gatwick Airport Limited (1991018), Stansted Airport Limited (1990920), Glasgow Airport Limited (SC96624) or Edinburgh Airport Limited (SC96623);

'Report' means the Report of the CC published on 19 March 2009 and titled BAA Airports Market Investigation; A Report on the supply of airport services by BAA in the UK;

'Undertakings' means these Final Undertakings; and

'working day' means any day other than a Saturday or Sunday on which banks are open for business in England;

unless the context requires otherwise, the singular shall include the plural and vice versa.

7.6 For the purposes of these Undertakings:

(a) references to a 'person' shall be construed so as to include any individual, firm, partnership, body corporate, association, government, state or agency of a state or other entity (whether or not having a separate legal personality);

(b) references to a 'shareholding' shall be construed so as to include any holding of shares or other securities or rights in respect of securities which give ownership, voting and/or economic rights over or in respect of a body corporate; and

(c) references to an 'interest' shall be construed so as to include any interest whatsoever, whether in respect of legal and/or beneficial ownership or title, control of and/or voting rights or the economic or other rights or benefits, including an interest through a shareholding or by virtue of being a partner or a member.

Signed by duly authorized signatories:

FOR AND ON BEHALF OF

GLOBAL INFRASTRUCTURE GP, L.P.

By: Global Infrastructure Investors, Limited, its general partner

By:

Name:

Title: [Managing] Partner

GLOBAL INFRASTRUCTURE INVESTORS, LIMITED

By:

Name:

Title: [Managing] Partner

GLOBAL INFRASTRUCTURE MANAGEMENT, LLC

By:

Name:

Title: [Managing] Partner

GLOBAL INFRASTRUCTURE PARTNERS-A1, L.P.

By: Global Infrastructure GP, L.P., its general partner,

By: Global Infrastructure Investors, Limited, its general partner.

By:

Name:

Title: [Managing] Partner

GLOBAL INFRASTRUCTURE PARTNERS-B, L.P.

By: Global Infrastructure GP, L.P., its general partner,

By: Global Infrastructure Investors, Limited, its general partner.

By:

Name:

Title: [Managing] Partner

GLOBAL INFRASTRUCTURE PARTNERS-C, L.P.

By: Global Infrastructure GP, L.P., its general partner,

By: Global Infrastructure Investors, Limited, its general partner.

By:

Name:

Title: [Managing] Partner

GIP-B IVY ACQUISITION PARTNERS, L.P.

By: Global Infrastructure GP, L.P., its general partner,

By: Global Infrastructure Investors, Limited, its general partner.

By:

Name:

Title: [Managing] Partner

GIP TUSCANY ACQUISITION PARTNERS, L.P.

By: Global Infrastructure GP, L.P., its general partner,

By: Global Infrastructure Investors, Limited, its general partner.

By:

Name:

Title: [Managing] Partner