



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 179 OF THE ENTERPRISE ACT 2002 CASE No: 1110/6/8/09

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 gives notice of the receipt of a notice of application, on 18 May 2009, under section 179 of the Enterprise Act 2002 ("the Act"), by BAA Limited ("BAA") of Heathrow Point West, 234 Bath Road, Middlesex UB3 5AP, challenging the legality of certain findings made by the Competition Commission ("the Commission") contained in a report, published on 19 March 2009, entitled "BAA airports market investigation" ("the Report")¹.

In the Report the Commission concluded that BAA's common ownership of airports in south-east England and lowland Scotland gives 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. It also concluded that a number of other features of the relevant markets give rise to AECs, namely: Heathrow Airport's position as the only significant hub airport in south-east England or indeed the UK; Aberdeen Airport's comparatively isolated geographical position combined with other factors that make it unattractive to serve a catchment area of Aberdeen's size with more than one airport; aspects of the planning system; aspects of government policy; and the current regulatory system for airports.

The Commission concluded that the following package of remedies would be effective in remedying the AECs identified: (a) divestiture of both Stansted Airport and Gatwick Airport to different purchasers; (b) divestiture of either Edinburgh Airport or Glasgow Airport; (c) strengthening of consultation procedures and provisions on quality of service at Heathrow, until a new regulatory system is introduced; (d) undertakings in relation to Aberdeen Airport, to require the reporting of relevant information and consultation with stakeholders on capital expenditure; and (e) recommendations to the Department for Transport in relation to economic regulation of airports.

BAA submits that the findings in the Report requiring the divestiture of Gatwick Airport, Stansted Airport and one of Edinburgh or Glasgow airports (and the findings on which that requirement is based) are unlawful on two separate grounds: (i) apparent bias; and (ii) proportionality.

In relation to the first ground, BAA emphasises that this is a case of apparent bias, not actual bias. BAA submits that the Report is unlawful because the participation of a member of the Inquiry Panel of the Commission during its market investigation contravened the principle of apparent bias, owing to the links between that member and an undertaking interested in acquiring those airports that BAA is required to sell in order to remedy the AECs.

In relation to the second ground, BAA submits that, in assessing the proportionality of the divestiture remedies, the CC has failed to take account, or carry out an assessment of, material considerations relating to the costs of divestiture, particularly in the context of the current financial and economic environment.

Accordingly, BAA seeks the following relief from the Tribunal:

1. an order that the Tribunal quash those findings in the Report requiring the divestiture of Gatwick Airport, Stansted Airport and one of Edinburgh or Glasgow airports and the findings on which that requirement is based; and
2. an order that the Commission pay BAA its costs.

¹ The Report may be found at: http://www.competition-commission.org.uk/rep_pub/reports/2009/545baa.htm

BAA submits that it may be appropriate for the Tribunal to hear further submissions on the nature and scope of the Tribunal's order once the issues raised in the application have been determined.

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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