

BAA AIRPORTS – EVALUATION OF THE COMPETITION COMMISSION’S 2009 MARKET INVESTIGATION REMEDIES

Terms of reference

Background

1. The Competition and Markets Authority (CMA) has commenced an evaluation of the impact of the decisions of the Competition Commission’s (CC) 2009 BAA airports market investigation.¹
2. This evaluation will consider the evidence available relating to the impact, proportionality and effectiveness of the remedies and the remedies implementation process and identify lessons learnt from this market investigation. Research, analytical modelling and stakeholder engagement will feature strongly throughout the evaluation. The evaluation will focus on the identification of the passenger benefits arising from the remedies.

Overall objectives

3. The objectives are to evaluate the remedies implemented in light of the CMA’s mission to promote/enforce competition and make markets work well for consumers, and includes.
 - (a) Assessing the impact of the remedies and in doing so:
 - (i) considering the individual and cumulative impact;
 - (ii) considering the extent to which changes to the market are directly or otherwise associated with the CC’s remedies; and
 - (iii) assessing the costs of the market interventions made and evaluate associated consumer benefits.

¹ CC final report: BAA.

- (b) Where possible, quantifying in monetary terms the impact of the CC remedies.
 - (c) Assessing lessons learnt for future market investigations and associated remedies.
- 4. It is important to clarify that the project is an evaluation of the remedies rather than a new market study. As such, we will not assess the merits of subsequent policy approaches or determinations by relevant bodies such as the Civil Aviation Authority (CAA). Our evaluation will assess the impact of the CC's remedies in its 2009 report and associated CC reports such as the possible material change of circumstances report, not decisions that have followed by other parties.
- 5. Consistent with this approach, we will not be evaluating the recommendations of the Airports Commission or including the impact on future competition of the government's upcoming decision on airport capacity expansion. However, in this evaluation project we will assess how the capacity expansion process may have been impacted by the CC's market investigation remedies and the recommendations made by the CC regarding the process for determining where capacity should be expanded.

Overall assessment areas

- 6. The primary assessment areas will be:
 - (a) the divestments in the south east airport market (Gatwick – December 2009; Stansted – March 2013);
 - (b) the divestment of Edinburgh airport (June 2012);
 - (c) the behavioural remedies at Aberdeen airport;
 - (d) the recommendations regarding airport regulation; and
 - (e) the recommendations regarding government policy.

Methodology and data sources

- 7. A quantitative and qualitative assessment of the costs and benefits will be determined.
- 8. A third party consultant (ICF International) has been appointed by the CMA to undertake quantitative analysis, including estimating the causal relationship between the remedies which resulted from the CC's original market

investigation and the current state of the affected airports market and quantifying the benefits to consumers. ICF International will collect and analyse data relevant to this evaluation project and plans to undertake an online consumer panel survey to support the objective of identifying if passengers have benefited from the remedies implemented.

9. The qualitative analysis will comprise a series of case studies, together with stakeholder engagement (interviews, questionnaire, site visits etc).

Investigation areas

10. The evaluation will consider each of the affected geographic areas separately
(a) south east England, (b) lowland Scotland, and (c) Aberdeen.

Separate ownership/divestment

11. Within the south east England and lowland Scotland geographic areas, we intend to try to identify for each airport, the impact of separate ownership on passengers in terms of, for example:

- (a) Routes.
- (b) Aeronautical charges, including level and structure.
- (c) Commercial negotiations between airports and airlines.
- (d) Non-aeronautical activities at the airports.
- (e) Airline charges to passengers.
- (f) Cargo markets.
- (g) Capacity availability within pre-existing infrastructure.
- (h) Service quality:
 - (i) to airlines; and
 - (ii) to passengers.
- (i) Innovation:
 - (i) for airlines; and
 - (ii) for passengers.
- (j) Efficiency:

- (i) capital expenditure; and
 - (ii) operating expenditure.
- (k) The process for making decisions on capacity expansion in south east England.

Behavioural remedies

12. We will assess the impact on outcomes for passengers of the behavioural remedies imposed at Aberdeen airport. We will also consider the CC's recommended remedies to the CAA relating to Heathrow Airport's consultation procedures and quality provisions.

Economic regulation of airports

13. With a particular focus on competition and the London airports, we will review the operation of the new regulatory framework introduced by the Civil Aviation Act 2012 that followed the recommendation for reform of the framework governing the economic regulation of airports. In particular, we will review:
- (a) the revised process for the regulatory review, including the introduction of the three part test for the imposition of economic regulation at an airport and the CAA's decisions being subject to appeal (as opposed to the previous mandatory reference to the CC under the previous framework);
 - (b) the additional flexibility on regulatory interventions afforded by the new framework; and
 - (c) changes to the costs of economic regulation.

Government policy and planning process

14. We will assess the extent to which the recommendations to government have been implemented and the benefits or otherwise of their implementation (or non-implementation).²

² Since government decisions regarding runway capacity expansion are not concluded it would be speculative to assess the linkages to the remedies imposed by the CC and hence we expect that this area of evaluation will focus on the process to date.

Remedies process

15. The overall review of the remedies implementation process will consider:
- (a) the effectiveness of the divestment process overall, including timing decisions;
 - (b) the development and application of the criteria for assessing potential bidders;
 - (c) the effectiveness of the bidder evaluation process;
 - (d) cost of divestment – ex post versus ex ante expectations;
 - (e) for the Aberdeen behavioural remedies, the costs of implementation (including set up and ongoing costs) versus ex ante expectations; and
 - (f) identification of any unforeseen issues arising from the remedies.

Considerations

16. The evaluation study will consider:
- (a) the extent to which divestment remedies resulted in greater competition and improved outcomes in terms of price, quality and innovation;
 - (b) the extent to which investment decisions by airports are more efficient, aligned to consumer needs and consistent with a need for major infrastructure planning;
 - (c) the extent to which behavioural remedies at Aberdeen airport led to increased transparency and improved consultation processes with airlines and other interested parties; and
 - (d) the extent to which regulatory and government policy recommendations were implemented and operational by reference to changes to incentives, efficiency of operations, regulatory costs/burden, capacity constraints and consumer outcomes.

To the extent these issues interact, the evaluation study will seek to take such interactions into account.

Consideration of the counterfactual

17. The evaluation will seek to identify the individual and cumulative effects of the remedies and also the evolved position that would have been reached without

any remedies. However, we recognise the challenges around choosing the right benchmarks due to the potential interactions between the impacts of the remedies and uncertainties around how the various markets would have evolved absent the interventions. We will take into consideration these potential interactions and uncertainties when developing our analytical framework as a basis to assess the counterfactual. The counterfactual analysis will use quantitative techniques to establish how the market would have evolved absent the remedies and recommendations and to what extent differences in airport performance and passenger experiences can be attributed to the CC's remedies.

Governance

18. The CMA has assigned a project team leading this evaluation, who will lead the coordination of the research and write the CMA's report. They will also coordinate the involvement of the appointed consultants who are leading on the quantitative assessment of the remedies – ICF International. This project team will be guided by the project steering group that is jointly chaired by two senior directors from the Remedies, Business and Financial Analysis group and the Office of the Chief Economic Advisor.
19. The evaluation project will be signed off by the Executive Committee of the CMA, who take overall responsibility for performance and delivery.

Publication

20. The CMA will publish the final report.

Stakeholders

21. The evaluation will invite full participation from interested stakeholders. It is envisaged these core stakeholders will include:
 - The CAA.
 - The Department for Transport.
 - The Scottish government (specifically Transport Scotland)
 - Airports:
 - Heathrow, Gatwick, Stansted, Luton, London City, Edinburgh, Glasgow, Prestwick, Aberdeen, airport associations eg Airports Council International.

- Airlines:
 - British Airways/IAG, Virgin Atlantic, easyJet, Ryanair, Flybe, TUI, Thomas Cook, Monarch, Emirates, Norwegian, airline associations eg IATA
- Passenger groups/cargo carrier representatives
- Seller (Heathrow Airport Holdings Ltd – previously BAA)
- Purchasers (Manchester Airports Group and Global Infrastructure Partners) and bidders.