



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 179 OF THE ENTERPRISE ACT 2002

CASE NO 1185/6/8/11

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of a notice of application, on 16 September 2011, under section 179 of the Enterprise Act 2002 (“the Act”), by BAA Limited (“BAA”) of The Compass Centre, Nelson Road, Hounslow, Middlesex TW6 2GW, for a review of the decision of the Competition Commission (“the Commission”) contained in a report dated 19 July 2011, entitled “BAA Market Investigation: Consideration of possible material changes of circumstances” (“the 2011 Report”)¹. BAA is represented by Herbert Smith LLP, Exchange House, Primrose Street, London EC2A 2HS (ref: Nusrat Zar).

In an earlier report dated 19 March 2009, entitled “BAA airports market investigation” (“the 2009 Report”), the Commission concluded that BAA’s common ownership of airports in south-east England and lowland Scotland was one of a number of features giving rise to adverse effects on competition (“AECs”), within the meaning of section 134(2) of the Act, in connection with the supply of airport services by BAA. The Commission concluded in the 2009 Report that a package of remedies would be effective in remedying the AECs identified, which package included, in particular, the divestiture of Stansted and Gatwick airport to different purchasers.

By its notice of application dated 18 May 2009, BAA sought a review by the Tribunal of the 2009 Report on two grounds: apparent bias and proportionality. In its judgment dated 21 December 2009, the Tribunal upheld BAA’s challenge on apparent bias, but rejected its challenge on proportionality. The Commission appealed against the Tribunal’s judgment on the first ground, apparent bias, and in its judgment dated 13 October 2010 the Court of Appeal upheld the Commission’s appeal and restored the 2009 Report.

On 18 November 2010, the Commission announced its intention to proceed to implement the package of remedies set out in the 2009 Report. As part of that process, the Commission invited representations from interested parties as to whether there had been any developments since the publication of the 2009 Report which constituted a material change of circumstances (“MCC”) or a special reason within the scope of section 138(3) of the Act, such that it should amend the package of remedies. Having considered submissions from BAA and other parties, the Commission concluded in the 2011 Report that it was still necessary to remedy the AEC identified in the 2009 Report arising from BAA’s common ownership of Heathrow, Gatwick and Stansted airports, and that the remedies proposed in the 2009 Report were still proportionate and appropriate.

BAA submits that the Commission's conclusions in its 2011 Report were flawed on four grounds:

1. The Commission failed in its duty to gather and assess the information necessary to perform its function and / or acted irrationally, in particular as regards its adherence to its assessment of the competition benefits connected with the expansion of runway capacity in circumstances where the prospect of new runway capacity and the principal competition benefits identified in the 2009 Report had fallen away.
2. The Commission’s assessment of whether, notwithstanding the MCC since the 2009 Report, common ownership of Heathrow and Stansted airports gave rise to an AEC, and of the timing and sequencing of the divestiture remedy, was flawed.

¹ The 2011 Report may be found at: http://www.competition-commission.org.uk/inquiries/ref2007/airports/pdf/final_report_excised.pdf



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3. The Commission's analysis of Stansted airport's profitability in the 2011 Report, supporting its findings that the financial situation at Stansted airport did not give rise to a MCC and that the divestiture remedy was proportionate, was irrational.
4. In assessing whether the divestiture remedy remained proportionate, the Commission failed to take into account a relevant consideration, namely, the damage to BAA and its shareholders flowing from the requirement to divest Stansted airport within a short specified period.

Accordingly, BAA submits that the 2011 Report must be quashed and remitted for reconsideration and further investigation in light of the errors identified in its notice of application. BAA also seeks an interim order under section 179(3) of the Act and rule 61 of the Rules suspending the effect of the Commission's decision until further order.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, the Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE
Registrar

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