

MARKET INVESTIGATION INTO THE SUPPLY OF AIRPORT SERVICES BY BAA

Notice of intention to release Final Undertakings pursuant to section 159 of and Schedule 10 to 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.
2. 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; and
 - (c) a package of remedies would be effective in remedying the AECs identified in the report.
3. 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.
4. In May 2009, BAA challenged the legality of findings in the report requiring divestiture of Stansted Airport and either Edinburgh or Glasgow Airport.
5. On 21 December 2009 the Competition Appeal Tribunal (CAT) quashed the decisions in the CC's report concerning the common ownership of airports.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. 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 meant that the divesting of Stansted Airport would not be affected by the run-up to the 2012 Olympics.
14. 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.
15. 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 came into force immediately.
16. Undertakings accepted by the CC may be varied, superseded or released by the CC in accordance with section 159 of the Act.
17. On 11 May 2012 the CC accepted Final Purchaser Undertakings in relation to Edinburgh Airport from Global Infrastructure Investors II, LLC, for itself and on behalf of Global Infrastructure GP II, LP, Global Infrastructure GP II Feeder, LP, Global Infrastructure Partners – II A1, LP, Global Infrastructure Partners II – B, LP, Global Infrastructure Partners II-B Feeder Fund, L.P., Global Infrastructure Partners II – C, LP, Global Infrastructure Partners II – D1, LP, GIP Green Acquisition Partners, LP, GIP Green Acquisition Partners II, LP and Global Infrastructure Management, LLC.
18. Divestment of Edinburgh Airport was completed on 31 May 2012.
19. 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.
20. On 5 February 2013 the CC accepted Final Purchaser Undertakings in relation to Stansted Airport from Manchester Airport Group Finance Limited, The Manchester Airport Group PLC and Manchester Airports Holdings.
21. Divestment of Stansted Airport was completed on 28 February 2013.
22. In accordance with section 183(4)(c),(4)(d)and (6) of the Act the reference is not finally determined until the making of the last undertaking in the group of final

undertakings, or 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.

23. The reference is now finally determined with the completed divestment of Edinburgh and Stansted airports.
24. The CC now gives notice of its intention to release HAH (formerly known as BAA) from the Undertakings. The CC invites written representations from any person or persons who wish to comment. Representations should reach the CC by **5pm on 25 March 2013** and be sent to:

The Inquiry Manager
BAA Airports Inquiry
Competition Commission
Victoria House
Southampton Row
London
WC1B 4AD

or by email: airports@cc.gsi.gov.uk

25. The CC will have regard to any representations made in response to this Notice. In the absence of any written representations the CC proposes to release HAH from the Undertakings.

Laura Carstensen
Group Chairman
On behalf of the CC
11 March 2013