

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

### Notice of acceptance of Final Undertakings pursuant to section 159 of and Schedule 10 to 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.

On 19 March 2009 the CC published its report entitled *BAA airports market investigation: a report on the supply of airport services by BAA in the UK* ('the report'). In the report, the CC's decision was 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, thereby having an adverse effect on competition (AEC) between airports and airlines;
- (b) the CC should take action to remedy, mitigate or prevent the AECs and the detrimental effects flowing from them;
- (c) a package of remedies would be effective in remedying the AECs identified in the report.

The package of remedies specified in the report included, in particular, that BAA must divest Stansted Airport and either Edinburgh or Glasgow Airport to Approved Purchasers, according to the criteria identified in the report.

In May 2009, BAA challenged the legality of findings in the report requiring divestiture of Stansted Airport and either Edinburgh or Glasgow Airport.

On 21 December 2009 the Competition Appeal Tribunal ('CAT') quashed the decisions in the CC's report concerning the common ownership of airports.

On 25 February 2010, the CAT 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 CAT's ruling.

On 13 October 2010 the Court of Appeal allowed the CC's appeal against the judgment of the CAT, dated 21 December 2009, and restored the decision of the CC in the report in its entirety.

On 7 January 2011, the CC, in order to prevent action being taken which might impede the taking of any action in respect of Stansted Airport, Glasgow Airport and Edinburgh Airport under section 138(2) of the Act, accepted Interim Undertakings under section 157 of the Act from the BAA Signatories.

On 15 February 2011, the Supreme Court refused permission for BAA to appeal the order made by the Court of Appeal on 13 October 2010.

Before taking further action to impose the package of remedies, and in view of the time that had passed by reason of BAA's challenge to the legality of the findings requiring divestiture, the CC invited submissions on whether there had been a material change of circumstances,

or there was otherwise a special reason, such that the CC should take action other than the remedial action specified in the report.

On 19 July 2011 the CC published a decision, entitled *Consideration of possible material change of circumstances* ('the Decision') in which the CC decided that it remained appropriate to require divestment of Stansted Airport and either Edinburgh or Glasgow Airport to Approved Purchasers within the timetable specified in the decision.

On 16 September 2011, BAA made an application to the CAT challenging the CC's 19 July decision in relation to the maintenance of the requirement to divest Stansted Airport. The CAT's proceedings for dealing with the application (the 'CAT Proceedings') remain ongoing.

In view of the CAT Proceedings, the CC decided to set a revised timetable for the divestment of either Edinburgh or Glasgow Airport. The CC considered, in view of the real risk of delay arising as a result of the CAT Proceedings, that it would be in the interests of affected passengers and airlines to proceed with the sale of either Glasgow or Edinburgh Airport first. The CC also noted that the change means that the divesting of Stansted Airport will not be affected by the run-up to the 2012 Olympics.

On 14 October 2011 the CC gave notice that it proposed to accept Final Undertakings to divest Stansted Airport and either Edinburgh or Glasgow Airport to Approved Purchasers within a specified timetable.

No representations were made during the statutory consultation period and the CC has decided to accept Final Undertakings in the form attached. The Final Undertakings shall come into force immediately.

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.

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

Laura Carstensen  
*Group Chairman*  
On behalf of the CC  
9 November 2011

**THE SUPPLY OF AIRPORT SERVICES BY BAA**

**Final Undertakings given in relation to divestment of certain airports**

**Arrangement of paragraphs**

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## THE SUPPLY OF AIRPORT SERVICES BY BAA

### **Final Undertakings accepted from FGP Topco Limited, ADI Finance 2 Limited, BAA Limited, BAA Airports Limited, BAA (AH) Limited, BAA (Non Des Topco) Limited, Stansted Airport Limited, Glasgow Airport Limited and Edinburgh Airport Limited pursuant to sections 138 and 159 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.

On 19 March 2009 the CC published its report entitled *BAA airports market investigation: a report on the supply of airport services by BAA in the UK* (the report). In the report, the CC's decision was 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, thereby having an adverse effect on competition (AEC) between airports and airlines;
- (b) the CC should take action to remedy, mitigate or prevent the AECs and the detrimental effects flowing from them;
- (c) to that end Undertakings should be given to give effect to the CC's decision on remedies specified in the report.

The package of remedies specified in the report included, in particular, that BAA must divest Gatwick Airport, Stansted Airport and either Edinburgh or Glasgow Airport to Approved Purchasers, according to the criteria identified in the report.

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.

In May 2009, BAA challenged the legality of findings in the report requiring divestiture of Gatwick Airport, Stansted Airport and either Edinburgh or Glasgow Airport.

In December 2009, BAA completed its divestment of Gatwick Airport.

On 21 December 2009 the Competition Appeal Tribunal (CAT) quashed the decisions in the CC's report concerning the common ownership of airports.

On 25 February 2010, the CAT 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 CAT's ruling.

On 13 October 2010 the Court of Appeal allowed the CC's appeal against the judgment of the CAT, dated 21 December 2009, and restored the decision of the CC in the report in its entirety.

On 7 January 2011, the CC, in order to prevent action being taken which might impede the taking of any action in respect of Stansted Airport, Glasgow Airport and Edinburgh Airport under section 138(2) of the Act, accepted Interim Undertakings under section 157 of the Act from the BAA Signatories.

On 15 February 2011, the Supreme Court refused permission for BAA to appeal the order made by the Court of Appeal on 13 October 2010.

Before taking further action to impose the package of remedies, and in view of the time that had passed by reason of BAA's challenge to the legality of the findings requiring divestiture, the CC invited submissions on whether there had been a material change of circumstances, or there was otherwise a special reason, such that the CC should take action other than the remedial action specified in the report.

On 19 July 2011 the CC published a decision, entitled *Consideration of possible material change of circumstances* in which the CC decided that it remained appropriate to require divestment of Stansted Airport and either Edinburgh or Glasgow Airport to Approved Purchasers within the timetable specified in the decision.

On 16 September 2011, BAA made an application to the CAT challenging the CC's 19 July decision in relation to the maintenance of the requirement to divest Stansted Airport. The CAT's proceedings for dealing with the application (the 'CAT Proceedings') remain ongoing.

In view of the CAT Proceedings the CC set a revised timetable for the divestment of either Edinburgh or Glasgow airport.

On 19 October 2011, BAA notified the CC that it nominated Edinburgh Airport Limited to be divested as the Nominated Scottish Airport.

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

The CC acknowledges that these undertakings are given and accepted without prejudice to the CAT Proceedings.

The BAA Signatories now give the CC the following undertakings, which the CC proposes to accept pursuant to sections 138 and 159 of the Act, and which supersede the Interim Undertakings pursuant to section 157(3)(b) of the Act.

## UNDERTAKINGS

### Interpretation

1.1 For the purposes of these undertakings:

'**AEC**' has the meaning given to the term 'adverse effect on competition' by section 134(2) of the Enterprise Act 2002.

'**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 United Kingdom at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW.

'**Approved Purchaser**' means a purchaser to whom the CC has given Notice that the CC: (i) is satisfied the purchaser meets the criteria specified in paragraph 10.142 of the report; and (ii) has accepted an undertaking from the purchaser concerning the matters specified in paragraph 5.2 of these undertakings.

'**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 United Kingdom 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 United Kingdom 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 05757208 and having its address for service in the United Kingdom 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 United Kingdom at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW.

**'BAA Representative'** means the Chief Executive Officer of BAA Limited or such person as the Chief Executive Officer may notify the CC in writing has authority to represent the BAA Signatories for the purposes of these Undertakings.

**'BAA Signatories'** means FGP Topco Limited, ADI Finance 2 Limited, BAA Limited, BAA Airports Limited, BAA (AH) Limited, BAA (Non Des Topco) Limited, Stansted Airport Limited, Glasgow Airport Limited and Edinburgh Airport Limited.

**'Business Day'** means any day other than a Saturday or Sunday on which banks are open for business in England.

**'CAA'** means the Civil Aviation Authority.

**'CC'** means the Competition Commission.

**'Commencement Date'** means the date on which these undertakings were accepted by the CC.

**'Completion Period'** means, unless extended in accordance with paragraph 8.1 of these undertakings—

(a) for the Nominated Scottish Airport, a period ending on [✂]; and

(b) for Stansted Airport Limited, a period ending [✂].

**'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.

**'DfT'** means the Department for Transport.

**'Divest'** means to sell, transfer, convey, or agree to sell transfer or convey, or grant any right or interest legal or equitable in or over, or otherwise in whole or part to dispose of or relinquish control over.

**'Divestment Obligation'** means the obligation accepted in accordance with paragraph 3.1 of these undertakings.

**'Divestiture Airport'** means Stansted Airport or the Nominated Scottish Airport as the case may be.

**'Divestiture Trustee'** means the person appointed as Divestiture Trustee in accordance with paragraph 10 of these undertakings.

**'Effective Divestment'** means completion of the divestment of (a) the relevant Divestiture Airport and (b) those assets associated with or used in the business of the airport, owned by the BAA Signatories or their subsidiaries, which are reasonably requested by the Approved Purchaser.

**'Edinburgh Airport Limited'** means the company of that name incorporated in Scotland with the number SC96623 and having its address for service in the United Kingdom at Edinburgh Airport Limited, Edinburgh, Scotland EH12 9DN.

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

**'Grant Thornton'** means Grant Thornton UK LLP.

**'Key Management'** means members of the Board of the relevant Protected Airport Company and staff reporting directly to them in roles that have operational or strategic decision-making or delivery responsibility of significance to day to day operation and business planning within the Protected Airport Company concerned.

**'Nominated Scottish Airport'** means Edinburgh Airport Limited.

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

**'Ordinary Course of Business'** means matters connected to the day-to-day supply of airport services by the BAA Signatories and includes:

- (a) lettings to airlines, ground handlers and other airport users and service providers of office, ramp accommodation, CIP lounges and storage facilities, fuel farm facilities, motor transport facilities, cargo facilities and facilities for use in connection with the provision of air navigation services to the airport;
- (b) leases of substations and granting of equipment licences to statutory undertakers and telecoms providers;
- (c) leases of hangars;
- (d) granting of concession agreements to retailers and car park managers and licensing of desks to airlines and ground handlers; and
- (e) the letting of properties acquired under the blight schemes connected with the Stansted Airport second runway and connected development application (*Home Value Guarantee Scheme, Home Owners Support Scheme and Special Case Scheme*).

For the sake of clarity it does not include matters involving significant changes to the strategy, capital expenditure commitments or organizational structure of the Protected Airport Companies.

**'Protected Airports'** means Stansted Airport until Effective Divestment of that airport, and Glasgow and Edinburgh Airport until Effective Divestment of the Nominated Scottish Airport.

**'Protected Airport Companies'** means Stansted Airport Limited until Effective Divestment of Stansted Airport, and Glasgow Airport Limited and Edinburgh Airport Limited until Effective Divestment of the Nominated Scottish Airport.

**'Report'** means the report of the CC published on 19 March 2009 and entitled *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 United Kingdom at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW.

**'Subsidiary'** has the meaning given to the term 'subsidiary undertaking' by section 1162 of the Companies Act 2006.

**'Transitional Arrangements'** and **'TSA'** means such transitional services agreements, service level agreements, foundation agreements and other agreements, covenants or arrangements in accordance with which the BAA Signatories continue to provide facilities, goods or services to the Nominated Scottish Airport for a transitional period subsequent to Effective Divestment.

**'2011 Decision'** means the report of the CC published on 19 July 2011 and entitled *Consideration of possible material change of circumstance*.

- 1.2 Words and expressions defined in the recitals to these undertakings have the same meaning in these undertakings.
- 1.3 These undertakings are to be interpreted and applied so as to give effect to the CC's decisions on remedies specified in Section 10 of the report and in the 2011 Decision.
- 1.4 A notification under these undertakings may be made to the CC by sending it to The Chief Financial & Business Adviser, BAA Market Investigation, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD.
- 1.5 A notification under these undertakings may be made to BAA by sending it to the General Counsel and Group Company Secretary, The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW, with a copy to the Chief Executive, The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW.
- 1.6 Unless the context requires otherwise, words in the singular include the plural and words in the plural include the singular.

## **2. Commencement**

- 2.1 The obligations in the undertakings come into effect on the Commencement Date.

## **3. Divestment Obligation**

- 3.1 In accordance with the provisions of these undertakings, the BAA Signatories undertake that they will use all reasonable endeavours to make Effective Divestment of each Divestiture Airport to an Approved Purchaser within each relevant Completion Period.

## **4. Nomination Obligation**

- 4.1 The BAA Signatories undertake that the BAA Representative will give Notice to the CC no later than 19 October 2011 or the Commencement Date, whichever is later, specifying which of Edinburgh Airport Limited or Glasgow Airport Limited respectively



they nominate to be divested as the Nominated Scottish Airport to an Approved Purchaser in accordance with the Divestment Obligations.

## **5. Approved Purchasers**

- 5.1 The BAA Signatories undertake to inform each proposed purchaser of a Divestiture Airport that in order to become an Approved Purchaser a proposed purchaser must produce evidence to the CC demonstrating the following:

### *Intention and ability to operate as a competitor*

- (a) That it has the intention and ability to operate and develop the relevant Divestiture Airport as a viable independent competitor airport in the market for aeronautical services provided by airports in the United Kingdom and so will address effectively the AECs specified in the report. A proposed purchaser must produce such evidence directly to the CC and must not share such evidence with BAA or any other competing third party airport operator or proposed purchaser.

### *Independence from the BAA Signatories*

- (b) That its independence from the BAA Signatories is not impaired by major operational dependencies, such as its information technology systems, other than in a transitional form, or by significant ownership and economic relationships with the BAA Signatories.

### *Appropriate expertise*

- (c) That it has experience of operating at least one major international airport, or otherwise has access to the necessary expertise and has the ability to provide a management team with comprehensive experience of operating and developing airports; and of how it intends to apply this expertise to the relevant Divestiture Airport. If it is intended that the existing BAA airport management team will be employed by the purchaser, this team must be supplemented by other management with appropriate strategic, regulatory and financial skills to fulfil the functions currently resourced at a group level. The purchaser must also satisfy the CAA's Safety Regulation Group regarding management proficiency and must satisfy the DfT regarding security regulations, and must provide to the CC:

- (i) a comprehensive business plan demonstrating the purchaser's intentions and abilities to operate and develop the relevant Divestiture Airport and giving a sound basis for long-term financial projections with accompanying sensitivity analysis; and
- (ii) clearly defined governance arrangements, setting out management processes, voting rights, reserved matters and other governance arrangements.

### *Appropriate financial resources*

- (d) That it has access to sufficient financial resources to acquire, develop and operate the relevant Divestiture Airport, evidenced by providing robust long-term financial projections, which include sufficient headroom in the finance facilities, or the capacity to raise capital, to cope with significant adverse conditions.

### *Absence of further competitive concerns*

(e) That it does not have significant horizontal overlaps with the Divestiture Airport which is to be acquired, and that any vertical economic relationships it may have with the Divestiture Airport as a consequence of the proposed purchase are acceptable to the CC. For the avoidance of doubt, this paragraph is without prejudice to the normal merger control process.

5.2 It is a condition of the CC's approval of a proposed purchaser as an Approved Purchaser that the CC has accepted an undertaking from the proposed purchaser that it will not sell the assets of or a controlling interest in the relevant Divestiture Airport within five years without having received prior notification that the CC is satisfied that the same criteria which were required on the initial divestiture will be fulfilled by the new purchaser.

## **6. Transitional Arrangements**

6.1 The BAA Signatories undertake, without prejudice to the generality of paragraph 7.2, that they will use all reasonable endeavours to conclude Transitional Arrangements on commercial terms with the relevant Approved Purchaser such as will ensure that, following Effective Divestment of each Divestiture Airport, the relevant Approved Purchaser is able to operate the relevant Divestiture Airport as an independent and effective competitor airport in the market for aeronautical services provided by airports in the United Kingdom and so will address effectively the AECs specified in the report.

6.2 The BAA Signatories further undertake to use all reasonable endeavours:

(a) to develop detailed separation plans to enable the independent operation of the Divestiture Airports upon their divestiture to Approved Purchasers;

(b) to develop Transitional Arrangements with the relevant Approved Purchaser to commence operation on or before the date of Effective Divestment;

(c) not without the prior approval of the CC to enter into any transitional services agreement or service level agreement;

(e) to make such systems and operations changes as are necessary to separate the computer systems of the relevant Divestiture Airport from the combined BAA airports' computer systems; and

(f) to arrange, so far as permitted by existing contractual obligations, for the division and novation of such customer and supply contracts as are required to enable the independent operation of the relevant Divestiture Airport after Effective Divestment.

6.3 The BAA Signatories undertake that they will, and that they will procure that their subsidiaries, agents, consultants and employees will, comply with the Transitional Arrangements for the duration of the Transitional Arrangement concerned.

6.4 The BAA Signatories undertake that, pursuant to a request from the Approved Purchaser and with the prior approval of the CC, if upon conclusion of the duration of any Transitional Arrangement it appears that transitional arrangements remain necessary, they will use all reasonable endeavours to enter into a further Transitional Arrangement on substantially the same terms as the Transitional Arrangement concerned.

## **7. The Protected Airport Companies**

7.1 The BAA Signatories undertake that so long as these undertakings remain in force they will not, and will procure that their subsidiaries will not, Divest:

(a) all or any part of the share capital, business, property or other assets of any of the Protected Airport Companies; or

(b) any assets or property owned by the BAA Signatories or their subsidiaries used in the businesses carried on at the Protected Airports;

other than in the Ordinary Course of Business or by divestment to an Approved Purchaser and on condition that the BAA Signatories have received prior Notice from the CC permitting the divestment.

7.2 The BAA Signatories undertake that they will not take any action which might prejudice the taking of any action in accordance with the CC's decisions in the report and 2011 Decision, including any action which might impair the ability of the Protected Airports to compete independently subsequent to their divestiture, without prejudice to the right of BAA to continue its legal challenge to the 2011 Decision in relation to the requirement to divest Stansted Airport.

7.3 Further and without prejudice to the generality of paragraph 7.2, the BAA Signatories will ensure, except where the CC has notified BAA that Effective Divestment has been achieved, that unless the BAA Signatories have received prior Notice of consent from the CC:

(a) [REDACTED];

(b) the assets of the Protected Airport Companies are maintained and preserved, including facilities and goodwill other than in the Ordinary Course of Business;

(c) [REDACTED];

(d) the nature, description, range and quality of services currently supplied by the Protected Airport Companies are maintained and preserved.

7.4 For the avoidance of doubt, the BAA Signatories confirm that paragraph 7 applies both to Edinburgh Airport and to Glasgow Airport until completion of the divestment of either Edinburgh Airport or Glasgow Airport as the case may be.

## **8. Ancillary Divestment Provisions**

8.1 The BAA Signatories may at any time after expiry of [REDACTED] from the Commencement Date, but no later than [REDACTED] before the end of the Completion Period for the relevant Divestiture Airport, request an extension to the Completion Period on the grounds that there has been a material change in circumstances since the 2011 Decision which is beyond the control of the BAA Signatories, and which is likely to frustrate Effective Divestment within the Completion Period. If there is a change in the effect of a material change in circumstances which has been notified to the CC, the BAA Signatories may make a further request for extension to the CC. For the avoidance of doubt, any legal proceedings challenging the decision of the CC of 6 October 2011 to set a revised timetable for divestment or the final determination of the CAT Proceedings (including any appeals) being after [REDACTED] will be considered as a material change in circumstances for the purposes of this paragraph 8.

8.2 A request for extension of the Completion Period must set out the reasons and evidence in support of the request. In considering the request, the CC will take account of the advice of the Monitoring Trustee. If the CC consents to the request it will determine the appropriate period of extension and issue to the BAA Signatories a Notice of extension to the Completion Period:

- (a) The BAA Signatories each undertake that a request for extension of the Completion Period must make full disclosure of every fact and matter known to Key Management that is relevant to the CC's decision.
- (b) The BAA Signatories recognize that where the CC grants an extension to the Completion Period on the basis of misleading or incomplete information, the extension to the Completion Period is voidable at the election of the CC.
- (c) In the event that the BAA Signatories discover that a request for extension to the Completion Period has been made without full disclosure of relevant matters known to the Key Management and is therefore incomplete, the BAA Signatories undertake to:
  - (i) notify the CC in writing identifying the particulars in which the request is incomplete, within seven days of becoming aware that the request is incomplete; and
  - (ii) at the same time, or as soon as possible thereafter, provide to the CC a request that is complete.

8.3 If the Monitoring Trustee:

- (a) advises that the BAA Signatories have not procured divestiture of a Divestiture Airport within the relevant Completion Period; or
- (b) provides the CC with substantial evidence that the BAA Signatories are not using all reasonable endeavours to satisfy the Divestment Obligation;

and if the CC concludes that the appointment of a Divestiture Trustee is appropriate, after having consulted with the Monitoring Trustee and the BAA Representative, then the CC may forthwith, or at such later time as it may determine, issue a direction to mandate the appointment of an independent Divestiture Trustee in accordance with the procedure set out in paragraphs 10.1 to 10.5.

8.4 Where the BAA Signatories fail to propose a suitable Divestiture Trustee in accordance with paragraph 10.1 or the BAA Signatories are unable for any reason to conclude the appointment within a time limit specified by the CC, the CC shall nominate one or more persons to act as Divestiture Trustee, and the BAA Signatories shall appoint, or cause to be appointed, such Divestiture Trustee within [~~30~~] working days from such nomination under the terms of a Divestiture Trustee mandate approved by the CC.

8.5 If, having received advice in accordance with subparagraph 3, the CC considers that it is appropriate to appoint a Divestiture Trustee in respect of the Nominated Scottish Airport, the CC may, having consulted with the BAA Representative, appoint a Divestiture Trustee to achieve Effective Divestment, in accordance with paragraph 10.87 of the report, of either Glasgow Airport or Edinburgh Airport as the CC may direct, notwithstanding the nomination made by the BAA Representative in accordance with paragraph 4 of these Undertakings.

## **9. The Monitoring Trustee**

- 9.1 BAA Limited undertakes to use all reasonable endeavours:
- (a) to renew the appointment of Grant Thornton as monitoring trustee for the purpose of monitoring the separation planning, asset preservation, and sale of the Divestiture Airports; and
  - (b) to make that appointment:
    - (i) on the terms set out at Appendix A of these undertakings or as varied in accordance with these terms; and
    - (ii) as soon as is reasonably practicable, and in any event within the period of two business days after the day on which the CC notifies BAA Limited of the acceptance of these undertakings.
- 9.2 The BAA Signatories undertake that they will, and will procure that their subsidiaries will, assist and not hinder the discharge by the Monitoring Trustee of its responsibilities as set out in Appendix A or as may be varied from time to time.
- 9.3 The appointment of the Monitoring Trustee in accordance with paragraph 9.1 must be irrevocable unless terminated pursuant to Section G of Appendix A to these Undertakings.
- 9.4 If the appointment of the Monitoring Trustee is terminated in accordance with Section G of Appendix A, the BAA Representative must, within [~~30~~] Business Days following the day written notice is given to the Monitoring Trustee, specify one person from the list of persons nominated by the CC to carry out the functions of Monitoring Trustee in accordance with Appendix A.
- 9.5 If so requested by the CC, the Monitoring Trustee will continue as Monitoring Trustee until a new Monitoring Trustee has been appointed and a full handover of all relevant information has taken place. For the avoidance of doubt, the Monitoring Trustee shall not continue as Monitoring Trustee where the appointment has been terminated pursuant to Section G of Appendix A on account of the Monitoring Trustee's exposure to a Conflict of Interest.

## **10. The Divestiture Trustee**

- 10.1 The BAA Signatories undertake that within the period of [~~30~~] Business Days following the day on which pursuant to paragraph 8.3 the CC gives a direction, the BAA Representative will submit to the CC for approval a list of two or more persons whom the BAA Signatories propose to appoint as Divestiture Trustee.
- 10.2 The proposal must contain sufficient information for the CC to verify that each proposed Divestiture Trustee fulfils the requirements set out in paragraph 10.3 and must include:
- (a) the full terms of the proposed mandate, including all provisions necessary to enable the Divestiture Trustee to fulfil its duties in accordance with the Divestiture Trustee Mandate, including remuneration by BAA Limited; and
  - (b) a schedule of the steps to be taken to give effect to the mandate.

- 10.3 Each person on the list mentioned in paragraph 10.1 must be independent of any member of the BAA Signatories, possess the qualifications necessary for the performance of the Divestiture Trustee Mandate, and must on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms on which it is remunerated.
- 10.4 The CC may approve or reject any or all of the proposed Divestiture Trustees and may approve the proposed mandate subject to any modifications necessary for the Divestiture Trustee to fulfil its duties:
- (a) If more than one name is approved, the BAA Signatories will be free to choose the Divestiture Trustee to be appointed from among the names approved.
- (b) The BAA Signatories must use all reasonable endeavours to make the appointment of the Divestiture Trustee within [X] Business Days following the day when the CC gives its approval and in the terms of the mandate approved by the CC.
- (c) If all the proposed Divestiture Trustees are rejected by the CC, the BAA Signatories shall, within [X] Business Days following the day of being Notified of the rejection, submit a list with the names of at least two further persons in accordance with the requirements and procedure set out in paragraphs 10.1 and 10.4.
- 10.5 If the BAA Signatories fail to submit a list in accordance with paragraph 10.1 or paragraph 10.4(c), or the CC rejects the proposed Divestiture Trustees or the BAA Signatories are unable for any reason to conclude the appointment within a time limit specified by the CC, the CC will nominate one or more persons to act as Divestiture Trustee, and the BAA Signatories must appoint, or cause to be appointed, one such Divestiture Trustee within [X] Business Days following Notification of such nomination under the terms of a Divestiture Trustee mandate approved by the CC.
- 10.6 The BAA Signatories recognize that the function of the Divestiture Trustee is distinct from the function of the Monitoring Trustee, notwithstanding that the two functions may be performed by the same person, subject to that person meeting the requirements in paragraph 10.3.
- 10.7 The Divestiture Trustee will use all reasonable endeavours to obtain the best price available in the circumstances of the divestiture, subject to achieving Effective Divestment within a specified period to an Approved Purchaser. The period within which the Divestiture Trustee is to achieve Effective Divestment will be specified by the CC following consultation with BAA. BAA will provide the Divestiture Trustee with appropriate access to information and, so far as permitted by law, authority to sell assets and contract on its behalf in order to achieve Effective Divestment.

## **11. Compliance statements**

- 11.1 The BAA Signatories will provide the CC such information or statement of compliance as the CC may from time to time require for the purposes of monitoring compliance by the BAA Signatories and their subsidiaries with these undertakings. In particular, on the 15<sup>th</sup> day of each month (or, where the 15<sup>th</sup> day does not fall on a Business Day, the first Business Day thereafter), the Chief Executive Officer of BAA Limited or in his absence the Managing Director of the Airports Division of BAA Limited must provide a monthly statement to the CC on behalf of the BAA Signatories confirming compliance with these undertakings in the form set out in Appendix B to these undertakings.

## **12. Directions**

- 12.1 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.

## **13. Severability**

- 13.1 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.
- 13.2 The BAA Signatories undertake that they will not rely unreasonably 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.

Signed by a duly authorized signatory:

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, Stansted Airport Limited, Glasgow Airport Limited and Edinburgh Airport Limited.

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Colin Matthews  
*Chief Executive*  
4 November 2011

## THE SUPPLY OF AIRPORT SERVICES BY BAA

### Final Undertakings given in relation to divestment of certain airports

#### MONITORING TRUSTEE MANDATE

BETWEEN

1. BAA Limited, a company organized under the laws of England, which has its registered office at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW ('BAA'),

AND

2. Grant Thornton UK LLP, a limited liability partnership organized under the laws of England, which has its registered office at Grant Thornton House, Melton Street, Euston Square, London NW1 2EP (the 'Monitoring Trustee'), hereafter referred to collectively as the 'Mandate Parties'.

Under Final Undertakings accepted by the Competition Commission on 9 November 2011 in its investigation into the supply of airport services by BAA ('the BAA Market Investigation'), BAA undertook to renew the appointment of Grant Thornton as Monitoring Trustee for the purposes of monitoring the separation planning, asset preservation and sale of the Divestiture Airports. BAA hereby engages the Monitoring Trustee and this agreement forms the mandate (hereafter the 'Mandate').

**THE MANDATE PARTIES HAVE AGREED AS FOLLOWS:**

#### SECTION A

##### Definitions

1. For the purpose of this Mandate, the following terms have the following meanings:

**'CC'** means the Competition Commission.

**'Conflict of Interest'** has the meaning given in paragraph 19 of this Mandate.

**'Divestiture Airport'** means, until the date of Effective Divestment of that airport, Stansted Airport or the Nominated Scottish Airport as the case may be.

**'Divestiture Airport Company'** means, until the date of Effective Divestment of that airport and as the case may be, Stansted Airport Limited and whichever of Edinburgh Airport Limited or Glasgow Airport Limited, respectively, the BAA Signatories have specified by Notice to the CC is to be divested for the purposes of the Divestment Obligation.

**'Effective Divestment'** means completion of the divestment of (a) the relevant Divestiture Airport and (b) those assets associated with or used in the business of the



airport, owned by the BAA Signatories or their subsidiaries, which are reasonably requested by the Approved Purchaser.

**'Final Undertakings'** means the final undertakings accepted under sections 138 and 159 of the Enterprise Act 2002 by the Competition Commission on 9 November 2011 in its investigation into the supply of airport services by BAA.

**'Monitoring Trustee Partner Firms'** means the other firms belonging to the same organization of individual partnerships and companies as the Monitoring Trustee.

**'Monitoring Trustee Team'** means the key persons responsible for carrying out the tasks assigned by the Mandate and identified in paragraph 4 of this Mandate.

**'Nominated Scottish Airport'** means whichever of Edinburgh Airport Limited or Glasgow Airport Limited, respectively, the BAA Signatories have specified by Notice to the CC is to be divested for the purposes of the Divestment Obligation.

**'Ordinary Course of Business'** means matters connected to the day-to-day supply of airport services by the BAA Signatories and includes:

- lettings to airlines, ground handlers and other airport users and service providers of offices, ramp accommodation, CIP lounges and storage facilities, fuel farm facilities, motor transport facilities, cargo facilities and facilities for use in connection with the provision of air navigation services to the airport;
- leases of substations and granting of equipment licences to statutory undertakers and telecoms providers;
- leases of hangars;
- granting of concession agreements to retailers and car park managers and licensing of desks to airlines and ground handlers; and
- the letting of properties acquired under the blight schemes connected with the Stansted Airport second runway and connected development application (*Home Value Guarantee Scheme, Home Owners Support Scheme and Special Case Scheme*).

For the sake of clarity it does not include matters involving significant changes to the strategy, capital expenditure commitments or organizational structure of the Divestiture Airport Companies.

**'Primary Function'** has the meaning given in paragraph 8 of this Mandate.

**'TSA'** has the meaning given in paragraph 8 of this Mandate.

## SECTION B

### Appointment of Monitoring Trustee

2. BAA hereby appoints the Monitoring Trustee to act as its exclusive trustee for fulfilling the tasks of a Monitoring Trustee according to this Mandate. The Monitoring Trustee hereby accepts the said appointment in accordance with the terms of this Mandate.

3. The appointment and this Mandate shall become effective on the date of this Mandate, and terminate in accordance with Section G.
4. The Monitoring Trustee Team consists of the key persons listed below. The key persons shall be supplemented where appropriate with junior executives.

<i>Name</i>	<i>Title</i>
[✂]	[✂]

## **SECTION C**

### **General duties and obligations of the Monitoring Trustee**

5. The Monitoring Trustee shall act in consultation with the CC to monitor matters material to the separation planning, asset preservation and sale of the Divestiture Airports in compliance with the Final Undertakings. The Monitoring Trustee shall carry out its duties in accordance with this Mandate, as well as revisions of this Mandate approved by the CC.
6. The Monitoring Trustee shall propose to BAA such measures as the Monitoring Trustee considers reasonably necessary to discharge its duties under this Mandate, and the Monitoring Trustee shall propose measures it considers reasonably necessary to the CC in the event that BAA does not comply with the Monitoring Trustee's proposals within a reasonable time frame.

## **SECTION D**

### **Obligations of the Monitoring Trustee**

7. The Monitoring Trustee shall carry out the duties described in this Section D until the Mandate is terminated in accordance with Section G.
8. The Monitoring Trustee's primary function (the 'Primary Function') shall be to monitor:

#### *Separation planning*

- (a) whether the planning to separate the operations of the Divestiture Airports from the remainder of BAA's business is satisfactory; including the establishment of measures to enable the business to move towards a position where the business, subject to establishment of TSAs will be capable of separate operation;

#### *Asset preservation*

- (b) whether each Divestiture Airport Company is preserved as viable, competitive and marketable businesses, and that no action is taken by BAA that might frustrate or prejudice a sale to an Approved Purchaser and the ability of that purchaser to properly and competitively operate the relevant Divestiture Airport Company; and

### *Sales monitoring*

- (c) in the event that BAA commences the marketing or sale of any Divestiture Airport Company, the Monitoring Trustee will monitor the sales process including (i) timescales, (ii) whether purchasers with the potential to provide competition will be afforded equal opportunity to formulate their bid, and (iii) whether the proposed purchasers identified are suitable in accordance with paragraph 5 of the Final Undertakings.
9. The Monitoring Trustee will take such steps as it reasonably considers necessary in order for it effectively to carry out its Primary Function. Those steps may include, but shall not be limited to, the following:
- (a) meeting with the management of the Divestiture Airport Companies to discuss the operations and management structure;
- (b) monitoring of the allocation of assets between the relevant Divestiture Airport Company and the businesses retained by BAA;
- (c) meeting with appropriate persons at the Divestiture Airport Companies and BAA to discuss the separation of the businesses and the sales process; and
- (d) requesting that BAA takes any reasonable steps which the Monitoring Trustee considers would be necessary to assist in carrying out its Primary Functions. Such requests may include requests for BAA to provide the Monitoring Trustee with access, within its Mandate, to books, records, documents, management or other personnel, facilities, sites, IT/computer systems and/or technical information (and any assistance in searching for or understanding information, documents or other material) of a Divestiture Airport and the BAA retained businesses as the Monitoring Trustee may consider reasonably necessary. For the avoidance of doubt, BAA is not obliged to provide to the Monitoring Trustee any material that is subject to legal privilege.
10. All communications between the Monitoring Trustee and the CC (excluding the statements and reports of the Monitoring Trustee referred to in paragraph 11, as set out below) must be confidential and not disclosed to third parties, save with the express written permission of the CC.
11. On the 20<sup>th</sup> day of each month following the end of the month of its appointment, the Monitoring Trustee must provide, following receipt of any comments from the CC and BAA, a draft report to the CC and following approval by the CC a non-confidential version of the report to BAA which will set out in detail:
- (a) the steps that have been taken to separate each Divestiture Airport Company from the retained business of BAA, the current position in relation to the separation process and further steps that have been planned;
- (b) a summary of significant separation issues and the recommendations of the Monitoring Trustees as to what changes to the separation procedures, if any, are necessary;
- (c) an overview of the assets of the Divestiture Airport Companies and any recent disposals which are not in the Ordinary Course of Business;
- (d) the recent trading performance of each Divestiture Airport Company used for monitoring the preservation of each Divestiture Airport Company's assets;

- (e) progress with any sales process that has been initiated by BAA in connection with a Divestiture Airport Company;
- (f) in the event that BAA has commenced the marketing or sale of any Divestiture Airport Company, a summary of the status of the TSAs and, to the extent required, adherence to the TSAs following divestiture; and
- (g) an upcoming work and event plan covering the next month.

The Monitoring Trustee will submit to the CC a final report following receipt of any comments from the CC and BAA.

12. At any time, the Monitoring Trustee may provide, in consultation with the CC, a written or oral report to the CC on matters falling within the Monitoring Trustee's Mandate.
13. During any sales process relating to a Divestiture Airport Company, the Monitoring Trustee will provide an analysis of the bidders' submissions in response to the CC's requests for information. Upon receipt of final bids by potential purchasers, the Monitoring Trustee must provide to the CC a reasoned opinion as to the suitability and independence of the proposed purchaser(s).
14. From time to time the Monitoring Trustee in conjunction with discussions with the CC may determine that certain communications may be more appropriately kept confidential between the Monitoring Trustee and the CC. BAA acknowledges that in such circumstances it will not receive copies of the relevant reports.
15. When providing its reports to the CC, the Monitoring Trustee must ensure that it does not disclose any information or documents to the CC which BAA would be entitled to withhold from the CC on the grounds of legal privilege.
16. The Monitoring Trustee should notify the CC immediately if it considers that it is not in a position effectively to carry out its Primary Functions. In that situation, the Monitoring Trustee should set out the reasons for its view and attach relevant supporting evidence (so far as it is permitted by paragraph 15).

## **SECTION E**

### **Duties and obligations of BAA**

17. Subject to paragraph 15 above, BAA must provide the Monitoring Trustee with all such cooperation, assistance and relevant information as the Monitoring Trustee may reasonably require in order to discharge its Primary Functions.
18. For the purpose of enabling the Monitoring Trustee to discharge its Primary Functions, BAA's cooperation will include but will not be limited to the following:
  - (a) BAA must provide such facilities as are reasonably necessary to enable the Monitoring Trustee to carry out its Primary Function including provision of an office with a desk, telephone and Internet access and access to a facsimile machine.
  - (b) BAA must provide full and complete access to all personnel, books, records, documents, including but not limited to written and electronic communications, facilities and information within the business of BAA as the Monitoring Trustee

may consider reasonably necessary. For the avoidance of doubt, BAA shall not be required to provide access to material which is subject to legal privilege.

- (c) BAA must provide the Monitoring Trustee with advance notice of any meetings of the UK management responsible for the business of each Divestment Airport Company, and of any related divestment and separation meetings and will allow the Monitoring Trustee to attend any such meeting. Such notice shall be provided at the earliest possible opportunity and in any event adequately in advance of a meeting for the Monitoring Trustee to be in a position to attend that meeting. The Monitoring Trustee must be provided with any relevant agenda or papers in advance of such meeting.
- (d) BAA must notify the Monitoring Trustee immediately of: (i) any substantial changes made to the organizational structure of the business of any Divestiture Airport Company or the management responsibilities within the business of each of the Divestiture Airport Companies; (ii) the disposal of any operating assets not in the Ordinary Course of Business; (iii) the creation or disposal of any interests in the assets of the Divestiture Airport Companies not in the Ordinary Course of Business; (iv) any key staff who leave the business of the Divestiture Airport Companies.
- (e) References to BAA in paragraph 17 shall be taken to refer to all staff, officers, directors, advisers and consultants of BAA. References to BAA in paragraph 18 shall be taken to refer to all staff, officers, directors, advisers and consultants of BAA.

## **SECTION F**

### **Monitoring Trustee related provisions**

#### *Conflict of Interests*

- 19. The Monitoring Trustee confirms that, as of the date of this Mandate, the Monitoring Trustee and each member of the Monitoring Trustee Team is independent of BAA and their respective subsidiaries, or any known party interested in acquiring any Divestiture Airport Company or any known party arranging finance for any bid relating to such proposed acquisition, and has no conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Mandate ('Conflict of Interest'). The Monitoring Trustee undertakes to notify the CC and BAA forthwith in the event that a Conflict of Interest arises.
- 20. The Monitoring Trustee undertakes not to create a Conflict of Interest during the term of the Mandate. Subject to paragraph 21, the Monitoring Trustee, members of the Monitoring Trustee Team and the Monitoring Trustee Partner Firms must not therefore during the term of this Mandate:
  - (a) Have or accept any employment by or be or accept any appointment as Member of the Board or member of other management bodies of BAA or its respective subsidiaries or any known party interested in acquiring any Divestiture Airport Company or any known party arranging finance for any bid relating to such proposed acquisition other than appointments pertaining to the establishment and performance of the Mandate.
  - (b) Have or accept any assignments or other business relationships with or financial interests in BAA or its respective subsidiaries or any known party interested in acquiring any Divestiture Airport Company or any known party arranging finance

for any bid relating to such proposed acquisition that might lead to a Conflict of Interest.

- (c) A party is deemed to be 'known' to the Monitoring Trustee once the Monitoring Trustee is aware of a party arranging finance for any bid relating to the acquisition of a Divestiture Airport Company or of any party proposing to acquire a Divestiture Airport Company.
- (d) For the purposes of this Mandate, a party arranging finance may include other parties such as the bid-co, investors, consortium or syndicate members and the key advisers (eg mergers and acquisition/corporate finance advisers, any lead manager, co-manager, underwriter, book-runner or joint book-runner). The involvement of such parties will be reviewed by the Monitoring Trustee on a case-by-case basis to determine whether there is any potential for a Conflict of Interest.
- (e) For the purposes of this Mandate, a party arranging finance is unlikely in principle to include any party that subscribes for debt or equity (or other form of finance) via a public offer, private placement, club arrangement, syndicate arrangement or commercial-lending arrangement (eg a bank loan). Similarly, this is unlikely to include banks or investors providing finance on arm's length terms within a consortium or financing organized by others.
- (f) Where any potential for a Conflict of Interest arising from an existing connection or relationships with any newly identified party interested in acquiring any Divestiture Airport Company or arranging finance for any bid relating to such proposed acquisition can be avoided through appropriate ring-fencing measures, the Monitoring Trustee shall implement such measures and advise the CC and BAA of these measures. As a minimum, ring-fencing measures will ensure that there is no exchange of information, documentation or common team membership.
- (g) The provisions of this Section F affect neither assignments or other business relationships between the Monitoring Trustee or Monitoring Trustee Partner Firms and BAA or its respective subsidiaries or any known party interested in acquiring any Divestiture Airport Company or any known party arranging finance for any bid nor investments by the Monitoring Trustee or Monitoring Trustee Partner Firms in the stock or securities of BAA or its respective subsidiaries or any known party interested in acquiring any Divestiture Airport Company or any known party arranging finance for any bid if such assignments, business relationships or investments are in the normal course of business and are material neither to the Monitoring Trustee or the Monitoring Trustee Partner Firms nor to the undertaking concerned.
- (h) Should the Monitoring Trustee, the Monitoring Trustee Partner Firms or members of the Monitoring Trustee Team wish to undertake an assignment, business relationship or investment, such a person must seek the prior approval of the CC. Should the Monitoring Trustee become aware of a Conflict of Interest, the Monitoring Trustee shall promptly inform BAA and the CC of such Conflict of Interest. In the event that BAA becomes aware that the Monitoring Trustee or the Monitoring Trustee Partner Firms have or may have a Conflict of Interest, BAA shall promptly notify the Monitoring Trustee and the CC of such Conflict of Interest. Where a Conflict of Interest occurs during the term of this Mandate, the Monitoring Trustee undertakes to resolve it immediately. In the event that the Conflict of Interest cannot be resolved or is not resolved by the Monitoring

Trustee in a timely manner, the Mandate may be terminated in accordance with Section G below.

21. The Monitoring Trustee undertakes that, during the term of the Mandate and for a period of one year following termination of the Mandate, members of the Monitoring Trustee Team must not provide services to:
- (a) BAA or their respective subsidiaries without first obtaining the CC's prior approval; or
  - (b) any known party interested in acquiring a Divestiture Airport or any known party arranging finance for any bid relating to such proposed acquisition without first obtaining the prior approval of the CC and BAA.

In particular:

- (c) access to confidential information must be limited to the Monitoring Trustee Team; and
- (d) the Monitoring Trustee Team must be prohibited from communicating any information relating to this Mandate to any other of the Monitoring Trustee's personnel, except for information of a general nature (eg Trustee's appointment, fees, etc), and except for information whose disclosure is required by law.

#### *Remuneration*

22. The Monitoring Trustee will be remunerated on a time-spent basis (or on the basis of an alternative fee structure as agreed by the Monitoring Trustee and BAA) in accordance with the following hourly rates:

[✂]

The hourly rate charged to BAA for each of the above grades of Monitoring Trustee partner or employee must not be increased during the duration of the mandate.

#### *Indemnity*

23. BAA must indemnify the Monitoring Trustee and its employees and agents (each an 'Indemnified Party'), to the full extent lawful, and hold each Indemnified Party harmless against any liabilities arising out of the performance of the Mandate, except to the extent that such liabilities result from the wilful default, recklessness, bad faith or gross negligence of the Monitoring Trustee, its employees, agents or advisers. BAA further agrees that an Indemnified Party will have no liability to BAA except to the extent that such liability results from the wilful default, recklessness, bad faith or gross negligence of the Monitoring Trustee, its employees, agents or advisers.

#### *Confidentiality*

24. The Monitoring Trustee undertakes not to disclose to anyone other than the CC any sensitive or proprietary information gained as a result of performing the Monitoring Trustee role other than where there is a legal obligation on the Monitoring Trustee. In particular, the Monitoring Trustee must not disclose confidential information relating to BAA gained as a result of the Monitoring Trustee role. The Monitoring Trustee undertakes not to disclose any information, of whatever nature, which falls outside the terms of the Mandate, which it has gained as a result of performing the Monitoring Trustee role.

## *Miscellaneous*

25. Notwithstanding the Monitoring Trustee's overall responsibility to discharge its Primary Functions, and in particular notwithstanding the Monitoring Trustee's position as an independent unrelated third party, the Monitoring Trustee must have due regard to the commercial interests of BAA to the extent possible given the nature of its tasks.

## **SECTION G**

### **Termination of the Mandate**

26. The Mandate may only be terminated in accordance with this Section G.
27. If the Monitoring Trustee ceases to perform its functions under the Mandate or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:
  - (a) the CC may, after hearing the Monitoring Trustee, require BAA to replace the Monitoring Trustee; or
  - (b) BAA may, after consultation and agreement with the CC, terminate this engagement provided that 14 days' written notice is given to the Monitoring Trustee and all outstanding fees are settled on or before the termination date save that BAA is not required to pay any fees to the Monitoring Trustee in respect of the period from the date when a Conflict of Interest has arisen provided that the CC agrees that the Conflict of Interest has not been notified to BAA and the CC by the Monitoring Trustee in a timely manner and/or the Monitoring Trustee did not take appropriate steps to seek to resolve the Conflict of Interest in a timely manner.

#### *Termination of the Mandate by the Monitoring Trustee*

28. The Monitoring Trustee may only terminate the Mandate for good cause by giving written notice to BAA and the CC.

#### *Surviving provisions*

29. Paragraphs 21, 23 and 24 and 26 to 29 of this Mandate shall survive the termination of the Mandate.

#### *Termination of the Mandate when an airport ceases to be a Divestiture Airport*

30. The Mandate will terminate in respect of an airport when it ceases to be a Divestiture Airport for the purposes of the Mandate.



## SECTION H

### Additional provisions

#### *Amendments to the Mandate*

31. Except as provided for in paragraph 32, the Mandate may only be amended in writing and with the CC's prior approval. In considering a request to amend this Mandate the CC will have regard to the views of BAA and the Monitoring Trustee.
32. The CC may direct an amendment to this Mandate, after consultation with the Monitoring Trustee and BAA.

#### *Governing law and Dispute Resolution*

33. This Mandate shall be governed by, and construed in accordance with, the laws of England.
34. In the event that a dispute arises concerning the Mandate Parties' obligations under the Mandate, such dispute shall be submitted to the non-exclusive jurisdiction of the English courts.

#### *Severability*

35. If any provision of this Mandate is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect the validity or enforceability of any of its other provisions or affect the validity or enforceability of such or any other provision in any other jurisdiction. The illegal, invalid or unenforceable provisions must be replaced by new provisions reflecting the purpose of this Mandate and the initial intention of the Mandate Parties.

#### *Notices*

36. All notices sent under this Mandate must be made in writing and be deemed to have been duly given if served by personal delivery upon the party for whom it is intended or the CC, or delivered by registered or certified mail (return receipt requested), or if sent by fax and email, upon receipt of oral confirmation that such transmission has been received, to the person at the address set forth below:

If to BAA, addressed as follows:

General Counsel and Company Secretary  
BAA Limited  
The Compass Centre  
Nelson Road  
Hounslow  
Middlesex  
TW6 2GW

If to the Monitoring Trustee, addressed as follows:

Mark Byers  
Grant Thornton UK LLP  
30 Finsbury Square  
London  
EC2P 2YU

If to the CC, addressed as follows:

Chief Financial & Business Adviser  
Competition Commission  
Victoria House  
Southampton Row  
London  
WC1B 4AD

or to any such other address or person as the relevant party may from time to time advise by notice in writing. The date of receipt of any such notice, or of any request, consent, agreement or approval will be deemed to be the date of delivery thereof.

**For BAA**

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Date	.....	Date

**For Monitoring Trustee**

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Date	.....	Date

## THE SUPPLY OF AIRPORT SERVICES BY BAA

### Final Undertakings given in relation to divestment of certain airports

#### Compliance statement

I, Colin Matthews, Chief Executive Officer of BAA Limited confirm on behalf of the BAA Signatories that:

- (a) The BAA Signatories and their subsidiaries have complied with the final undertakings given by them and accepted by the CC on *[insert date]* ('the Final Undertakings') in the period from *[insert date]* to *[insert date]*.
- (b) Except in accordance with the Final Undertakings no action has been taken by the BAA Signatories or their subsidiaries in the period from *[insert date]* to *[insert date]* that will prejudice the taking of any action in accordance with the CC's decisions in the report.
- (c) Except in accordance with the Interim Undertakings the nature, description, range and quality of services currently supplied by the Protected Airport Companies are maintained and preserved.

#### *Assets—including facilities and goodwill*

- (d) Except in accordance with the Final Undertakings, the assets of the Protected Airport Companies are maintained and preserved, including facilities and goodwill.
- (e) Except in accordance with the Final Undertakings, no disposal has been made of all or any part of the share capital, business, property or other assets of any of the Protected Airport Companies.
- (f) Except in accordance with the Final Undertakings, no disposal has been made of any assets or property owned by the BAA Signatories or their subsidiaries used in connection with the businesses carried on at the Protected Airports.

#### *Staff*

- (g) Except in accordance with the Final Undertakings the BAA Signatories have made no changes to key staff and no substantive changes have been made to the organizational structure of the Protected Airport Companies or to the management responsibilities within the Protected Airport Companies.

#### *Separation activities*

- (h) In furtherance of paragraph 4.1(Divestment Obligation) of the Final Undertakings the BAA Signatories have conducted preparations for the sale of Edinburgh Airport Limited detailed in the annex to this compliance report.

#### *Interpretation*

- (i) Words used in this Compliance Statement have the meaning given by the Final Undertakings.

**For and on behalf of the BAA Signatories**

..... Signature

..... Name

..... Date