

THE SUPPLY OF AIRPORT SERVICES BY BAA

Notice of acceptance of Final Undertakings pursuant to 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 concerning the supply of airport services by BAA in the UK (the Reference).
2. The CC published its report titled *BAA airports market investigation* 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:
 - 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.
 - A condition of our approval of the purchaser will be an undertaking from the purchaser preventing the onward sale of the airport within a given period unless the CC is satisfied that the same criteria required on the initial divestiture are fulfilled by the new purchaser.
3. The Reference has not been finally determined in accordance with section 183(3) of the Enterprise Act 2002.
4. On 23 April 2012 the CC published a notice of proposal to accept Purchaser Undertakings from Global Infrastructure Investors II, LLC, for itself and on behalf Global Infrastructure GP II, LP, Global Infrastructure Partners – II A1, LP, Global Infrastructure Partners II – B, LP, Global Infrastructure Investors II – C, LP, Global Infrastructure Partners II – D1, LP, GIP Green Acquisition Partners, LP and Global Infrastructure Management, LLC. No representations were received and the CC has decided to accept Purchaser Undertakings in the form consulted on with no significant changes.
5. 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.
6. The CC under section 159 of the Act now accepts the Purchaser Undertakings given by: 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, a copy of which is set out in the attached annex. The Purchaser Undertakings come into force accordingly.

7. 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

11 May 2012

THE SUPPLY OF AIRPORT SERVICES BY BAA

Final Undertakings given by 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 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 (EA02) 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 EA02 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. 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 19 October 2011 BAA nominated Edinburgh Airport for divestiture. 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.
4. In order to approve a purchaser the CC must be satisfied that the proposed purchaser meets the Approved Purchaser Criteria. On 23 April 2012 the CC advised it was satisfied that the Parties meet the Approved Purchaser Criteria.
5. It is a condition of the sale that the Approved Purchaser must give the CC an undertaking preventing the onward sale of the airport to anyone other than a buyer which also satisfies the Approved Purchaser Criteria.
6. On 23 April 2012 the CC accepted interim purchaser undertakings from the Parties 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).

7. 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.
8. Now Global Infrastructure Investors II LLC for itself and on behalf of the GIP II Entities, Global Infrastructure GP II, LP, and Global Infrastructure Management, LLC gives the CC the following Undertakings pursuant to section 159 of the Enterprise Act 2002:

1. Undertaking not to divest without CC consent

- 1.1 Each of the Parties undertakes that it will not, and that it will procure that none of its Affiliates will, without obtaining the prior written consent of the CC in accordance with paragraph 2 of these Undertakings, enter into any transaction or arrangement which would, in relation to Edinburgh Airport Limited, have the same commercial effect as, or substantially similar commercial effect to, any of the following:

- (a) divestment of all or a substantial part of the assets or property of Edinburgh Airport;
- (b) divestment of a shareholding or interest in Edinburgh Airport Limited or any Affiliate of the Parties that results in a change of control of Edinburgh Airport Limited;
- (c) divestment of a shareholding or interest in Edinburgh Airport Limited or any Affiliate of the Parties that creates a position of material influence in relation to Edinburgh Airport Limited;
- (d) divestment of any material shareholding or material interest in Edinburgh Airport Limited or any Affiliate of the Parties that affects or could reasonably be expected to affect the provision of management services to Edinburgh Airport or Edinburgh Airport Limited;
- (e) divestment of any material shareholding or material interest in Edinburgh Airport Limited or any Affiliate of the Parties that results or could reasonably be expected to result in a material adverse change to the overall financial position of Edinburgh Airport or Edinburgh Airport Limited; or
- (f) divestment of any shareholding or interest in Edinburgh Airport Limited or any Affiliate of the Parties or any of the Parties to the BAA Entities.

2. CC consent

- 2.1 The Parties undertake that any application by them 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 attached as Schedule 1 to these Undertakings are satisfied.
- 2.2 The Parties recognize that where the CC grants consent on the basis of misleading or incomplete information, that consent is voidable at the election of the CC.
- 2.3 In the event that any of the Parties discovers that an application for consent has been made without full disclosure and is therefore incomplete the Parties undertake 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 The Parties shall use all reasonable endeavours to make each application or to procure that each application for consent 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 is necessary to avoid a breach of these Undertakings.

2.5 The Parties recognize that the CC shall use all reasonable endeavours to grant or refuse any consent within the five-working-day period referred to in paragraph 2.4.

3. Directions

3.1 The Parties undertake to comply, insofar as they are able, 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 Final 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.

6. Variation and Release

6.1 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.

6.2 The Parties 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.

6.3 The Parties undertake that they 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. Notice

7.1 A notification under these Undertakings may be given to the CC by giving it to Head of Remedies, Competition Commission, Victoria House, Southampton Row, London, WC1 4AD.

- 7.2 A notification under these Undertakings may be given to the Parties by giving it to the General Counsel, Global Infrastructure Partners, c/o Global Infrastructure Management LLP, The Peak, 5 Wilton Road, London, SW1V 1AN.

8. Interpretation

- 8.1 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in these Undertakings.
- 8.2 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.
- 8.3 For the purposes of these Undertakings:

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

'Approved Purchaser' means any person approved by the CC as a purchaser of Edinburgh Airport Limited;

'Approved Purchaser Criteria' means the criteria set out in paragraph 10.142 of the Report and reproduced in Schedule 1;

'BAA Entities' means the corporate entities identified in Schedule 2;

'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 UK 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 UK 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 5757218 and having its address for service in the UK 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 UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'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 of the Interim Purchaser Undertakings' means 23 April 2012, the day on which the Interim Purchaser Undertakings were accepted by the CC;

'divest' means to 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 otherwise in whole or part to dispose of or relinquish control over, 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 any of the Parties or their Affiliates is not a divestment for the purposes of these undertakings and **'divestment'** shall be construed accordingly;

'Edinburgh Airport' means the assets and business which constitute the entity known as Edinburgh Airport operated by Edinburgh Airport Limited;

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

'FGP Topco Limited' means the company of that name incorporated in England and Wales with the number 5723961 and having its address for service in the UK at The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW;

'Final Undertakings' means undertakings accepted by the CC pursuant to section 159 EA02;

'GIP II Entities' means Global Infrastructure Partners II-A1 L.P., Global Infrastructure Partners II-B L.P., Global Infrastructure Partners II-B Feeder Fund, L.P., Global Infrastructure Partners II-C L.P., Global Infrastructure Partners II-D1 L.P., GIP Green Acquisition Partners, LP and GIP Green Acquisition Partners II, LP;

'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 Edinburgh Airport or Edinburgh 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;

'Parties' means the GIP II Entities, Global Infrastructure Investors II, LLC, Global Infrastructure GP II, LP, Global Infrastructure GP II Feeder, LP and Global Infrastructure Management LLC;

'Undertakings' means these Interim Undertakings; and

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

8.4 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;
- (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; and
- (d) unless the context requires otherwise, the singular shall include the plural and vice versa.

Signed by duly authorized signatories:

FOR AND ON BEHALF OF

GLOBAL INFRASTRUCTURE INVESTORS II, LLC

By: _____

Name:

Title:

GLOBAL INFRASTRUCTURE GP II, L.P.

By: Global Infrastructure Investors II, LLC, its general partner

By: _____

Name:

Title:

GLOBAL INFRASTRUCTURE GP II FEEDER L.P.

By: Global Infrastructure Investors II, LLC, its general partner:

By: _____

Name:

Title:

GLOBAL INFRASTRUCTURE PARTNERS II - A1, L.P.

By: Global Infrastructure GP II, L.P., its general partner,

By: Global Infrastructure Investors II, LLC, its general partner

By: _____

Name:

Title:

GLOBAL INFRASTRUCTURE PARTNERS II - B, L.P.

By: Global Infrastructure GP II, L.P., its general partner,

By: Global Infrastructure Investors II, LLC, its general partner

By: _____

Name:

Title:

GLOBAL INFRASTRUCTURE PARTNERS II – B Feeder Fund, L.P.

By: Global Infrastructure GP II Feeder, L.P., its general partner,

By: Global Infrastructure Investors II, LLC, its general partner

By: _____

Name:

Title:

GLOBAL INFRASTRUCTURE PARTNERS II - C, L.P.

By: Global Infrastructure GP II, L.P., its general partner,

By: Global Infrastructure Investors II, LLC, its general partner

By: _____

Name:

Title:

GLOBAL INFRASTRUCTURE PARTNERS II - D1, L.P.

By: Global Infrastructure GP II, L.P., its general partner,

By: Global Infrastructure Investors II, LLC, its general partner

By: _____

Name:

Title:

GLOBAL INFRASTRUCTURE MANAGEMENT, LLC

By: _____

Name:

Title:

GIP GREEN ACQUISITION PARTNERS , L.P.

By: Global Infrastructure GP II, L.P., its general partner,

By: Global Infrastructure Investors II, LLC, its general partner

By: _____

Name:

Title:

GIP GREEN ACQUISITION PARTNERS II, L.P.

By: Global Infrastructure GP II, L.P., its general partner,

By: Global Infrastructure Investors II, LLC, its general partner

By: _____

Name:

Title:

Schedule 1

The CC's Approved Purchaser Criteria

In assessing purchasers against these criteria, we will seek evidence to demonstrate the intention and ability of purchasers to operate and develop the airports in question as viable independent competitors and thus address the AECs effectively:

- (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 Civil Aviation Authority's Safety Regulation Group regarding management proficiency and will also need to satisfy the Department for Transport 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.

Schedule 2

FGP Topco LTD Group Structure Chart 28 March 2012

