

DECISION UNDER SECTION 51(6) OF THE AIRPORTS ACT ON THE PROVISION OF TRAVEL OUTLETS AT GATWICK AIRPORT

Summary

1. This document sets out the CAA's decision on an application from BAA to remove the condition applying at Gatwick Airport preventing the airport from allowing less than two travel outlets on the concourse. The CAA published a consultation document on 10 July 2003 and the decision reflects the comments made in response to that document. The CAA has decided to remove the restriction with immediate effect.

Background

2. At the 1996 review of the BAA London Airports, the then Monopolies and Mergers Commission (MMC) concluded that the policy of Gatwick Airport (GAL) to allow the sale of discounted charter or scheduled seats through a single retail agent located on the airport concourse was against the public interest. The MMC recommended that the CAA should impose a condition on GAL which would require it not unreasonably to limit the number of travel agents or other outlets on the concourse wishing to sell airline tickets or other travel products. The MMC said that it should be for the CAA to determine the number of outlets.

3 The CAA subsequently proposed (and later confirmed) a condition to implement the MMC's recommendation. In terms of the number of travel outlets the CAA said:

The information now available to the CAA does not provide a sufficient basis for it to come to a view on what the appropriate number might be. The MMC's concern was with the lack of competition and choice and the Authority believes that in line with the MMC's recommendation GAL should not unreasonably restrict the number of outlets subject to a minimum number necessary to ensure that competition and choice is available for the benefit of users. The Authority has taken the general view both for airline and airport services that a minimum of three suppliers is necessary to produce effective competition. However, in this case the Authority believes that a minimum of two would be appropriate. In coming to this view the Authority has had in mind its statutory objective of promoting the efficient operation of airports and the fact that there is already a travel agency at the station which is at the same level as the airport concourse and not far from it. If in practice a minimum of two outlets does not provide sufficient competition and choice, for example if there are two outlets each operated by a vertically integrated travel company, the Authority will consider using its powers under section 51(6) of the Airports Act to modify the condition.

The CAA's condition provided that with effect from 1 November 1996 Gatwick Airport should not unreasonably restrict the number of travel agencies or outlets selling tickets or other travel products on the airport concourse, should not restrict to fewer than two the number of outlets selling tickets or other travel products on the airport concourse and should not impose restrictions on the sale of air tickets or other travel products other than those necessary to secure consumer protection and to secure the safe and efficient operation of the airport.

4. When the concession held by the sole agency expired GAL tendered for two travel shops and two new contracts were awarded. One of the two new agencies has since left Gatwick as has the travel agency that was appointed in its place. Consequently only one travel agency is now operating on the airport concourse.

5. During the more recent review of the BAA London Airports BAA asked the Commission to recommend to the CAA that the condition should be revoked on the grounds that there is no longer an apparent demand for more than one retail outlet. Between 1999 and 2001 sales from the outlets apparently fell by 56%. BAA attributes this decline in demand to:

- the rapid growth of low cost airlines which sell direct to passengers;
- the amount of discounted sales by airlines through affiliated tour operators;
- the very significant increase in internet sales by airlines and tour operators;
- tour operators improving their own late sales systems;
- tour operators opening large call centres to manage their own business;
- airlines paying lower levels of commission to travel agents;
- the increase in ticket-less travel;
- discounted sales by local tour operators and/or travel agents.

6. In paragraphs 2.556 to 2.558 of its report¹ the Commission noted the difficulties that BAA had experienced in attracting a second travel agent. The existing agent pointed out however that these difficulties arose partly from the fee demanded by GAL (a guaranteed minimum based on sales forecasts) and partly because the tender was for an office rather than a simple desk. On this latter point BAA explained that the standard rental for an airline or handling agent ticket desks would actually be higher than the guaranteed minimum payment made by the travel agent. The Commission concluded:

Section 51(6) of the Airports Act gives the CAA power to modify the condition whether or not we make an adverse finding in this report. We see no evidence that BAA has been pursuing a course of conduct against the public interest as regards these matters. In the absence of such a finding, the question of whether the condition should be modified is outside our terms of reference.

7. BAA formally asked the CAA to withdraw the condition and on 10 July 2003 the CAA published for consultation a proposal to revoke the condition. It invited responses by Friday 22 August.

Responses to the Consultation

8. Responses were received from the Air Transport Users Committee (AUC) and from BAA. The AUC accepted the reasons given in the consultation paper for the drop in sales from outlets on the concourse. It questioned whether there was ever sufficient demand to sustain two travel agencies at Gatwick noting that there was also an agency at the train station at the concourse level. The AUC pointed to various alternative means by which passengers are able to book travel – before

¹ Competition Commission: *BAA plc A report on the economic regulation of the London airports companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd)* October 2002

arrival at the airport, at airline ticket desks or by telephoning their airline or tour operator to make arrangements. There was also increasing use being made of the internet to make travel bookings and this trend was likely to continue. The AUC believed the removal of the condition would have little or no impact on consumers and endorsed the CAA's view that it should be revoked. BAA also wrote in support of the CAA's proposal which was in line with the CAA's duties to promote efficient airport operations and impose the minimum of restrictions.

The CAA's View

9. In the CAA's view the removal of the condition would reflect the Commission's conclusion that there is no evidence that GAL has been acting against the public interest since the 1996 review. It would also be consistent with CAA's statutory objectives in section 39(2) of the Airports Act 1986 of promoting efficient airport operation and imposing the minimum of restrictions. The Competition Act 1998 has come into effect since the condition was introduced in 1996 and this should be sufficient to address any competition concerns that might arise in the future.

10. The CAA notes that there were no objections to the proposal and indeed positive support from the AUC.

The Decision

11. In accordance with Section 51(6) of the Airports Act 1986 the CAA revokes, with immediate effect, the conditions as to the provision of travel outlets at Gatwick Airport imposed by the CAA and published as Appendix 11 to its decision "Economic Regulation of BAA London Airports 1997-2002 (CAP 664)" dated 24 October 1996.

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for the Civil Aviation Authority

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