

## MARKET INVESTIGATION INTO THE SUPPLY OF AIRPORT SERVICES BY BAA

### Notice of release of Interim Undertakings pursuant to section 157(3) 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 (the Act) concerning the supply of airport services by BAA in the UK.
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) pending final determination of the market investigation, the CC will pursue interim measures in relation to the sale of Gatwick Airport, reports on the progress towards an agreement on consultation for Heathrow Airport, the preservation of the SG2 planning application and hold separate provisions for all the airports subject to divestiture.
3. On 15 May 2009, in accordance with section 157 of the Act, the CC accepted Interim Undertakings from FGP Topco Limited, ADI Finance 2 Limited, BAA Limited, BAA Airports Limited, BAA (AH) Limited, BAA (Non Des Topco) Limited, Gatwick Airport Limited, Stansted Airport Limited, Glasgow Airport Limited and Edinburgh Airport Limited (together the 'BAA signatories') to prevent action being taken which might impede the taking of any action by the CC under section 138(2) of the Act (the Interim Undertakings).
4. On 5 November 2009, the CC consented to the sale of Gatwick Airport Limited to Global Infrastructure GP, LP, in accordance with paragraph 5 of the Interim Undertakings.
5. On 18 May 2009, BAA Limited filed a notice of application under section 179 of the Act for the Competition Appeal Tribunal to review the findings contained in the report. On 21 December 2009, the Tribunal issued a judgement that the application succeeded on ground of 'apparent bias' ([2009] CAT 35). On 25 February 2010, the Tribunal made an Order:
  - (a) quashing the decisions, findings and reasoning in the report in so far as they related to the common ownership of airports set out, inter alia, in paragraphs 8.4(a) and 10.377(a); and
  - (b) referring these matters back to the CC for reconsideration in accordance with the Tribunal's ruling.
6. In accordance with section 157(3) of the Act, the CC releases the BAA signatories from paragraph 1, 'The preservation and sale of Protected Airport Companies';

paragraph 2, The monitoring trustee at Gatwick Airport; paragraph 3, The development of Stansted Airport; paragraph 5, Consent; and paragraph 6, Compliance Statements; of the Interim Undertakings.

7. Except where released, the Interim Undertakings, comprising paragraph 4 and paragraphs 7 to 11 as appropriate, a copy of which is attached to this notice, remain in force.

Competition Commission  
11 March 2010

## THE SUPPLY OF AIRPORT SERVICES BY BAA

### **Interim Undertakings given by FGP Topco Limited, ADI Finance 2 Limited, BAA Limited, BAA Airports Limited, BAA (AH) Limited, BAA (Non Des Topco) Limited, Gatwick Airport Limited, Stansted Airport Limited, Glasgow Airport Limited and Edinburgh Airport Limited under section 157 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 concerning the supply of airport services by BAA in the United Kingdom.

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) pending final determination of the market investigation, the CC will pursue interim measures in relation to ... reports on the progress toward an agreement on consultation for Heathrow Airport. ...

And the CC wishes to prevent action being taken which might impede the taking of any action by the CC under section 138(2) of the Enterprise Act 2002 in relation to the reference.

And the reference has not been finally determined in accordance with section 183(3) of the Enterprise Act 2002.

Now FGP Topco Limited, ADI Finance 2 Limited, BAA Limited, BAA Airports Limited, BAA (AH) Limited, BAA (Non Des Topco) Limited, Gatwick Airport Limited, Stansted Airport Limited, Glasgow Airport Limited and Edinburgh Airport Limited (together the 'BAA signatories') give the CC the following undertakings pursuant to section 157 of the Enterprise Act 2002.

- 1. Released**
- 2. Released**
- 3. Released**
- 4. Progress towards protocol on disclosure and consultation at Heathrow airport**
  - 4.1 BAA Limited undertakes that:

4.1.1 it will, within the period of 15 days from the Notification Day, provide a written report to the CC on the steps that it proposes to take to bring about a Consultation Protocol; and

4.1.2 thereafter it will provide a monthly report to the CC of the steps that have been taken and the progress that has been made towards conclusion of the Consultation Protocol, including a summary of the views of airlines and the details of major areas of disagreement or concern.

## **5. Released**

## **6. Released**

## **7. Directions**

7.1 The BAA signatories will in so far 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.

## **8. Commencement**

8.1 These undertakings shall come into force on the Commencement Day.

## **9. Termination**

9.1 These undertakings shall remain in force until final determination of the reference or such earlier time as the CC and the BAA signatories shall agree.

9.2 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.

## **10. Effect of invalidity**

10.1 The BAA signatories 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.

10.2 The BAA signatories undertake that they shall not rely on any default or want of authority on the part of any BAA signatory or any officer or employee thereof in the execution of these undertakings unless directed to do so by the CC.

## **11. Interpretation**

11.1 Words and expressions defined in the recitals to these undertakings shall have the same meaning in these undertakings.

11.2 These undertakings are to be interpreted and applied so as to give effect to the conclusions of the CC as to the need for interim measures stated in Section 10 of the report.

- 11.3 In these undertakings a company is a subsidiary of another company, if that other company:
- 11.3.1 holds a majority of the voting rights in it; or
  - 11.3.2 is a member of it and has the right to appoint or remove a majority of its board or directors; or
  - 11.3.3 is a member of it and controls alone a majority of the voting rights in it; or
  - 11.3.4 if it is a subsidiary of a company that is itself a subsidiary of that other company.
- 11.4 A notification under these undertakings may be given to the CC by giving it to Inquiry Manager, BAA Airports Inquiry, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD.
- 11.5 A notification under these undertakings may be given to BAA by giving it to Carol Hui, General Counsel and Company Secretary, Heathrow Point West, 234 Bath Road, Hayes UB3 5AP.
- 11.6 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 130 Wilton Road, London SW1V 1LQ;
- ...
- '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 130 Wilton Road, London SW1V 1LQ;
- '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 130 Wilton Road, London SW1V 1LQ;
- '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 130 Wilton Road, London SW1V 1LQ;
- '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 130 Wilton Road, London SW1V 1LQ;
- 'business day'** means any day other than a Saturday or Sunday on which banks are open for business in England;
- 'CC'** means the Competition Commission;
- 'Commencement Day'** means the day on which these undertakings are accepted by the CC;
- 'Consultation Protocol'** means an agreement between Heathrow Airport Limited and the Civil Aviation Authority as to the further matters on which there should be disclosure and consultation at Heathrow Airport pursuant to paragraphs 10.255 and 10.257 of the report;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise or activity;

...

**'Edinburgh Airport Limited'** means the company of that name incorporated in Scotland with the number SC96623 and having its address for service in the UK at St Andrews Drive, Glasgow Airport, Paisley PA3 2SW;

**'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 130 Wilton Road, London SW1V 1LQ;

**'Glasgow Airport Limited'** means the company of that name incorporated in Scotland with the number SC96624 and having its address for service in the UK at St Andrews Drive, Glasgow Airport, Paisley PA3 2SW;

...

**'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 BAA;

...

...

...

...

**'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*;

...

...

**'Stansted Airport Limited'** means the company of that name incorporated in England and Wales with the number 1990920 and having its address for service in the UK at 130 Wilton Road, London SW1V 1LQ;

...

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

**Signed by duly authorized signatories:**

FOR AND ON BEHALF OF FGP Topco Limited, ADI Finance 2 Limited, BAA Limited, BAA Airports Limited, BAA (AH) Limited, BAA (Non Des Topco) Limited, Gatwick Airport Limited, Stansted Airport Limited, Glasgow Airport Limited and Edinburgh Airport Limited

.....Signature

.....Signature

COLIN MATTHEWS  
*Chief Executive Officer*  
BAA Limited  
14 May 2009

TIM HAWKINS  
*Acting Director of Regulation*  
BAA Limited  
14 May 2009

## Explanatory Note

### Status of these Interim Undertakings

Having published a report detailing the decisions to the statutory questions in section 136 of the Act, the CC can accept interim undertakings<sup>1</sup> or make an interim order<sup>2</sup> for the purpose of preventing pre-emptive action. 'Pre-emptive action' is action which might impede the taking of any action required as a result of the decisions on remedies in the report.<sup>3</sup> Interim undertakings and interim orders remain in force until final determination<sup>4</sup> of the reference unless they are superseded or released by the CC.<sup>5</sup>

A market investigation reference is finally determined<sup>6</sup> upon the acceptance of final undertakings<sup>7</sup> or the making of a final order<sup>8</sup> implementing the decisions in the report. These Interim Undertakings shall, therefore, cease to apply when the CC accepts final undertakings or makes a final order to implement the decisions in the report.

On 18 May 2009 BAA Limited filed a notice of application under section 179 of the Act for Competition Appeal Tribunal to review of the findings contained in the report. On 21 December 2009 the Tribunal issued a judgement that the application succeeded on ground of 'apparent bias' ([2009] CAT 35). On 25 February 2010 the Tribunal made an Order:

- (a) quashing the decisions, findings and reasoning in the report in so far as they related to the common ownership of airports set out, inter alia, in paragraphs 8.4(a) and 10.377(a); and
- (b) referring these matters back to the CC for reconsideration in accordance with the Tribunal's ruling.

On 9 March 2010, in accordance with section 157(3) of the Act, the CC released the BAA signatories from paragraph 1, 'The preservation and sale of Protected Airport Companies'; paragraph 2, The monitoring trustee at Gatwick Airport; paragraph 3, The development of Stansted Airport; paragraph 5, Consent; and paragraph 6, Compliance Statements; of the Interim Undertakings. By virtue of this release a number of the definitions in paragraph 11 fall away, these have been marked with ... .

---

<sup>1</sup>Section 157(2) of the Act.

<sup>2</sup>Section 158(2) of the Act.

<sup>3</sup>Section 157(6) of the Act.

<sup>4</sup>Section 157(4) of the Act.

<sup>5</sup>Section 157(3) of the Act.

<sup>6</sup>In accordance with section 183(3) and (4) of the Act.

<sup>7</sup>Section 159 of the Act.

<sup>8</sup>Section 161 of the Act.