

# **BRITISH AIRWAYS PLC**

## **Response to the Civil Aviation Authority**

### **UK CAA CONSULTATION ON THE IMPLEMENTATION OF THE CIVIL AVIATION (ALLOCATION OF SCARCE CAPACITY) REGULATIONS 2007**

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## **Response by British Airways**

British Airways welcomes the opportunity to comment on the CAA's proposals regarding the allocation of scarce capacity.

In response to the questions asked by the CAA our response is as follows:

### ***1. Do you have any comments on the proposed changes to the Statement of Policies?***

We have no comments on the proposed changes to the Statement of Policies. However, it is important to British Airways that we have equal access to scarce capacity in bilateral arrangements between other Member States and countries outside the single European aviation market. We would like to know what regulations and procedures, including notification of scarce capacity, other Member States have put in place and whether these have been co-ordinated through the European Commission. If such details are not available, we urge the CAA, through the European Commission, to ensure that Member States act in a co-ordinated and equivalent way so that a level playing field is achieved. Without this, UK airlines could be disadvantaged. For Example, an airline from another Member State might apply to operate a route from the UK for which there is no available capacity. Given that the regulations allow the possibility of substitution, this would trigger the scarce capacity process. UK airlines would be obliged to incur the costs (including the proposed new SCAC charge) and resources necessary to defend their existing operations. We wish to ensure that UK airlines are afforded the same rights by other Member States so that we are able to apply for scarce capacity under their bilateral arrangements and not be met with a blanket refusal if capacity is not available.

### ***2. Do you have any comments on the proposed changes to the Official Record Series 1?***

We have no comments on the proposed changes to the Official Record Series 1.

### ***3. Should the CAA change the way it recovers the cost of administering scarce capacity hearings?***

- (i) We support a change as we agree that cost of administering scarce capacity hearings should not be recovered from the ATL charge. Under S11 of the 1982 Civil Aviation Act, charge schemes should recover the costs associated with the corresponding regulatory activity. The regulatory activity no longer involves the licence – first because applicants need not be UK licence holders; and second because rather than varying the licence, as in the past, the CAA will issue a separate certificate (SCAC).

- (ii) We agree that costs should be recovered from a new SCAC charge, levied on applicants for scarce capacity. This is consistent both with the charging provisions under the Act and the CAA's charging principles, as quoted in the consultation paper. Although a small cross subsidy may exist in the current arrangements, the new regulation would, without the CAA's proposal, increase the risk of a cross subsidy significantly, both in scope (foreign carriers are likely to apply along with UK airlines) and in scale (since more applicants are likely to result in more complexity and hence greater costs). The charge would be consistent with the CAA's commitment to using best endeavours to remove material cross subsidies from the charging schemes.
- (iii) A separate charge would also bring the benefit of cost transparency, which would allow airlines and the CAA to review whether the administrative procedures are proportionate to the decision being taken (and whether improvements could be made).
- (iv) ATL charges should be reduced commensurate with the introduction of the new charge.

***4. If so, what form should a charge take? For example, should it be an up-front application fee or should the costs be recovered from the applicants after the hearing?***

- (i) We do not support option C because this creates too much uncertainty to applicants and, as the CAA points out, could lead to significant under-recoveries and disproportionate administrative costs.
- (ii) We therefore agree with the CAA that Option B is the best of the three options. This approach is fair, lawful and consistent with the charging principles. It also creates good incentives for the CAA to be efficient and to manage the costs of the process, over which it has control. Finally, it would help to ensure that all applications are serious, given that a financial commitment would have to be made at the outset. However, within option B, we would like to make the following comments:
  - a) We do not agree with the implication that the ATL charge should be used as a "top up" fund, for reasons explained above.
  - b) ATL charges should be reduced commensurate with the introduction of the new charge and we would expect to see evidence of this in the 2009/10 charges consultation. If the ATL charge cannot be reduced due to the infrequent nature and unpredictable need for scarce capacity hearings, we should receive clearly identified refunds/waivers equal to the new charges in years where such charges are incurred.

***5. If an up-front application fee is appropriate, is £15,000 set at the right level?***

We would like to see more detail on the costs of the India hearing and on other hearings before commenting on whether £15,000 is the correct amount for the charge. This should be subject to more detailed consultation.

***6. Are there circumstances where the fee should be refundable?***

- (i) Refunds should be provided whenever the CAA does not incur the cost charged under the new procedure.
- (ii) We agree that a practical way of dealing with potential over-charging would be to give partial refunds, on a pro-rata basis, either for straightforward cases or for applicants who withdrew before major costs were incurred.