

## BAA AIRPORTS MARKET INVESTIGATION

### Consultation on possible remedies regarding Aberdeen Airport

#### Introduction

1. In the Competition Commission's (CC) provisional findings in this investigation published on 20 August 2008, the CC provisionally found that Aberdeen Airport's (Aberdeen) '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' (paragraph 8.4(b)). The CC therefore provisionally found an adverse effect on competition (AEC) with respect to Aberdeen.
2. In its provisional decision on remedies published on 17 December 2008, the CC noted that it was not practicable to address the AEC it had identified at Aberdeen directly, through measures such as divestiture, but it appeared feasible to address the detrimental effects on customers through the combination of a price control and behavioural undertakings on consultation (paragraph 155). In its response to the provisional decision on remedies, the Civil Aviation Authority (CAA) suggested that the CC could consider alternative remedies to a price control including obliging Aberdeen to act in a 'fair, reasonable and non-discriminatory manner' or obliging Aberdeen to prepare and publish depreciated replacement cost accounts.
3. Having considered all the evidence submitted in response to its provisional decision on remedies, including from business groups, airlines, representative bodies and the CAA, the CC now seeks views on the potential use of alternative remedies to the price control proposal in our provisional decision on remedies. Specifically we seek views on a requirement for BAA to publish certain financial and other information (including depreciated replacement cost accounts) and have an obligation to act in a fair, reasonable and non discriminatory manner. After considering the response to this consultation on these alternative remedies, the inquiry group will decide on the most appropriate remedy to address the AEC.
4. It is assumed, for the purpose of this further consultation, that these obligations would be implemented in addition to undertakings from BAA regarding consultation on capital expenditure as set out in our provisional decision on remedies. It is envisaged that all of these measures would be implemented as undertakings under the Enterprise Act 2002 (the Enterprise Act) and would remain in force until superseded by new regulatory arrangements arising from the Department for Transport's review of airport regulation<sup>1</sup>.

#### Details of possible alternative remedies

5. BAA would be obliged to publish audited accounts and segmental analysis on a depreciated replacement cost basis for Aberdeen together with other relevant information as indicated below. This undertaking would seek to increase transparency and highlight potential areas requiring inquiry by customers and/or regulators.

---

<sup>1</sup> The CC may vary or revoke undertakings given under the Enterprise Act following receipt of advice from the OFT that there has been a relevant change of circumstances. The CC envisages that the introduction of new regulatory arrangements would be an instance of a relevant change of circumstances.

6. The accounts and other information would be audited and published on an annual basis and could include:
  - (a) Segmental analysis of the value of tangible assets on a depreciated replacement cost basis split by major categories of aeronautical (ie fixed wing and rotary wing) and non-aeronautical assets.
  - (b) Segmental analysis of revenue, operating costs and operating profit for major categories of aeronautical and non-aeronautical activities (as split in (a) above).
  - (c) Depreciated replacement cost return on assets employed.
  - (d) Average annual yield for fixed wing aircraft and rotary aircraft and (for the CAA/Office of Fair Trading (OFT) only)) average yield per airline.
  - (e) Summary of forward programme of major capital projects together with forecast costs.

For items (a) to (d) it is proposed that the publication should provide comparable annual figures for the last five years. The proposed form and content of the publication would be approved by the CAA and OFT.

7. It is proposed that the above publication remedy is accompanied by an explicit obligation on Aberdeen to act in a 'fair, reasonable and non discriminatory manner' with regard to charges to airlines and other relevant users. This obligation would be supported by BAA providing to a customer (and, if necessary, the CAA or OFT) on request, the basis of its charges to the relevant customer and setting out why this may be considered fair, reasonable and non discriminatory in relation to the costs incurred by BAA in providing the service concerned . The objective of this remedy would be to raise awareness and transparency of the basis of possible charges, provide an incentive for appropriate charging and help identify possible areas needing investigation.
8. Failure to comply with these measures may result in enforcement action by the OFT or third parties under the Enterprise Act. Customer complaints arising from the information generated by these measures may provide grounds for investigation by the CAA using its powers under the Airports Act.

### **Issues for consultation**

9. We are seeking views on the likely effectiveness, practicability and proportionality of the above remedies in addressing the AEC we have identified at Aberdeen. In particular, we seek views on the most effective specification of the above remedies, features that may facilitate or hinder implementation and arrangements for monitoring and enforcement.
10. We seek views from interested parties not later than mid-day on **Friday 20 February**. Comments should be made in writing to [Anne.Jolly@cc.gsi.gov.uk](mailto:Anne.Jolly@cc.gsi.gov.uk).

12 February 2009