

BAA MARKET INVESTIGATION

Provisional consideration of possible material changes of circumstances

30 March 2011

The Competition Commission has excluded from the published version of this document information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by ✂.

Summary

1. In this document we consider whether, in the light of events since March 2009, it is still right to require BAA to divest Stansted Airport, so that Heathrow, Gatwick and Stansted airports are under separate ownership, and also to divest either Glasgow or Edinburgh airports. We also consider whether we should change the order in which divestments should take place, or how long BAA has to complete each divestment.
2. On 29 March 2007, the Office of Fair Trading (OFT) referred to the Competition Commission (CC) for investigation the supply by BAA Limited (BAA) of airport services in the UK. The CC published its findings on 19 March 2009 (the 2009 report). In the 2009 report we found that a number of features of the market including BAA's common ownership of airports in south-east England and lowland Scotland gave rise to adverse effects on competition (AECs) within the meaning of section 134(2) of the Enterprise Act (the Act) in connection with the supply of airport services by BAA. In order to remedy the AECs, we concluded that a package of remedies was required. Some of these remedies in the package were unaffected by subsequent appeals and are not central to our current consideration. For the present purposes the key remedies are that BAA should divest both Gatwick Airport (Gatwick) and Stansted Airport (Stansted) and also one of either Edinburgh Airport (Edinburgh) or Glasgow Airport (Glasgow). The sale of Gatwick, was completed on 3 December 2009.
3. On 18 May 2009, BAA appealed the decision to the Competition Appeal Tribunal (CAT), on grounds of proportionality and apparent bias. BAA was successful on the ground of apparent bias but not proportionality. We appealed the CAT's decision on apparent bias to the Court of Appeal, which restored our decision. BAA sought, but was refused, permission to appeal to the Supreme Court.

4. As the challenges to the 2009 report have been dismissed, we have a duty to take action to remedy the AECs which is consistent with the decisions in the report. However, before doing so, we invited submissions on whether there were any material changes of circumstances (MCCs) or special reason such that we should amend in any way the remedies related to the divestment of Stansted and either Edinburgh or Glasgow (a Scottish airport). BAA set out what it said were MCCs which meant that we should not require the divestment of Stansted. If we were not persuaded of that, BAA said that we should amend the divestment sequence and allow longer divestment periods. BAA did not set out any special reason other than the MCCs it submitted.
5. We considered BAA's submissions. We found that the change in government policy, with the Coalition Government opposing the proposals for the third runway at Heathrow Airport (Heathrow) and SG2 at Stansted and opposing new runway development at Gatwick, was a significant development and meant that the delivery of new runway capacity, and the benefits of competition based on new runway capacity, were likely to be delayed or not take place at all. We did not find that any of the other possible MCCs put to us by BAA were significant developments since the 2009 report was published. However, we also found that since the 2009 report the scope for competition between airports within existing runway capacity has increased. Runway capacity at Stansted has been freed up, while Gatwick's new owners see scope for significant increases in passenger numbers through better use of slots and use of larger planes.
6. The remedy was put in place to address the AECs relating to common ownership, and we found that divestment of Stansted remained an effective way of addressing this. We considered a management separation remedy proposed by BAA as an alternative to divestment. We concluded that the alternative remedy would not be

substantially effective in remedying the AECs related to common ownership. The divestment remedy package remained the only substantially effective way of remedying the AEC.

7. Given that the benefits of competition based on new runway capacity were likely to be at least delayed and may not accrue at all, because of the change of government policy, we reassessed the benefits of intervention relative to the costs, taking no account of any benefits associated with new runway capacity. We found that the benefits of the divestiture remedy still significantly exceed the cost of divestment.
8. We conclude that, in relation to the requirement to divest Stansted, there are no MCCs or special reason that should lead us to take action which is inconsistent with the decisions in the 2009 report. We conclude that it remains appropriate to require BAA to sell Stansted.
9. We also find that it remains appropriate to require BAA to sell a Scottish airport.
10. We considered whether there were any MCCs or special reason to change the order of divestment of the two airports, or to lengthen the divestment periods set out in the 2009 report. We conclude that there is not. We conclude that BAA should be required to divest Stansted within a period of [X] starting from the earlier of: the date on which undertakings are accepted from BAA; or three months after the date of the final version of this document. BAA is then required to initiate the sale of a Scottish airport no later than [X] prior to the end of the period for the divestiture of Stansted, and to complete the sale no later than [X] after the end of the period for the divestiture of Stansted. The overall time frame for the divestments of the two airports is no more than [X] after the acceptance of undertakings or [X] after publication of the final version of this document.