



Agenda Item	Reference HACC.505
Date: September 16 2007	
Competition Commission: BAA airports market investigation- Issues Statement	

## BACKGROUND

1. Members will probably be aware from the extensive press and media coverage of the fact that the Office of Fair Trading (OFT) referred the question of the supply of airport services by BAA in the UK to the Competition Commission (C.C) on 29 March 2007.
2. The Commission is now to determine whether there are any features of the market that prevent, restrict or distort competition and, if so, what remedial measures might be taken. On 9 August, following an initial process of information gathering, visits to airports and meetings with interested parties, the Commission put out an Issues Statement of 21 pages setting out what it is proposing to do in collecting and assessing the evidence on all aspects of the seven BAA airports relevant to a Competition Inquiry. The Issues Statement is written very much from an economists point of view.
3. A copy of a News Release dealing with the Issues Statement is annexed to this report.
4. Members will note that in the remarks made by the Chairman of the Inquiry Group, Christopher Clarke, he specifically refers to a number of aspects of airport operations affecting passengers which are amongst the wider concerns of our own Passenger Service Sub-Committee; these include:
  - delays experienced by passengers going through security or immigration
  - availability of facilities such as lifts, escalators and travelators
  - other aspects which may affect passengers experience such as overcrowding, signage and cleanliness
5. The C.C points that if it finds that there is an adverse effect on competition (an AEC) it is required to decide whether action should be taken by it, or whether it should recommend the taking of action by others, for the purpose of remedying, mitigating or preventing the adverse effect concerned or any detrimental effect on customers.
6. The CC Issues Statement deals with all seven of the BAA's airports. This report concentrates specifically on the issues affecting only Heathrow Airport. Annexed to this document is a summary of the main issues.
7. The Issues Statement is a complex and lengthy document, much of it dealing with matters not really within the purview of this Committee and any observations at this first stage are required by 28 September. Whilst some Members, particularly the airline representatives, may have views they would advocate being adopted by

the Committee, it is considered that it would be more appropriate and productive to await the provisional findings and possible remedies of the Commission, expected from mid-summer 2008 onward, when the issues will have been narrowed down, before the HACC considers a detailed response.

8. There would then be an opportunity for the HACC to consider the findings of the Commission, debate them and make any representations thought necessary.

9. The Commission envisages the following timetable:

* March/April 2008	Further hearings with the main parties
* June	Deadline for all parties responsibilities/submissions required
* June/July	Provisional findings&(if required) possible remedies notified
* July/August	Remedies hearings (if required)
* August/September	Final report published if no adverse effect on competition
* October	Final remedies proposals for consultation
* November	Final deadline for all parties responses/submissions
* December	Final report published
* 29 March 2009	Statutory deadline

## **CONCLUSION AND RECOMMENDATION**

**That the Competition Commission be informed that whilst the subject of the Inquiry is a matter of importance to the HACC, the Committee would wish to delay taking a view of the matter until a later stage in the Inquiry procedure when the issues are better defined.**

## APPENDIX

### STATEMENT OF ISSUES

1. The Commission points out that it is also currently carrying out an inquiry into the maximum level of airport charges at Heathrow and Gatwick airports for the five years beginning on 1 April 2008 on a reference to it from the Civil Aviation Authority.
2. The HACC has considered the proposals emanating from the CAA on several occasions in the lead-in to the reference to the Commission which has noted that there is potentially some overlap of issues between the two inquiries although the legal frameworks are quite different.
3. The Commission recognises that it will need to take into account the increasing significance of low cost carriers, possibly their extension into long haul as well as short haul services, and their different requirements from other (legacy) airlines. At present there is very little activity of this nature at Heathrow Airport although airlines such as BMI have indicated their intention to enter this market in the future.
4. Product market definition – in addition to airport services, the Commission believes it may need to define a number of markets for different services provided by BAA or by other suppliers under arrangements with BAA such as ground handling services which it licenses, or the separate commercial services for passengers such as catering, retail or car rental services.
5. It will need to consider whether some services, such as the supply of airline offices or car parking are affected by off-airport competition although aeronautical services (those used in connection with the landing and parking of aircraft and boarding of disembarkation of passengers) are not.
6. It may be necessary to consider whether there should be any sub-division by services to different categories of airline; one suggestion made is of airport services which enable distinct hub and spoke, point to point or cargo operations. Another possible sub-division is between short haul and long haul operations.
7. The Commission notes that there is scope for transfer passengers to substitute between British Airways at Heathrow and other airlines with different hubs e.g Paris (CDG) Frankfurt and Amsterdam(Schipol)

### COMPETITIVE EFFECTS

8. In assessing the extent of competition in the relevant markets, both airport and airline markets are likely to be relevant. In considering the extent of the market power held by each BAA airport, information likely to be considered includes:
  - \* the extent of overlaps between different catchment areas
  - \* the determinants of passenger choice of airports; accessibility to the airports and the range and frequency of services available from them
  - \* airline costs to move from an airport and operational requirements such as runway length, whether they use the airport as a hub for their own operations or as a network hub with other airlines
  - \* the extent to which capacity constraints limit airline's ability to switch airports within a particular geographic market and whether it is attractive for airlines to switch aircraft to different geographic markets, for example to routes elsewhere in Europe or the world)

## **DEVELOPMENT RESTRICTIONS AND CAPACITY CONSTRAINTS**

9. In the preliminary investigation, the Office of Fair Trading identified both development restrictions and capacity constraints, the alleviation of which could be inhibited by such development restrictions. Airlines suggested lack of spare capacity was likely to reduce the extent of competition in the short term. This may depend on the availability of slots and by terminal, apron, stand or surface access capacity and by airspace capacity.
10. The document recognises that planning restrictions may make entry or expansion in a market difficult or even impossible, particularly in regard to runway capacity, terminal capacity and surface access capacity. As well as the possibility of refusal of planning permission, the length of time and expense involved are likely to deter entry and expansion.
11. Customer demand may mean it can be met more economically by a single airport; some passengers may prefer the availability of more frequent flights from one airport than less frequent flights from each of two airports close to one another and for given passenger demand it may be cheaper to operate several flights a day from one rather than two airports.

## **REGULATION**

12. As Members will be aware, the BAA London airports are subject to economic regulation by the CAA and the Commission concludes that it has used its powers sparingly in the past and the Authority has said it would generally expect to apply the relevant powers in a way that was in line with the Competition Act. Nonetheless, the Commission may need to consider whether the economic regulation could distort competition.
13. There is also a proposed European Union Directive on airport charges which could have effects in the future, both as regards price discrimination and more generally, e.g by allowing each airline to appeal its prices to a national regulator.

## **COMMON OWNERSHIP OF AIRPORTS BY BAA**

14. The main economic factors relevant to considering BAA's common ownership of airports are:
  - wider evidence on the extent to which separately owned airports compete; examples have been quoted of competition between airports in the UK and elsewhere
  - the extent of potential demand, substitutability between the airports and the potential to switch by both airlines and passengers
  - any features of the market, for example capacity constraints, that reduce the intensity of competition between independently owned airports
  - the ability of independently owned airports to coordinate prices or investment decisions without overt collusion
  - the effect of joint ownership on the incentives for both capital expenditure and operations (including both service levels and efficiencies)
  - other evidence on the performance of the airports, including pricing, profitability, investment and service

## **THE BAA SOUTH EAST AIRPORTS**

15. The main potentially adverse characteristics of these airports are claimed to be - development restrictions, capacity and other constraints on the supply of airport services, regulation, and common ownership by BAA – together with price control by the CAA making the analysis of effects more complex

## **BAA ON DEVELOPMENT RESTRICTIONS AND CAPACITY**

16. In the BAA submission, on the Commission's website, it argued that taken together, development restrictions and capacity constraints were a feature of the market that potentially adversely affected competition. It pointed out that with almost no unused slots throughout the day at Heathrow (all year) or at Gatwick (summer) and few at Stansted at peak times, there is substantial excess demand for runway capacity, particularly at Heathrow which could be alleviated by the policies of the 2003 White Paper for new runways at Stansted by around 2015 and 2020 at Heathrow.
17. BAA pointed out that introduction of Mixed Mode use of runways at Heathrow would increase capacity somewhat earlier. The C.C records that airlines have criticised the scale and cost of the proposed development at Stansted, that the White Paper did not propose new runway development at Gatwick and that the owners of Luton Airport have abandoned plans to construct a longer replacement runway.
18. The document records that market entry in the South East is also made more difficult by the fact that the existing airports already occupy the most favourably located acceptable sites. The few remaining acceptable sites are thus likely to be disadvantaged by being remote from London.
19. The Commission has said that it will have to consider the arguments that BAA has been insufficiently proactive in attempting to overcome development restrictions, that it has tended to await the outcome of government policy rather than influence it, and that separate ownership could itself have acted as a greater stimulus to overcome development restrictions to the benefit of users of the individual airports.