

CAA consultation on an “indicative airport licence” published November 2011

Response from British Airways, December 2011

INTRODUCTION

British Airways welcomes the opportunity provided by the CAA to comment on the draft indicative licence produced for Parliament, as they prepare to scrutinise the new Civil Aviation Bill.

British Airways notes (from slides 7 and 36) that the CAA will be issuing the first licences to take effect from the start of Q6 (1 April 2014) and that the conditions in them will be capable of appeal to the CC both by licence holders and by materially affected airlines.

We welcome the CAA’s statement that “The draft indicative licence is not designed to represent the CAA’s policy on Heathrow nor the final full licences – these will be subject to exhaustive consultation at a later date.” In fact we would expect the licences to be somewhat different, drawing as much from economic licences in other sectors as from the Q5 settlement. We look forward to engaging in discussion and consultation with the CAA through the process set out in slides 36-37.

It would perhaps be more accurate to call this a “sample licence” than an “indicative licence”. The DfT’s terms of reference required the CAA only to consider matters necessary to convert the existing Q5 settlement into a licence, as well as operating conditions (eg charges, revocation), high level examples of operational resilience conditions and high level examples of alternative forms of regulation. They were specifically asked not to provide financial resilience conditions at this stage as the DfT’s conclusions from the December 2009 consultation will be used. Furthermore, the licence refers to many matters that are specific to the Q5 period (eg yield caps for specific years, triggers for specified projects and existing SQR standards) and these will change.

COMMENTS ON LICENCE PROVISIONS

Part 1 introduction

A statement is needed somewhere in the licence, perhaps as an introduction to Part 1, that the scope of the licence does not extend beyond the economic regulation of airports as set out in Part 1 of the Civil Aviation Bill. It is important that the document is constrained for this purpose and not used as a general vehicle to impose other obligations on the airport or to bind other parties.

Part 1 Condition 2

Heathrow Airport should be defined geographically, because the licence will include provisions for selling assets and it needs to be clear exactly what the airport comprises. As a starting point, everything currently in the RAB should be included within the definition of the licence area.

Operable conditions (Part 2) Condition 1

A clearer commitment from the CAA on fees would be welcomed. For example, that CAA will charge the allocated costs incurred in its airport regulation work along with a fair share of CAA overheads and costs of the CAA's other economic regulation work. This will avoid the real risk of cross-subsidy from or to these schemes. Reference should also be made to the CAA's charging principles as the basis on which charges will be set. This approach would give more specific guidance and commitments without requiring the level of detail that the CAA wishes to avoid in setting out a precise formula.

Part 2, condition 2

- Insolvency must be a revocation condition, as in other licences, to protect consumer interests. Given that the CAA "may" revoke under these conditions, it is essential to give the CAA this option.
- Equally, the loss of the aerodrome's safety licence should also allow the CAA to revoke the licence (though we agree that a serious safety breach does not need to be defined here).
- We support the right for the CAA to revoke in the event that the airport provides false or misleading information.
- We recommend that the CAA considers further how continuity of service would be maintained in the event of licence revocation – either in the Bill itself or through the licence. It is important that the CAA is able to protect passenger interests and the continuity of airport operations if the licence were to be revoked. Otherwise, revocation would be extremely disruptive and the CAA would be deterred from revoking the licence. This would weaken the airport's incentives to comply with licence provisions.

Price control conditions (Part 3)

- We believe that all the PI conditions should be transposed. We do not agree with the DfT that some existing PICs should be excluded.
- Condition 3.3. should be broadened beyond capital investment to facilitate constructive engagement in general. It should therefore cover all price control matters as well as non-regulated charges and related matters such as the Master Plan. Central to this will be a requirement to disclose information to airlines in a timely way and at a level of detail required. There should also be a requirement to consult on the full range of issues and to show how airline comments have been taken into account when decisions are taken. This provision could also cover confidentiality agreements.

Part 4 (Other conditions) Condition 7

Operational resilience is important and we welcome this condition. However, more time is needed to consider this further and in more detail. It will be important to ensure operational resilience but to avoid unintended consequences that might result from making this a licence obligation. For example, the airport might reduce ATMs too much or build in an excessive level of contingency in order to be sure of complying. It is also necessary to consider the needs of future passengers as well as existing passengers. For example, a very cautious approach to safeguarding capacity could compromise future growth. We would like to try and avoid creating conflicts between efficiency and resilience and between contingency and growth. We do welcome the inclusion of an operational resilience condition and would welcome further discussions about how this should be drafted.

In the meantime we have one particular suggestion under 7.3, which is to include an obligation to communicate information to other parties providing services at the airport:

“(d) communicate operational information, conditions and decisions to all companies providing a service to passengers at the airport.”

Alternative forms of regulation

We do not comment in any detail on the ideas in this section, given that further discussion and consultation is expected as the preparatory work for Q6 proceeds.

Slide 24 points out that the CAA will have much greater flexibility to operate different regulatory models and in general we understand and support this point. However, regulatory certainty is important for many stakeholders, including airlines. RAB-based approaches are soundly based, well known and understood. Therefore we think it would be helpful for the CAA to re-state its presumption in favour of RAB based approaches (rather than a simple reference on slide 25), unless there is clear evidence of benefits from switching to another approach.