

Consultation at Stansted

Introduction

1. This appendix sets out our findings on the consultation process and the provision of information at Stansted in Q4 as a public interest issue. It focuses on capex consultation for SG1 and SG2 because they were the main focus of consultation in Q4 and will remain so in Q5, but our findings are not limited to those projects. In paragraph 51 onwards, we set out our recommendations for improvements to the process of consultation at Stansted in Q5.
2. The question of whether the failure of consultation warrants a public interest finding against BAA (addressed in this appendix) is separate from (albeit related to) the question of whether the failure of consultation during Q4 should lead us to exclude any capex from the opening Q5 RAB (addressed in Appendix D). Our decision regarding what capex we recommend allowing into the opening Q5 RAB did not rely on our decision on the public interest issue, or vice versa. For example, we believed that BAA may have met the CAA's test for inclusion of capex into the opening RAB, while still acting against the public interest. However, while separating the issues in this way, much of the information which we have considered has been relevant to both questions.

Public interest test

3. In addition to the price cap, we are required to investigate and report on public interest questions. Broadly, these are whether STAL has, at any time during the period between the making of the Q4 reference and the making of the Q5 reference pursued a course of conduct in relation to:
 - (a) airport charges levied by it at Stansted;
 - (b) operational activities carried on by it relating to Stansted; or
 - (c) a right to carry on operational activities relating to Stansted,which has operated or might be expected to operate against the public interest. If we find that there has been conduct contrary to the public interest we have to consider whether the adverse effects of that course of conduct could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any conditions already in force in relation to it.
4. In determining public interest questions we are directed by section 43(5) of the Act to have regard to the objectives specified in section 39(2) of the Act. In summary, these are:
 - (a) furtherance of the reasonable interests of users of airports within the UK;
 - (b) promotion of the efficient, economic and profitable operation of airports within the UK;
 - (c) encouragement of investment in new facilities at airports in time to satisfy anticipated demands by users of airports within the UK; and

(d) imposition of the minimum restrictions that are consistent with the performance by the CAA of its functions under specified sections of the Act.

'Users' includes airlines and passengers at Stansted airport.¹ 'Operational activities' mean 'any activities—(a) which are carried on wholly or mainly for the benefit of users of the airport, or (b) the revenues from which are wholly or mainly attributable to payments by such users ...'.²

5. The key considerations for deciding the public interest question are:
 - (a) whether the conduct of STAL in relation to charges levied or operational matters at Stansted has operated against the public interest;
 - (b) whether the relevant events occurred between 28 February 2002 and 29 April 2008 (the dates of the CAA's references to us for Q4 and Q5 respectively); and
 - (c) whether the adverse effects of the conduct can be remedied by imposing or modifying conditions on STAL.

Consultation and information provision

6. In a competitive market for airport services we would expect to see effective consultation between supplier and customer and we believed that, in a regulated market, this process should still exist. The provision of adequate information on a timely basis and an effective consultation process are important both to those responsible for the management and development of an airport and to their users. If an airport is to be run and developed efficiently, airlines must understand the operational and development objectives of the airport's management. At the same time, the airport's management must understand the operational and development preferences of their customers. The effective and timely provision of adequate information should play an important role in identifying where there is agreement and where there is disagreement between an airport and its airline users. Consultation should promote the resolution, where possible, of disagreement. This process will further the reasonable interests of airport users, promote the efficient and economic operation of the airport, and encourage timely investment in new facilities. It is particularly important where airport regulation directly relates infrastructure delivered to the price paid for use of the airport, as it does under the existing RAB-based regulation of Stansted.
7. We considered to what extent the interests of existing airline users of the airport could be taken as representative of the interests of future airline users or the interests of passengers. In our view, for most purposes, competition between airlines is likely to imply a commonality of interests between airlines and final consumers (see paragraph 8.79 of the main report). However, we recognized that, in using the results of consultation within its regulatory functions, the CAA must reach a balance in the weight that it assigns to the interests of current users, which can be known, and the interests of possible future users, for which it might be possible to gather some evidence but about which there will usually be less certainty. Even if the interests of current users and possible future users were to diverge, we believed that the airport should at least be taking into account the interests of its current users, which can be identified and engaged in a dialogue—if it manages to consult potential future users too, then so much the better.

¹Section 82(1) of the Act.

²Section 30(4) of the Act.

8. We recognized that there have been important steps towards better consultation and information provision at Stansted. In its 2003 determination, which imposed the conditions currently in effect at Stansted, the CAA said:

The CAA's price cap proposals were based on the following policies ... the airports should provide enhanced information disclosure as a basis for improved consultation with its users, under the terms of proposals previously agreed with BAA. ... The CAA believes that the price caps for Q4 resulting from this set of policies is best calculated to meet its statutory objectives

9. In the same decision, the CAA also stated that '... providing BAA follows best practice management and operates pro-actively the enhanced information disclosure and consultation agreement, consulting effectively with well-informed users, the CAA sees no good reason for disallowing capital expenditure at the next review'.³
10. We believed that the emphasis placed on information disclosure by the CAA in 2003 was an important step forward in airport regulation. We also agreed that consultation must be demonstrably effective. Genuine consultation is not an empty exercise, and should improve the quality of decision-making.
11. We also believed that the importance of information provision and consultation at Stansted was not limited to the determination of price caps. It would be artificial to divide the relationships between Stansted and its users by quinquennia. Those relationships are better understood as part of a continuum that will normally exist before, and continue after, any five-year period. Equally, the competitive pressures on the businesses of those airlines and passengers who use Stansted do not observe the five-year planning cycles of quinquennial price caps. Indeed, the planning, development and implementation of important capital projects at Stansted span several quinquennia.
12. The need for effective consultation derives from the importance of the underlying relationships and priorities of the airport and its users. The airport should not build or operate services which its users, or anticipated users, do not require, and in this respect price-caps are a vital safeguard for them, but it is also important that airport users should have the facilities that they reasonably do require. In this regard, consultation affects all three areas set out for the public interest test (see paragraph 5).
13. This view of the continuing role of consultation does not diminish the significance of capex planning in the five-year price review. If capex is undertaken that is excessively priced, or if the capex does not address the needs of the users of the airport, either in scope or timing, the efficient development of the airport is impaired, and the wrong prices are set for airport users. However, a decision by BAA about capex will normally reflect a number of underlying decisions about the day-to-day operations of the airport. For example, a decision by BAA about the replacement of the baggage system, both in judgements about the suitability and resilience of the existing system, and the specification of the new system and the timing of any replacement, will significantly affect airlines and could affect passengers if delays occurred. Many of the capex projects that are proposed for a quinquennium are directly concerned with the development of the day-to-day operations of the airport in some way and may well affect the plans of users of the airport.

³Paragraph 6.10 of the CAA's 2003 price control determination.

14. In our view, consultation is also not only about future airport development and planning new projects but should be concerned with ex-post reviews of historical projects. For this purpose, it requires disclosure of information in relation to concluded projects. If airport users are to be able to engage properly with the airport operator, they need to understand not just the new developments proposed, but also the efficiency with which similar projects have been delivered in the past and whether lessons can be and should have been learned from them.
15. There are a number of components to information provision at Stansted. First, it is important that information is provided to airport users so that they can evaluate the success with which projects have been implemented. Second, information should be provided to enable the evaluation of future projects. Third, all information must be provided in a timely fashion by BAA to airport users. The timely provision of information is essential to enable parties to make informed judgements and to allow time for the process to be effective, both for discussion of the proposals over a reasonable period and for each party, both BAA and the airport users, to take into account the views of the other party. Where relevant, consultation may mean that revised proposals should be made available in a similar way. Finally, it is important that the information is relevant to the needs of the users and is understandable to them. We accepted that, as a practical matter, most consultation is likely to take place between the airport and its airline customers, but we noted that the airport should attempt to consult passengers as far as possible on major developments.
16. We saw consultation as a process which provides for, and encourages, genuine, two-way, constructive dialogue. We accepted that effective consultation will not necessarily lead to agreement. However, we believed that the likelihood of enduring disagreement should be significantly reduced if there is clarity about the nature and purpose of consultation and the need for adequate and timely information provision. We observed that much of the debate, and misunderstanding, at Stansted during Q4 seemed to have arisen because of a fundamental difference of view between BAA and the airlines as to the purpose and intended process of consultation. We accepted that the differing motivations of BAA and the airlines (in particular with regard to SG2) played a part in the failure to achieve an effective dialogue, but we believed that this tension increased the need for improved clarity on the information provided, and for supervision of the consultation process, and did not mean that effective discussion and agreement could not be achieved.
17. During our review we received numerous and substantial submissions about the consultation that has or has not taken place at Stansted in relation to SG1 and SG2 in Q4. We examined carefully the processes of consultation between BAA and the airlines, and sought to understand whether these processes were adequate for the airlines to enter into a constructive dialogue and for BAA to ensure that it took into account the reasonable interests of users on a timely basis.
18. The focus of our review was the process of consultation at Stansted concerning the airport's development and BAA's capex programme. We were not concerned with the day-to-day discussions which occur between the airport and the airlines on operational matters, about which we heard few concerns.

SG1

19. The airlines objected very strongly to both BAA's SG1 development plans (including raising objections at the public inquiry) and BAA's SG2 proposals. The airlines also objected to the lack of consultation on each programme.

20. The Cotterill report⁴ identified that ‘there are certainly still ways in which BAA can raise its game, both in relation to the provision of appropriate information and to genuinely constructive, imaginative and proactive consultation with its airline users. But this will be of little avail if the airlines themselves do not also demonstrate by their actions that they too are willing to seek mutually acceptable ways to bridging the current divide’.
21. The information which was to form the basis of consultation was taken by both BAA and the CAA to mean the provision of the annual CIP by BAA to the airlines and discussion based on this document. The airlines strongly disagreed and believed that further information was required, including the provision of a much more comprehensive airport business plan. We found that the CIP was insufficient to inform the airlines and to enable effective consultation. Indeed, we found that it was insufficient for us or our consultants to perform an ex-ante review of BAA’s capex programme.
22. During Q4, BAA’s capex plans have changed, for example the amount spent on SG1 fell significantly (see chapter 8 of the main report). However, it was not clear to us the extent to which this scaling down from BAA’s previous proposals was the result of consultation. The CAA believed that it was prima facie evidence of consultation working and drew our attention to C&B’s study for the CAA on the efficiency of Q4 capex. However, we noted that the C&B study also contained the following assessment:
- A key issue for this study has been the lack in clarity of stakeholder views on key changes to investment plans both in terms of choice of investment options and timing of delivery. This is a direct result of the ineffective consultation process between BAA and the airline stakeholders ... It is important to recognize therefore that despite the poor environment surrounding stakeholder consultation, the downward pressure requirements of the ACC to minimize investment have been realized by a 45% reduction in the original Q4 forecasts; although we have not been able to establish tangible evidence ... within the time frame for this study.⁵
23. We noted that the under-spend on SG1 capex had been almost exactly matched by the increased spend on SG2. Although we did not see any evidence that the increase in SG2 was linked to the decrease in SG1 capex, we did note that, as a result, the RAB remained at approximately the same level (see Appendix D). However, we were unable to conclude that the reduction in SG1 capex had occurred due to the consultation process.

Constructive engagement

24. A particular example of consultation, which was encouraged by the CAA to inform its regulatory price control review process, was ‘constructive engagement’. Constructive engagement was the result of an initiative first suggested by the CAA in May 2004 and was subsequently developed over the following year in consultation with BAA and the airlines. Although set up by the CAA to inform its regulatory function of setting price-caps, we believed that constructive engagement had potential benefits beyond this function as a forum for consultation between the airlines and BAA.

⁴Review of BAA’s Compliance with Annex 4 of the CAA’s Decision of February 2003, dated December 2006.

⁵Currie & Brown report on BAA’s Performance in Capital Investment Project Management and Cost Efficiency at Stansted Airport during Q4, May 2008.

25. BAA argued that it made considerable efforts at constructive engagement, but was frustrated by the airlines' preconditions, for example their demands for a business plan.
26. The airlines submitted that effective engagement was impossible due to their receiving limited information and often receiving it too late. In particular, they argued that BAA had never provided a business plan for the airport, as they believed was required in Annex 4 to the CAA's 2003 price control determination. The CAA has said in public documents, and in correspondence with the airlines, that such a plan was not required by Annex 4 and was not a reasonable pre-condition for the commencement of the constructive engagement process.
27. We believed that the airlines' complaints regarding the information provided and the process undertaken were largely valid. We did not accept that the CIP was an adequate document for consultation. We also noted that our consultants, C&B, in its study for us as part of this review, commented on the inadequacy of information provided to the airlines as a basis for constructive engagement. Indeed, both ASA and C&B, our consultants undertaking various analyses of BAA's capex, were unable to conclude on a number of projects due to a lack of adequate information being available.
28. The CAA told us that, by the end of 2005, when it was clear that the parties were making no progress with constructive engagement, it indicated that it would not be able to rely on the outputs of the process for its price control decisions and effectively terminated constructive engagement at Stansted.
29. We concluded that the process of consultation over SG1 at Stansted failed. Although there have been meetings between the airlines and BAA, and information has been exchanged (including the CIPs, as well as other information) we found that the information provided was insufficient and the process of discussion was largely ineffective.

SG2

30. We considered the process of consultation on SG2. Key dates on SG2 were as follows.

TABLE 1 **Timeline of dates relevant to SG2 programme**

<i>Date</i>	
February 2003	Publication of CAA's price determination on London airports (including Stansted)
December 2003	Publication of <i>Future of Air Transport White Paper</i> BAA announces first blight scheme
June 2004	CAA consultation document on regulatory treatment of initial expenditure
September 2004	BAA introduces second blight scheme (HOSS)
November 2004	BAA introduces third blight scheme (SCS)
January 2005	CAA statement on regulatory treatment of initial expenditure
February 2005	High Court judgement on legal action by coalition of local authorities and campaign groups Withdrawal of CAA decision document
July 2005	Further CAA consultation on regulatory treatment of initial expenditure
December 2005	BAA 3-month public consultation on different runway options
March 2006	End of public consultation on BAA's proposed runway options CAA's final statement on regulatory treatment of initial expenditure
December 2006	Publication of DfT's <i>The Future of Air Transport Progress Report</i>
January 2007	BAA report of consultation and proposed location of second runway announced
March 2008	BAA planning application submitted
July 2008	Planning application called in by Secretary of State

Source: BAA and the CAA.

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31. We found that BAA's approach to consultation with its airline users raised significant concerns. Specifically, we understood that BAA launched the Home Value Guarantee Scheme very shortly after the publication of the 2003 Air Transport White Paper, without first having consulted its airline customers.
 32. Similarly, we found that BAA launched its public consultation process in December 2005 on the optioneering process (the consideration of different options for SG2) without first consulting its airline customers, despite the airlines having expressed their desire to be consulted on conceptual designs. At that point in the process, approximately £40 million of SG2 preliminary expenditure had already been incurred and the number of options being considered had already been substantially reduced.
 33. During the period that led up to the publication of the December 2005 consultation document, BAA started to discuss high level options for terminal development internally (including the option of extending the current terminal in order to postpone the development of a second terminal) but it appears to have made no attempt to involve the airlines in these discussions.
 34. BAA's approach to consultation with its airline users following the publication of the December 2005 consultation document also raised significant concerns:
 - (a) In response to the consultation document, the airlines expressed a preference for a narrow-spaced runway option (on the lines of BAA's Option D) and suggested alterations to the design. BAA decided that it would provide detailed feedback to the SACC on its options on completion of BAA's detailed assessment.
 - (b) The various airport development options were discussed further internally by BAA in October 2006 and BAA decided to proceed with Option A in segregated mode. At a subsequent meeting in October 2006, it was reported that the next meeting with the SACC was planned for the beginning of November. It was agreed within BAA that there was no need to consult airlines formally any further. Arrangements would be made for special briefings on the day of the announcement of BAA's preferred options. We understood that, at the time these comments were made, there had been no in-depth discussion of the options with the airlines

although BAA told us that it would have been willing to change its view if new information had come to light.

- (c) The SACC told us that a workshop to discuss the options with the SACC took place in mid-January 2007. Further work had been required to refine these options to overcome the concerns of both BAA and the SACC. BAA had undertaken to prepare a more detailed appraisal of these options and detailed costings for further discussion with the SACC. The SACC had still been awaiting the detailed material on the options from BAA for further discussion when, on 23 January, a deadline of 30 January was set for a follow-up meeting, which was scheduled for 29 January. However, on 25 January, Ryanair was told that BAA's choice of Option A would be announced on 31 January. The SACC suggested strongly that the consultation process and workshop in mid-January had been a sham. BAA, on the other hand, said that it had communicated to the SACC at the end of the workshop that nothing had emerged that would cause it to change its views, and referred to a meeting with Ryanair on 25 January at which it explained its preference for Option A and its intention to make the subsequent announcement. However, BAA emphasized that it had said clearly to the airlines throughout the process that it was willing to change its view if there was evidence to justify doing so.
35. BAA also carried out some work on the design of the terminal after the publication of the 2005 consultation document. There were internal discussions in September and December 2006 which focused specifically on terminal design, with the decision made by BAA to take a modular approach to the development of the second terminal at Stansted. We have seen no evidence that BAA made any attempt to involve the airlines or take their views into account, although the minutes of the December 2006 meeting noted that a modular approach (the 'multi-box concept') was meant to deal with the concerns of LCCs, as it would deliver capital economies and flexible growth.
36. We noted that BAA appears to have made no real effort to involve the airlines in the optioneering process. Even accepting that discussing the overall scheme may have had its limitations at that stage, given the controversy of the project and the lack of trust between the airlines and BAA, there were at least some elements of the scheme which should have been capable of being discussed with the airlines. Although we recognized that, in planning terms, speed is important, there seemed to be little justification for BAA's approach to airline consultation and the lack of discussion of alternative options following its public consultation, particularly when the airlines appear to have been prepared to engage constructively.
37. In addition, the SACC told us that it had not seen any reports produced by BAA's professional consultants on SG2, despite having requested copies in order to evaluate BAA's airport development proposals. The SACC said that, in spite of having spent over £50 million on consultants by 31 March 2008, BAA had informed Stansted's users that no reports existed and that the optioneering process had taken place through workshops.
38. BAA drew our attention to the quarterly reports on SG2 preliminary expenditure as evidence of consultation. However, we noted that these reports, although useful, set out historical expenditure and so could not be construed as consultation prior to expenditure occurring.
39. The CAA stated in its March 2006 document that 'it is debatable whether it would have been practicable for BAA to consult on the costs of the Home Value Guarantee Scheme, as the costs appear to have arisen from the day the Government White

Paper was published in December 2003, and BAA did consult on the Home Owner Support Scheme'.⁶

40. The CAA also stated that 'the CAA recognizes that BAA did not consult on its plans for a second runway at Stansted as part of its 2005 Capital Investment Programme ... In July 2005, it published its proposed timetable for consultation on Stansted G2, and subsequently unveiled its plans for a second runway at Stansted on 9 December 2005'.⁷ The CAA drew our attention to the discussions between BAA and the airlines on traffic forecasts, among other items. The CAA has also referred us to the evidence provided by Scott Wilson:⁸

Due to the stances taken by the [S]ACC and BAA, meaningful consultation with the ACC has not been undertaken, although a potentially useful process was undertaken 16 days before issue of the January 2007 Development Proposal document. In the absence of consultation with the ACC, it is not clear that the proposals reflect the needs of the current users, and are not biased towards long term safeguarding for potential future users.

41. We also noted that the airlines were now opposing BAA's SG2 planning application, with consequential potential effects on the future operations of the airport.

Conclusion on public interest question

Effects on charges levied and the operational activities of the airport

42. Before we could conclude our public interest considerations in relation to consultation we considered whether BAA's conduct could be said to be in relation to 'airport charges levied by' or 'operational activities carried on by' STAL, as set out in the Act.
43. We thought that the meaning of conduct which relates to 'airport charges levied' should not be restricted artificially. We considered whether 'charges levied' means charges that 'have been levied' or whether it can extend to charges that 'will be levied'. If it means only the former, then conduct relating to charges to be levied in the future, perhaps in relation to SG2, might not fall within the scope of the public interest jurisdiction, at least under this criterion. However, we felt that this interpretation would significantly limit the scope of the public interest jurisdiction in relation to airport charges, and we doubted such an interpretation was correct.
44. More generally, we would not wish to limit artificially the meaning of 'charges levied' so as to exclude conduct that is clearly contrary to the public interest. When an airport operator levies an airport charge on an airline, it represents consideration for a service provided by the airport to the airline. The charge may then be passed on in whole or part to passengers, who are customers both of the airport and the airline. Both airlines and passengers are airport users whose reasonable interests are integral to the public interest considerations in the Act. In either case, the levying of a charge represents a relationship between the airport and the user. In thinking about the type of conduct that relates to charges levied, it would be artificial not to think about the conduct of the airport operator insofar as it affects that relationship, and the reasonable expectations that follow from it. While there may be passengers who use Stansted only occasionally, the airport's airline customers pay very substantial sums

⁶Paragraph 4.12.

⁷Paragraph 4.12.

⁸Paragraph 5.1.10.

by way of airport charges, may be committed to continuing to operate services from Stansted and, as we have found, may have very little choice to operate from another airport. Consequently, in thinking about conduct that is against the public interest we believed that it is not only permissible but necessary to address the totality of the relationship that is represented by the levying of airport charges. In our view, that relationship extends to the provision of information and proper consultation in relation to the management and development of the airport. We believed that failure in these actions would constitute conduct against the public interest in relation to airport charges levied at Stansted.

45. Similar considerations apply to conduct in relation to the operational activities of the airport. These activities include its day-to-day management, but they are much more than that. The Act provides that operational activities are those activities carried on wholly or mainly for the benefit of the users of the airport, or the revenues from which are wholly or mainly attributable to payments by users of the airport. Again, we believed that it is important that the meaning of 'operational activities' is not artificially restricted, and that decisions taken by STAL about the management and development of the airport are not looked at too narrowly.
46. The management and development of Stansted are activities that are carried on for the benefit of users of the airport. Revenues are of course derived from the users and we believed that to try to carry on the management and development of the airport without proper consultation or adequate provision of information would be contrary to the public interest, as that term is understood by the Act.

Our findings

47. We considered the effects of BAA's failure with regard to information provision and the process of consultation and found that there were adverse effects on the management and development of Stansted and specifically on:
 - (a) the operational activities of the airport and its users, which affect directly the price paid by users of the airport in airport charges and the operational efficiency and effectiveness of the airport, both of which affect users' reasonable interests, including the interests of possible future users; and
 - (b) the efficiency of capex, which also affects directly the price paid by users of the airport in airport charges and so affects users' reasonable interests.
48. We recognized that BAA did provide some information to the SACC, and we noted that the attitude of the SACC was often very unhelpful. Nevertheless, we found that the information provided by BAA to the SACC was frequently too insufficient and untimely to enable effective consultation to take place. Overall, we found that the consultation process, with regards to the development of the airport and BAA's capex programme, failed and this failure had adverse effects both on the charges levied in the following quinquennium and on the operational activities of the airport and its users. More broadly, we noted that the failure of consultation had tended to lead to an entrenched division and lack of cooperation between Stansted and its users, the effect of which we found to be contrary to the public interest according to the Act. Therefore, we concluded that that BAA's conduct with regard to consultation at Stansted in the relevant period had operated against the public interest.
49. The CAA put to us that any effects of the failures we considered could be remedied at the end of the quinquennium as part of the ex-post review carried out by us and the CAA. However, we believed that neither of the two specific effects set out above could be remedied adequately after the event. We noted that the quality of the price-

setting which occurs at the end of a quinquennium is only as good as the quality of information on which it based and that such information needs to be provided to the airlines and the CAA well in advance of decisions being taken, which can occur at any time in a quinquennium. Overall, we concluded that more effective information provision and consultation should enable better quality decision-making, not only by both the airport and its airline customers but also by the CAA in its determination of price-caps.

50. We believed that the failure of consultation and the adverse effects we had found could be remedied.

Recommendations

51. There are two main areas for improvement which we recommend to the CAA to address this public interest finding:
- (a) the information provided as the basis of consultation; and
 - (b) the process of consultation.
52. We found substantial issues regarding the quality of the information which has been provided historically to the airlines by BAA. Similar issues were considered during the Heathrow/Gatwick inquiry leading to a replacement to Annex 4 (being Annex G). We recommend that BAA should provide more and better information to the airlines, providing on a timely basis the information that airlines need to participate in effective consultation on each project, including the necessary contextual information about strategic development aims and supporting data. We recommend the following overriding principles:
- (a) There should be greater certainty about the information that BAA must provide. Therefore the CAA should specify at the time that it sets the condition, following our public interest finding, precisely what sort of information must be provided so as to reduce disagreement as to the subject matter of the disclosure.
 - (b) The information provided must cover all of the anticipated capex projects in any year.
 - (c) New information should be provided on a timely basis for new projects which arise or for projects which change during a year.
 - (d) There should be sufficient information about completed projects to enable airlines (and the CAA) to review the outcome, compare the incurred costs to the forecasts and thereby to evaluate BAA's success in implementing projects.
53. We also recommend the following improvements to the process itself:
- (a) The airlines should be given sufficient time to understand and analyse the information which is provided, and BAA should allow sufficient time for consultation before a project begins.
 - (b) The decision-making process should be transparent and auditable, so that evidence of the airlines' views and the views of other airport users having been taken into account is visible to the CAA, even if no agreement has been reached.
54. There will inevitably be disagreement on some projects, especially given the parties' disagreement over the future of Stansted and the scope of infrastructure required.

We set out below our recommendations on the extent to which the CAA, or a person or persons appointed by the CAA should exercise a supervisory role, monitoring BAA's compliance with the new conditions and actively intervening to ensure the process moves forward effectively. We also note that the CAA can use its formal powers, as necessary, to investigate complaints and enforce compliance with these conditions.⁹

55. We set out our recommendations for improving the information provided and the process of consultation in the following sections.

Improvements to the information provided

56. C&B told us that:

The process would benefit from a published plan that is fully detailed and contains current and consistent information on all planned investments during the quinquennium period. The majority of time spent during our study has been gathering additional data from various internal BAA systems that are sufficient and appropriate to form a view of reasonableness of the proposed Q5 investment. The review has highlighted the lack of a readily available, detailed, easily understood and auditable model of BAA's full proposals.

57. We recognized that there is a need for an overall plan that gives the airlines (and the CAA) a view on how the projects fit into the airport's strategy, as well as how they relate to each other, the rationale for them and the possible benefits (and costs) to the airlines. This plan will need to cover both the short and the long term.

58. We found that there is a need for two levels of information:

- (a) an overall strategic business plan into which specific projects will fit;
- (b) detailed information relating to individual projects, which would include information about completed projects.

59. The content and the form of these document(s), set out in detail in Annex 1, should be agreed by the CAA at the time that it sets the condition, taking into account the views of all parties.

60. We have considered evidence from a number of sources including both Annex 4 of the CAA Q4 price determination and Annex G of the CAA's 2008 Q5 Heathrow and Gatwick determination. Although Annex G is intended to be an improvement to Annex 4, one party submitted to us that Annex G is in fact a watered down and inferior version of Annex 4. The CAA put to us that Annex G was the result of extensive discussions and believed that it represents an improvement on Annex 4. Given these conflicting views we do not recommend replicating Annex G for Stansted in Q5 but, having considered both Annex G and Annex 4, our consultants' advice and the parties' submissions, we instead set out what we believe to be the key requirements for the information to be provided.

61. We would expect that BAA includes the airlines and other users in the earliest stages of its planning process, to allow all views to be considered in time. Currently, BAA

⁹The CAA has formal enforcement powers, under sections 48 and 49 of the Act, and would be able, if necessary, to investigate complaints and make a compliance order for the purpose of securing compliance with the new 'consultation' conditions, and of remedying any loss or damage sustained, or injustice suffered, in consequence of the failure to comply with these conditions.

controls the timing and release of information, which may reduce the opportunity for the airlines or the CAA to consider and to participate in deciding on the specification and timing of projects and in evaluating their estimated costs. The airlines should have the opportunity to propose alternative options, which BAA has time to consider, before the project starts.

62. In addition, the decision-making process will need to be sufficiently visible to allow the CAA to decide whether consultation has occurred (either on an ad-hoc basis or at the end of the quinquennium), with the burden of proof being on BAA to demonstrate that it has made all reasonable efforts and taken all reasonable steps to bring about an effective process of consultation. To this end, it is important that the process, even for individual projects, is readily auditable by the CAA or an external party.
63. In the following sections, we set out our overarching principles for the information which we believe should be provided by BAA to the airlines. The annex sets out our more detailed proposals.

Overall strategic business plan

64. As we noted in the provisional findings of our market investigation, we were concerned that BAA does not currently have what we would regard as a full one-, five- or ten-year corporate strategic plan. It relies, in consulting with the airlines, on the masterplans and CIPs for each airport. We would expect a company in a commercial environment needing to attract or retain customers to include in its strategic plan analysis of its strengths, weaknesses, opportunities and threats together with a vision of where it expects to be in five or ten years' time, and how it proposes to get there. We would also expect this plan, typically, to cover: its growth prospects; key performance indicators; how it expects the business to change, including customers and competitors; identification of new markets; and aspirations for the future. We would expect a more detailed business plan for each airport to bring these strategic objectives together, with more detailed workings, and, in turn to cascade this plan down to the relevant areas of the business.
65. We would expect this business plan to be prepared by BAA and provided to the airlines. We would not expect BAA to provide information that it reasonably needs to withhold on the grounds of commercial confidentiality. However, we would expect that sufficient information is provided to the airlines for the reasonable purpose of informing them so as to enable realistic consultation. We would expect the facilitator (see paragraph 76) to review the information provided and, at its discretion, the information withheld by BAA, to assess its sufficiency for the purpose of assisting consultation at Stansted.

Detailed project level information

66. We recommend that BAA should maintain a log of the information which has been gathered with regard to each capex project. This log should be available to the airlines which would then be in a position to request specific project level information (for example a specific consultant's report).
67. BAA's project information should include a detailed breakdown of the estimated total cost of the plan and pricing implications. This analysis should state what major assumptions have been made, including the timing of key projects.
68. The specific information requirements may differ for the following broad categories of project and different information may be required for different categories:

- (a) SG1 'baseline' capex as agreed at the start of the quinquennium;
 - (b) SG1 additional capex;
 - (c) SG2 preliminary expenditure; and
 - (d) SG2 further capex.
69. We recommend that there should be separate criteria if any capex is subject to triggers or capital investment conditions (we note that these do not form part of our proposals for capex in Q5—see Section 8 of the main report).
70. We recommend that all major projects should be included in detail and that the information should cover all projects making up all or the majority of the total forecast capex, including:
- (a) projects currently in delivery stage;
 - (b) projects recently completed; and
 - (c) some detail of all of the smaller projects.
71. We would expect that the principal information required for each project would be a cost-benefit analysis of the capital investment for both BAA and Stansted's users (to the extent that BAA is able to understand the costs of the airlines). For any project, it should be clear how the benefits justify the costs.
72. We also recommend that BAA's planned maintenance spend, including both major and minor projects, should be supported by a maintenance plan, which identifies the asset life of each asset being replaced, a measure of the deterioration of each asset, the timetable for replacement, the alternatives to replacement, and an explanation of the risk if replacement is delayed.

Improvements to the process of consultation

73. In addition to the actual information provided, we have considered improvements that could be made to the consultation process. We noted that participating in an improved consultation process might impose an increased burden on all parties but we anticipated that this burden would be more than outweighed by the benefits to all parties in delivering an optimal development programme for the airport.
74. Therefore, we recommend a two-stage process. The first stage is the process of disclosing information and consultation; the second stage is how to resolve outstanding disagreements.

Facilitation and compliance

75. In the first stage of the process, we recommend that an independent facilitator is appointed (either being the CAA or an external person or persons appointed by the CAA), who will ensure that the process of consultation continues effectively, while also ensuring that BAA is compliant with its obligations pursuant to action taken by the CAA on the basis of this public interest finding. It was our understanding that the CAA has the powers to undertake this role, or to appoint somebody else to do it.
76. The facilitator should be acceptable to all parties, though appointed and paid for by BAA. In order to ensure that the process of consultation continues effectively, we

would expect the facilitator to ensure that consultation meetings occur at appropriate intervals and that they are conducted effectively, while also ensuring that the parties' reasonable needs for effective consultation are met, including any information required for a meeting being provided to all parties sufficiently in advance. We would expect the facilitator to intervene if the parties have not complied. We would also expect the facilitator to take an active role in ensuring that BAA has complied with its information provision requirements and consultation conditions. If the role of the facilitator is not performed by the CAA, then we recommend that the facilitator should report to the CAA on the status of the consultation process on a regular basis, so that the CAA can judge whether the public interest condition is being satisfied.

77. In the provisional findings of our market investigation, we stated that¹⁰ 'we regard an active involvement of the regulator as necessary, not principally as a decision-maker/arbitrator but in order to ensure there are processes and procedures for consultation and the necessary two-way flow of information between the airport operators and the airlines'. We believed that our recommendations for Stansted in Q5 would be consistent with this view.
78. We did not believe that it is essential that the CAA undertakes the role of facilitator itself and we recognized that it may have valid concerns about doing so. In particular, we recognized that there might be a tension between the CAA facilitating a process of consultation so as to make it work effectively, while also, at the end of the quinquennium, assessing whether BAA had consulted adequately in order to meet the CAA's criterion for the inclusion of capex in the RAB. We also recognized that, although the CAA may be best placed to perform this role, specific skills would be required and the CAA may decide that it is appropriate to appoint an external independent facilitator instead. We would expect the CAA to take responsibility for ensuring that the facilitation process is established and we would also expect the CAA to take into account the views of BAA and the SACC in deciding who should undertake the role. As noted above, we recommend that the facilitator should be acceptable to all parties. We noted that both BAA and the SACC suggested that the CAA should perform it.

Mediation or arbitration

79. We recognized that, where, after a process of consultation, there is still no agreement between the parties on an issue, they may choose to disagree or, if a decision is needed, they may agree to seek independent mediation or arbitration, either from the CAA or from a mutually agreed mediator or arbitrator. Although not binding on the CAA at the end of the quinquennium, when the CAA must decide the amount of capex to allow into the RAB, we would expect the decision of a mediator or arbitrator to be considered by the CAA as good evidence of a reasonable capex decision.

¹⁰Paragraph 26.

Detailed recommendations on the information to be provided

1. BAA should create a master 'document log' setting out what information is available to the airlines on each project and to offer to provide users all non-confidential, relevant project-specific information which it has in its possession (including, for example, where appropriate, consultants' reports).
2. This annex covers two separate levels of information:
 - (a) an overall strategic business plan; and
 - (b) a detailed list of the information which should be provided on individual projects.

Overall strategic business plan

3. We would expect the plan to contain these key elements:
 - (a) strategic aspects (such as scope and timing) of major developments;
 - (b) principal business drivers behind the airport's development strategy, including assumptions made by BAA regarding the future operating environment of the airport, including desired levels of service, and constraints faced by the airport;
 - (c) government and airport-specific policy;
 - (d) a long-term land use plan, highlighting the infrastructure to be delivered across the airport, and how best to use the land in the future;
 - (e) information on asset disposals: consultation with airlines before disposing of any land or buildings from the RAB; the timing of the proposed disposal; potential impact on both current airport operations and on future airport development; and measures taken to protect future airport development;
 - (f) forecast demand for airport services for the duration of the plan, as different forecast scenarios may be important where there is some uncertainty or risk about future demand and to test the robustness of the plan; and
 - (g) high level options for the development of the airport, including details of the cost and output trade-offs involved in each option, and the relative impact on user charges and, where possible, on future airline costs.
4. All assumptions in the plan should be clearly stated, with reasons, so that the airlines can understand the inherent risks and sensitivities involved.

Detailed project level information

5. The project information should include a detailed breakdown of the estimated total cost of the plan and pricing implications. This breakdown should state what major assumptions have been made, including the timing of key projects.

Projects covered

6. We would expect all major projects to be included in detail and that the information should cover all projects making up all or the majority of the total forecast capex programme.

Revenues/benefits

7. For each project, we would expect to see cost benefit analyses of the capital investment for both BAA and the airline community (to the extent that BAA is able to estimate the costs to the airlines) and the steps taken to optimize the balance of costs and benefits. For any project, it should be clear how the benefits justify the costs.
8. For each project we would expect to see the benefits to BAA, the airlines and passengers, including:
 - (a) benefits that will be realized in terms of increased capacity, increased forecast passengers, improved service levels, statutory compliance etc (the outputs should be quantified and provided on an incremental basis at a level of detail appropriate to the stage of the project);
 - (b) operational improvements, which may involve discussions about future airline plans for check-in, fleet, baggage etc, and the level of flexibility to changes in forecasts;
 - (c) the facilities which the airport intends to supply and the extent to which the different parts of the infrastructure (passenger areas, stands, baggage belts, runways and airfield facilities etc) will meet demand forecasts under the different scenarios; and
 - (d) any commercial revenues which BAA anticipates the investment will generate.

Costs

9. For each project, we would expect to see statements of need/design parameters upon which the projects are based, as well as information on the procurement strategy for the project.
10. For each project we would expect to see the costs to BAA, the airlines and passengers, including:
 - (a) the effect on airport charges;
 - (b) the profile of the annual capital costs;
 - (c) updated and auditable information showing how expenditure incurred to date relates to the latest anticipated costs of the projects;
 - (d) total capex (including the phasing) and the anticipated incremental impact upon the operating costs of both BAA and the airlines;
 - (e) an analysis of costs into base construction costs, risk allowances, on-costs and any other provisions such as site-specific costs;

- (f) an explanation of any positive or negative cost comparison with similar past projects and with external benchmarks;
- (g) specific details of alternatives considered and analysis of reasons for choosing the preferred option; and
- (h) the incremental impact on opex in each year.

Timing

11. In order to assist the users' understanding, information on the timing of projects should be provided, to include:
 - (a) asset replacement budgetary information;
 - (b) the programme and project gateway approval dates, consistent with the cash flow projections provided; and
 - (c) information on anticipated asset lives associated with the development proposal.
12. The timing of consultation should be prior to BAA moving a project from an outline description to options development, which means that it would be prior to any option decision or construction design.

Relationship to overall business plan

13. We would expect there to be an auditable reconciliation of the detail provided to the airlines on individual projects to the total proposed capital investment set out in the overall business plan.

Review

14. For completed/nearly completed projects there should be information on:
 - (a) lessons learned/stakeholder feedback on recently completed projects;
 - (b) out-turn performance of projects against the outputs anticipated in previous plans; and
 - (c) project evaluation, highlighting performance in terms of cost, infrastructure delivered and benefits realized.

Change

15. Inevitably, some of the projects will change during the course of the quinquennium but information will need to be provided, which provides transparency and ensures that parties do not abuse the process. This information should include:
 - (a) the rationale for any changes, which should be discussed before decisions are taken; and
 - (b) the implications of any change, including on benefits, costs and operational activities.

16. Any changes need to be made transparently, though minor modifications to the plan may be excluded (unless they have significant effects).

Minor projects

17. We understand that none of the parties want detailed consultation on all of the minor projects. However, we noted that the current system, whereby it is possible for the majority of one year's capex to consist of minor projects which are outside the consultation process, appears flawed.
18. We recommend that BAA and the airlines should agree between them the level of annual cap on minor projects below which the airlines do not need to be consulted, at the same time as confirming the threshold for consultation on an individual project (currently £2 million). The agreed thresholds should be incorporated by the CAA into this framework for consultation. If the parties are unable to agree on the thresholds, then we recommend that the CAA determines the thresholds (both the annual cap and the threshold for consultation on an individual project), after consulting the parties.

Confidentiality

19. Some elements of the data provided by BAA may need to be covered by a confidentiality agreement (and/or disclosed in a restricted manner). In general we would expect information to be shared, except where BAA considers that disclosure of the information could jeopardize either its, or a third party's, commercial interests. The facilitator might be able to assist in this process.