

## THE SUPPLY OF AIRPORT SERVICES BY BAA

### NOTICE OF ACCEPTANCE OF FINAL UNDERTAKINGS PURSUANT TO SECTION 159 AND SCHEDULE 10 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 United Kingdom.

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;
  - (i) paragraph 5.42 set out the finding that Aberdeen's comparatively isolated geographical position, combined with other general factors that deter entry, are features that restrict airport competition and therefore give rise to an AEC;
- (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;
  - (i) paragraph 10.215(a) concluded that the CC should require undertakings from BAA comprising a requirement to publish audited accounts and segmental analysis on a depreciated replacement cost basis for Aberdeen together with other relevant information as indicated in the Report; and
  - (ii) paragraph 10.215(b) concluded that the CC should require undertakings from BAA comprising, inter alia, a requirement to consult at least annually with airport users and other relevant stakeholders at Aberdeen regarding its expected capital expenditure programme. This would require the timely publication of information on the airport masterplan, a summary forward programme of capital projects together with forecast costs and details of individual key projects to the airlines and other interested parties and the creation of a forum for the proposals to be discussed.

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.

The CC published a notice of proposal to accept Final Undertakings on 24 September 2009. In accordance with the Enterprise Act 2002, all representations made during the minimum 15 day statutory consultation period have been considered. Non-material modifications have been made to the Final Undertakings as a result of such representations and the Final Undertakings have been entered into in the form attached. The Final Undertakings shall come into force accordingly.

The Final Undertakings contain a requirement to publish a Consultation Protocol that has been approved by the CC. The Consultation Protocol has not been published as part of the Final Undertakings. Instead, the Final Undertakings contain a hyperlink to the Aberdeen

Airport Limited website where the latest version of the Consultation Protocol will be published.

Undertakings accepted by the CC may be varied, superseded or released by the CC in accordance with section 159 of the Act.

Peter Freeman QC  
*Chairman*  
On behalf of the CC  
5 May 2010

## THE SUPPLY OF AIRPORT SERVICES BY BAA

### **Final Undertakings in relation to Aberdeen Airport given by FGP Topco Limited, ADI Finance 1 Limited, ADI Finance 2 Limited, BAA Limited, BAA (Non Des Topco) Limited, BAA (NDH1) Limited and Aberdeen Airport Limited under section 159 of the Enterprise Act 2002**

On 29 March 2007 the Office of Fair Trading (OFT) 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 United Kingdom.

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;
  - (i) paragraph 5.42 set out the finding that Aberdeen's comparatively isolated geographical position, combined with other general factors that deter entry, are features that restrict airport competition and therefore give rise to an AEC;
- (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;
  - (i) paragraph 10.215 concluded that the CC should require undertakings from BAA comprising, inter alia, a requirement to consult at least annually with airport users and other relevant stakeholders at Aberdeen regarding its expected capital expenditure programme. This would require the timely publication of information on the airport masterplan, a summary forward programme of capital projects together with forecast costs and details of individual key projects to the airlines and other interested parties and the creation of a forum for the proposals to be discussed.

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.

Now FGP Topco Limited, ADI Finance 1 Limited, ADI Finance 2 Limited, BAA Limited, BAA (Non Des Topco) Limited, BAA (NDH1) Limited and Aberdeen Airport Limited (the Aberdeen signatories) give the CC the following undertakings in relation to Aberdeen Airport pursuant to section 159 of the Act.

## **1. Aberdeen Airport consultation**

- 1.1 The Aberdeen signatories undertake to consult annually, or with such greater frequency as the programme requires, on the prospective capital expenditure programme for the current and following financial years for Aberdeen Airport with the users of Aberdeen Airport and other interested persons.
  - 1.1.1 Within five business days of the Notification Day the Aberdeen signatories will publish, on the relevant section of the Aberdeen Airport website, the Consultation Protocol, approved by the CC detailing the approach to consultation on the following:
    - (a) the airport master plan;
    - (b) the strategic plan and capital investment plan; and
    - (c) details of key projects.
  - 1.1.2 Having sought and obtained the agreement of the Airport Users, the Aberdeen signatories may amend the Consultation Protocol once in any 12 month period with the consent of the OFT. The Aberdeen signatories shall not seek to amend the Consultation Protocol in the 12 month period following publication in accordance with paragraph 1.1.1 above.
  - 1.1.3 The Aberdeen signatories recognize that in considering whether to provide consent to the amendment of the Consultation Protocol the OFT may consult Airport Users and the Civil Aviation Authority (CAA).
  - 1.1.4 The Aberdeen signatories will publish, on the relevant section of the Aberdeen Airport website, any updated versions of the Consultation Protocol.
- 1.2 The Aberdeen signatories shall ensure that a forum is available in which the capital expenditure programme may be discussed.

## **2. Notice**

- 2.1 Should the Aberdeen signatories need to give Notice to the CC or the OFT in relation to any matter, including any factor affecting the performance of their obligations in accordance with these undertakings, they will give this Notice in writing.

## **3. Directions**

- 3.1 The Aberdeen signatories will comply with such written directions or requests for information 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.
- 3.2 The Aberdeen signatories will comply with such written directions or request for information as the OFT 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 Commencement Day.

## 5. Termination

- 5.1 The Aberdeen signatories recognize and acknowledge that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 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 The Aberdeen 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.
- 6.2 The Aberdeen signatories undertake that they shall not rely 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.

## 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 remedies to the AECs stated in paragraphs 10.198 to 10.219 of the Report.
- 7.3 A notification under these undertakings may be given to the CC by giving it to The Remedies Manager, Competition Commission, Victoria House, Southampton Row, London, WC1B 4AD, email [tim.oyler@cc.gsi.gov.uk](mailto:tim.oyler@cc.gsi.gov.uk).
- 7.4 A notification under these undertakings may be given to the OFT by giving it to Assistant Director, Markets Policy and Remedies, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX.
- 7.5 A notification under these undertakings may be given to BAA by giving it to Carol Hui, General Counsel, Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW (email [carol.hui@baa.com](mailto:carol.hui@baa.com)).
- 7.6 For the purposes of these undertakings:

**'Aberdeen Airport Limited'** means the company of that name incorporated in Scotland with the number SC096622 and having its address for service in the United Kingdom at St Andrew's Drive, Glasgow Airport, Paisley PA3 2SW;

**'ADI Finance 1 Limited'** means the company of that name incorporated in England and Wales with the number 05723977 and having its address for service in the United Kingdom at Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;

**'ADI Finance 2 Limited'** 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 Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;

**'Airport Users'** means those airline and helicopter operators with annual passenger charges of more than £100,000 at Aberdeen Airport;

**'BAA (NDH1) Limited'** means the company of that name incorporated in England and Wales with the number 06408392 and having its address for service in the United Kingdom at Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;

**'BAA Limited'** means the company of that name incorporated in England and Wales with the number 5757208 and having its address for service in the United Kingdom at 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 Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;

**'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 Day'** means the day on which these undertakings are accepted by the CC;

**'Consultation Protocol'** means the consultation protocol approved by the CC, the latest version of which can be found at [www.aberdeenairport.com](http://www.aberdeenairport.com);

**'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;

**'FGP Topco Limited'** means the company of that name incorporated in England and Wales with the number 05723961 and having its address for service in the United Kingdom at Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;

**'Notification Day'** means the day on which acceptance of these undertakings is notified to BAA;

**'OFT'** means the Office of Fair Trading; and

**'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*;

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

..... Signature

Carol Hui  
General Counsel  
15 April 2010

..... Signature

CS Matthews  
CEO  
15 April 2010