

THE SUPPLY OF AIRPORT SERVICES BY BAA

Notice of acceptance of Final Purchaser Undertakings pursuant to section 159 and Schedule 10 of the Enterprise Act 2002

1. On 29 March 2007 the Office of Fair Trading made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 (the Act) concerning the supply of airport services by BAA in the UK (the Reference). 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.
2. The CC published its report titled *BAA airports market investigation: A report on the supply of airport services by BAA in the UK* on 19 March 2009 (the Report). In the Report, the CC concluded that:
 - (a) there are a number of features of the markets for airport services supplied by BAA, which each (and, in certain circumstances, in combination) prevent, restrict or distort competition, and thereby have an adverse effect on competition (AEC) between airports and airlines;
 - (b) the CC should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them and to that end Undertakings should be given to give effect to the CC's decision on remedies specified in the Report; and
 - (c) BAA must sell Gatwick, Stansted and either Edinburgh or Glasgow Airports to Approved Purchasers, according to the criteria identified in the Report, in order to remedy, mitigate or prevent the AECs and detrimental effects identified in the Report.
3. In order to approve a purchaser the CC will assess whether the proposed purchaser meets the purchaser criteria: independence from BAA and ADI/Ferrovial; appropriate expertise; appropriate financial resources; and absence of further competitive concerns.
4. On 15 October 2012 BAA announced a change of corporate name from BAA Limited to Heathrow Airport Holdings Limited (HAH) and for the company which owned Stansted from BAA (AH) Limited to Heathrow (AH) Limited.
5. A condition of CC approval of the purchaser will be an undertaking from the purchaser preventing the onward sale of the airport for a period of five years unless the CC is satisfied that the same criteria required on the initial divestiture are fulfilled by the new purchaser.
6. On 18 January 2013 the CC accepted interim purchaser Undertakings from Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings with section 157 of the Act to prevent action being taken which might impede the taking of any action by the CC under section 138(2) of the Act in relation to the reference (the Interim Purchaser Undertakings).
7. The CC published a notice of proposal to accept final Purchaser Undertakings on 21 January 2013. No representations were received and the CC has decided to accept Purchaser Undertakings in the form consulted on.

8. In accordance with section 159 of the Act the CC may accept from such persons as it considers appropriate, Undertakings to remedy, mitigate or prevent the AECs and detrimental effects flowing from them identified in the Report.
9. The CC under section 159 of the Act now accepts the Purchaser Undertakings given by Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings, a copy of which is set out in the attached annex. The Purchaser Undertakings come into force accordingly.
10. Undertakings accepted by the CC may be varied, superseded or released by the CC in accordance with section 159 of the Act.

(signed) LAURA CARSTENSEN
Group Chairman
On behalf of the CC
5 February 2013

THE SUPPLY OF AIRPORT SERVICES BY BAA

Final Undertakings given by Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited under section 159 of the Enterprise Act 2002

1. On 29 March 2007 the Office of Fair Trading made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 (the Act) concerning the supply of airport services by BAA in the UK (the Reference).
2. On 19 March 2009 the CC published its Report under section 136 of the Act titled *BAA airports market investigation: A report on the supply of airport services by BAA in the UK* (the Report). In the Report, the CC concluded that:
 - (a) there are a number of features of the markets for airport services supplied by BAA, which each (and, in certain circumstances, in combination) prevent, restrict or distort competition, and thereby have an adverse effect on competition (AEC) between airports and airlines;
 - (b) the CC should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them and to that end undertakings should be given to give effect to the CC's decision on remedies specified in the Report; and
 - (c) BAA must sell Gatwick, Stansted and either Edinburgh or Glasgow Airports to Approved Purchasers, according to the criteria identified in the Report, in order to remedy, mitigate or prevent the AECs and detrimental effects identified in the Report.
3. 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.
4. It is a condition of CC approval that the purchaser must give the CC an undertaking preventing for a period of five years from the Commencement Date the onward sale of the airport to anyone other than a buyer which also satisfies the Approved Purchaser Criteria.
5. On 14 October 2011 the CC issued a notice of intention to accept Final Undertakings in relation to Stansted and either Edinburgh or Glasgow Airport. On 9 November 2011 the CC accepted Final Undertakings in relation to the sale of a Scottish Airport, noting that BAA had nominated Edinburgh Airport for divestiture. Final Purchaser Undertakings for the sale of Edinburgh Airport were accepted by the CC on 11 May 2012.
6. On 15 October 2012 BAA announced a change of corporate name from BAA Limited to Heathrow Airport Holdings Limited (HAH) and for the company which owned Stansted from BAA (AH) Limited to Heathrow (AH) Limited.
7. In order to approve a purchaser the CC must be satisfied that the proposed purchaser meets the Approved Purchaser Criteria. On 18 January 2013 the CC advised it was satisfied that Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited met the Approved Purchaser Criteria.

8. It is a condition of the sale that the purchaser must give the CC an undertaking preventing for a period of five years from the Commencement Date the onward sale of the airport to anyone other than a buyer which also satisfies the Approved Purchaser Criteria.
9. On 18 January 2013 the CC accepted interim purchaser undertakings from Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited in accordance with section 157 of the Act to prevent action being taken which might impede the taking of any action by the CC under section 138(2) of the Act in relation to the reference (the Interim Purchaser Undertakings).
10. Manchester Airport Group Finance Limited has agreed to purchase the entire issued share capital of Stansted Airport Limited. Manchester Airport Group Finance Limited is currently a wholly-owned subsidiary of The Manchester Airport Group PLC, which, in turn, is currently the ultimate holding company of the Manchester Airport group. However, a new group corporate structure will be put in place prior to Manchester Airport Group Finance Limited completing its acquisition of Stansted Airport Limited. Under the new group structure, a newly incorporated company, Manchester Airports Holdings Limited (incorporated on 9 January 2013), will, at the time of completion of that transaction, be the ultimate holding company of the Manchester Airport group.
11. 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.
12. Now each of Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited gives the CC the following Undertakings pursuant to section 159 of the Act:

1. Undertaking not to divest without CC consent

- 1.1 Each of Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited undertakes that it will not, and that it will procure that none of its Affiliates will, enter into any transaction or arrangement referred to in paragraphs 1.1(a) to 1.1(f) or any transaction or arrangement which would, in relation to Stansted Airport Limited, have the same commercial effect as, or a substantially similar commercial effect to, any of the following:
 - (a) divestment of Stansted Airport or a substantial part of the assets or property of Stansted Airport;
 - (b) divestment of a shareholding or interest in Stansted Airport Limited or any Affiliate of Manchester Airport Group Finance Limited that results in a change of control of Stansted Airport Limited;
 - (c) divestment of a shareholding or interest in Stansted Airport Limited or any Affiliate of Manchester Airport Group Finance Limited that creates a position of material influence in relation to Stansted Airport Limited;
 - (d) divestment of any material shareholding or material interest in Stansted Airport Limited or any Affiliate of Manchester Airport Group Finance Limited that affects or could reasonably be expected to affect the provision of management services to Stansted Airport or Stansted Airport Limited;

- (e) divestment of any material shareholding or material interest in Stansted Airport Limited or any Affiliate of Manchester Airport Group Finance Limited that results or could reasonably be expected to result in a material adverse change to the overall financial position of Stansted Airport or Stansted Airport Limited; or
- (f) divestment of any shareholding or interest in Stansted Airport Limited or any Affiliate of Manchester Airport Group Finance Limited or Manchester Airport Group Finance Limited to any of the HAH Entities or their Affiliates,

other than where any of Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited has received prior Notice from the CC consenting to the transaction or arrangement.

- 1.2 Each of Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited hereby confirms that it has entered into these Undertakings for itself and that it has the power to procure the compliance by its Affiliates with these Undertakings.

2. Consent

- 2.1 Each of Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited undertakes that any application by it for the CC's consent shall be made in writing and make full disclosure of every fact and matter that is relevant to the CC's decision including demonstrating how the Approved Purchaser Criteria identified in paragraph 10.142 of the Report and annexed as Schedule 1 to these Undertakings are satisfied.
- 2.2 Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited recognize that where the CC grants consent or approval on the basis of misleading or incomplete information, the consent or approval is voidable at the election of the CC.
- 2.3 In the event that Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited discovers that an application for consent or approval has been made without full disclosure and is therefore incomplete it undertakes to:
 - (a) inform the CC in writing identifying the particulars in which the application for consent is incomplete within three working days of becoming aware that the application is incomplete; and
 - (b) at the same time or as soon as possible thereafter provide to the CC an application for consent that is complete.
- 2.4 Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CC at least five working days, or such lesser period as the CC may allow, before the day on which the CC's consent or approval is necessary to avoid a breach of these Undertakings.
- 2.5 Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited recognize that the CC shall use all reasonable endeavours to grant or refuse any consent or approval within the five-working-day period referred to in paragraph 2.4.

3. Directions

- 3.1 Each of Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited will, insofar as it is 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.

4. Commencement

- 4.1 These Undertakings shall come into force on the day on which these Undertakings are accepted by the CC.

5. Termination

- 5.1 These Undertakings shall remain in force until five years from the Commencement Date of the Interim Purchaser Undertakings, or such earlier time as the CC and the Parties shall agree.
- 5.2 The variation, termination, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights arising prior to such variation, termination, release or supersession.

6. Effect of invalidity

- 6.1 Each of Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited undertakes that should any provision of these Undertakings be held by any court or tribunal to be contrary to law or invalid for any reason it will continue to observe the remaining provisions.
- 6.2 Each of Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited undertakes that it shall not rely on any default or want of authority on the part of any signatory or any officer or employee thereof in the execution of these Undertakings unless directed to do so by the CC.

7. Interpretation

- 7.1 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in these Undertakings.
- 7.2 These Undertakings are to be interpreted and applied so as to give effect to the conclusions of the CC as to the need for a purchaser undertaking stated in Part 10 of the Report.
- 7.3 A notification under these Undertakings may be given to the CC by giving it to Remedies Manager, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD.
- 7.4 A notification under these Undertakings may be given to Manchester Airport Group Finance Limited by giving it to Emma Terry, General Counsel, The Manchester Airport Group, Olympic House, Manchester Airport, M90 1QX.
- 7.5 For the purposes of these Undertakings:

'Affiliate' means with respect to any person, any other person directly or indirectly controlled by such person, any other person directly or indirectly controlling such person and any other person directly or indirectly controlled by that controlling person;

'Approved Purchaser' means any person approved by the CC as a purchaser;

'Approved Purchaser Criteria' means the criteria identified in paragraph 10.142 of the Report and annexed as Schedule 1 of these Undertakings;

'CC' means the Competition Commission;

'change of control' means where any person, taken together with its Affiliates, ceases to be able to direct or cause the direction of, whether directly or indirectly, the activities, management and/or policies of another person, including without limitation by that person:

- (a) ceasing to hold more than 50 per cent of the then outstanding securities issued by, or economic interests in, such person;
- (b) ceasing to hold or be able to exercise more than 50 per cent of the voting rights in such other person; or
- (c) ceasing to be able to appoint and remove a majority of the directors or management of that other person;

'Commencement Date' means the day on which the Interim Purchaser Undertakings are accepted by the CC;

'divest' means sell, transfer, convey, or agree to sell, transfer or convey, or grant or agree to grant any right or interest legal or equitable in or over, or allot, issue or create, or agree to allot, issue or create, any interest or securities or otherwise in whole or part dispose of or relinquish control over, agree to dispose of or relinquish control over, whether through a single transaction or a series of transactions, provided that the creation, or agreement to create, or subsistence of, any security interests (whether by way of mortgage, charge, pledge, assignment, transfer or otherwise) by Manchester Airport Group Finance Limited or any of its Affiliates is not a divestment for the purposes of these Undertakings, and **'divestment'** shall be construed accordingly;

'HAH Entities' means FGP Topco Limited and its Affiliates including but not limited to Heathrow Airport Holdings Limited and Heathrow (AH) Limited;

'Interim Purchaser Undertakings' means the undertakings given by Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings Limited and accepted by the CC on 18 January 2013;

'material adverse change to overall financial position' means a change that, in all the circumstances at the relevant time, would or could reasonably be expected to have a material adverse effect on the overall financial position of Stansted Airport or Stansted Airport Limited;

'material influence' means beneficial ownership of or the ability to control more than 30 per cent of ordinary share capital or voting rights in the company concerned or (in the case of a person which is not a company) beneficial ownership of or an

entitlement to more than 30 per cent of the economic interests and/or voting rights in, or issued by or in respect of, that person;

'material interest' means an interest of 5 per cent or greater;

'material shareholding' means a shareholding of 5 per cent or greater;

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

'Report' means the Report of the CC published on 19 March 2009 and titled *BAA airports market investigation: A report on the supply of airport services by BAA in the UK*;

'Stansted Airport Limited' means the company of that name incorporated in England and Wales with the number 1990920 and having its address for service in the UK at Enterprise House, Bassingbourn Road, London Stansted Airport, Stansted, Essex CM24 1QN;

'Undertakings' means these Final Undertakings; and

'working day' means any day other than a Saturday or Sunday on which banks are open for business in England;

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

7.6 For the purposes of these Undertakings:

(a) references to a 'person' shall be construed so as to include any individual, firm, partnership, body corporate, association, government, state or agency of a state or other entity (whether or not having a separate legal personality);

(b) references to a 'shareholding' shall be construed so as to include any holding of shares or other securities or rights in respect of securities which give ownership, voting and/or economic rights over or in respect of a body corporate; and

(c) references to an 'interest' shall be construed so as to include any interest whatsoever, whether in respect of legal and/or beneficial ownership or title, control of and/or voting rights or the economic or other rights or benefits, including an interest through a shareholding or by virtue of being a partner or a member.

Signed by duly authorized signatories:

FOR AND ON BEHALF OF

MANCHESTER AIRPORT GROUP FINANCE LIMITED

BY

THE MANCHESTER AIRPORT GROUP PLC

BY

MANCHESTER AIRPORTS HOLDINGS LIMITED

BY

Schedule 1

Approved Purchaser Criteria taken from paragraph 10.142 of the Report

- (a) *Independence from BAA and ADI/Ferrovial.* A purchaser's independence from BAA should not be impaired by major operational dependencies (eg IT) other than in a transitional form. Existence of significant economic relationships with the Ferrovial consortium or any of its members would be a major area of concern but would be subject to assessment on a case by case basis regarding the extent of influence.
- (b) *Appropriate expertise.* If a purchaser operates at least one major international airport, then, prima facie, we will interpret this as providing strong evidence that the purchaser possesses appropriate expertise to operate and develop the airports in question as viable independent competitors and thus address the AECs effectively. However, we will wish to understand how the purchaser intends to apply this expertise to the divestiture airport. If a purchaser does not operate such airports, then we will need to be provided with persuasive evidence regarding its access to expertise and ability to provide a management team with comprehensive experience of operating and developing airports. Where the existing BAA airport management team will be employed by the purchaser, this should in any event be supplemented with management with appropriate strategic, regulatory and financial skills to fulfil the functions currently resourced at a group level. The purchaser will also need to satisfy the CAA's Safety Regulation Group regarding management proficiency and will also need to satisfy the DfT regarding security regulations. For each purchaser, we would expect to see a comprehensive business plan that demonstrates the purchaser's intentions and abilities to operate and develop the airport and provides a sound basis for long-term financial projections with accompanying sensitivity analysis. For all purchasers, but particularly consortia, we would expect to see clearly defined governance arrangements setting out management processes, voting rights, reserved matters, etc.
- (c) *Appropriate financial resources.* A purchaser should have access to sufficient financial resources to acquire, develop and operate the airport concerned. This should be evidenced by robust long-term financial projections and sufficient head room in finance facilities or capacity to raise capital to cope with significant adverse conditions. We would expect a purchaser to have access to resources to develop the airport and create capacity when required. In considering this issue, we would have regard to the impact of government policy on the airport's prospects for expansion.
- (d) *Absence of further competitive concerns.* A purchaser should not have significant horizontal overlaps with the airport to be acquired. Vertical issues, such as the involvement of airlines in purchaser consortia, will be reviewed on a case by case basis. In principle, we welcome any structure that would deliver a customer-focused approach to the management of the airport. However, we would be concerned if an airline's economic involvement in a consortium could result in exclusionary behaviour towards its competitors, although we recognize that such issues would be limited if the airlines had limited ownership and voting rights *and* there were appropriate controls in place. We note that, in any event, the divestiture will be subject to normal merger control procedures.