

Taxi Information Desks at Heathrow

**CAA Decision
June 2004**

CIVIL AVIATION AUTHORITY

DECISION IN RESPECT OF TAXI INFORMATION DESKS AT HEATHROW

Summary

- i) At the recent review of the price controls on BAA's Heathrow airport, the Competition Commission ('CC') made a public interest finding in respect of a levy imposed by Heathrow Airport Limited ('BAA (HAL)') on all taxi drivers. The CC recommended a condition under which the airport would need to satisfy the Civil Aviation Authority ('CAA') that the service funded by the levy (essentially taxi information desks in the passenger terminals) brought benefits in excess of its costs and that the service could not be provided more efficiently and cost-effectively. The CAA duly imposed a condition which followed closely the CC's recommendation.
- ii) BAA subsequently sought the views of taxi drivers by way of a questionnaire. Other taxi related organisations also asked their members for views. The results of the various surveys revealed little support for changes to the present arrangements. The Heathrow Airport Consultative Committee ('HACC'), representing the interests of the public and of passengers, also favoured their retention.
- iii) The CAA, taking into account the results of the surveys, also considered whether the taxi information service and the levy that funds it met the CAA's statutory objective of furthering the reasonable interests of airport users, namely airlines and passengers travelling on airlines. The CAA was satisfied that the taxi information service was of net benefit in terms of its objectives. However, the CAA expected the airport to enter into a more formal agreement with the operator of the taxi information desks to make explicit the basis on which the service was provided and the arrangements for determining the future level of the charge on taxi drivers.
- iv) The CAA issued a consultation paper seeking views on its findings before reaching a final decision. It has considered the representations made in response to then paper and has decided to confirm its earlier findings. It noted that the airport and the HACC were already looking at ways of improving the information given to passengers regarding onward travel. The CAA wishes to encourage this process, but recognises that it has no formal locus.

Complaint to the Competition Commission

1. As part of its statutory review of the BAA London airports during 2002 the CC examined a complaint from a taxi driver operating at Heathrow Airport that BAA (HAL) unfairly used its bargaining position. The grounds of the complaint included:

- a) There was an obligatory payment by every taxi driver of £0.50 to Heathrow Airport Licensed Taxis Limited ("HALT") every time they used the Heathrow taxi system. This payment was enforced by BAA (HAL) and it was alleged that BAA (HAL) insisted that it could rely on the airport byelaws to prevent a taxi driver from working at Heathrow should he refuse to make payments to HALT. One of HALT's main duties was to provide taxi information desks in the passenger terminals and to take bookings from taxi passengers travelling from Heathrow to London and vice versa.
- b) BAA (HAL) had failed to produce a written commercial agreement setting out the terms and conditions under which self-employed taxi drivers are granted access to Heathrow's taxi ranks.

2. BAA told the CC that it regulated the number of taxis waiting on the ranks at each of the four terminals by use of a holding area away from the terminals known as the Taxi Feeder Park. The Heathrow Airport - London Byelaws 1996 prevent taxis from entering an authorised taxi rank without first passing through the Taxi Feeder Park. Under separate terms and conditions of use of the Taxi Feeder Park taxi drivers have to display a "Cabtag" – an electronic control system operated by BAA (HAL) - which allowed access to the Taxi Feeder Park. BAA was not under any contractual obligation to taxi drivers to provide support services. It was HALT who provided these services and in particular the taxi information desks at each of the terminals. BAA regarded HALT as licensees at a reduced rent who were not under any contractual obligation to BAA to provide the HALT services.

3. Taxi drivers currently have to pay £2.71 upon each visit to the Taxi Feeder Park. This includes a charge to BAA of £2.21 (including VAT) intended to cover the operational costs of running the control system. The balance of £0.50 is collected by BAA and passed on to HALT (less a 2.5% handling fee)¹. All taxi drivers have to pay the levy whether or not they are a member of HALT and the levy is reviewed annually following a consultation exercise involving HALT, the London Cab Drivers Club, the Licensed Taxi Drivers Association and the Transport and General Workers Union. BAA told the CAA that in assessing the levy it would expect any annual increase to reflect the rate of inflation unless there were justifiable increases in the costs to HALT of providing the service. If BAA did not consider any increase proposed by HALT to be reasonable then it could cease collecting the HALT levy by giving due notice. In these circumstances, HALT would have to try to collect the levy directly from taxi drivers.

The CC's finding

4. The CC concluded that since the services had not been tendered it was more likely than not that costs were higher than necessary. BAA (HAL) had pursued a course of conduct contrary to the public interest in that it had imposed the HALT levy

¹ The charge will increase to £3.16 per visit from 1 June 2004. The HALT element will remain at 50p until the public interest issue is resolved. HALT have requested an increase in this element to 59p.

on all taxi drivers without first ascertaining, by tender or otherwise, such questions as whether all aspects of the service are necessary; whether they could be obtained at a lower price from a commercial provider; or whether a better service could be obtained from a commercial provider for the same price. An appropriate remedy was that the CAA should invite BAA to produce evidence within six months that the HALT service was of benefit to taxi drivers and their passengers, that the benefits outweighed the costs of provision and if so that the service could not be provided in a more effective and cost-effective manner.

The CAA's condition

5. The CAA's decision, after inviting written submissions and convening a hearing attended by a number of organisations and individual taxi drivers, mirrored closely the CC's recommendation. The condition it imposed required BAA (HAL) to provide within 6 months of the decision evidence of the kind described in paragraph 4 above.

BAA's response

6. BAA responded to the CAA's condition by consulting the taxi trade on the future of the HALT levy. It displayed a notice in the Taxi Feeder Park seeking views on the impact if the HALT service were withdrawn, on whether the £0.50 charge represented value for money, on the possible tendering of the service and on whether BAA (HAL) should continue to collect the levy. BAA also wrote to the London Cab Drivers Club, HALT, the Transport and General Workers Union and the Licensed Taxi Drivers Association. It also published the notice in taxi trade journals.

7. There were 35 individual responses to BAA's consultation. These showed:
- a) 83% of respondents believed the information desks were of benefit to taxi drivers and passengers.
 - b) 37% pointed to adverse consequences if the service was not provided.
 - c) 37% thought the benefits of the levy outweighed its costs although 63% expressed no opinion. None expressed the view that the benefits did not outweigh the costs.
 - d) 57% thought the levy at £0.50 represented good value for money (43% expressed no opinion).
 - e) 46% were content for BAA(HAL) to continue collecting the levy (54% did not answer).
 - f) None thought the service should be funded in some other way.

The organisations to whom BAA wrote also generally favoured the continuation of the current arrangements.

8. BAA also provided the results of separate consultations carried out by HALT and by the London Cab Drivers Club. HALT sought the views of its members in the form of a questionnaire asking whether the taxi information desks were an asset, whether the desks should be put out to tender and whether the payment to HALT represented good value. There were 773 responses. These overwhelmingly supported the maintenance of the information desks and rejected the suggestion that

the service might be put out to tender. 89% thought the £0.50 levy represented good value for money while 8% did not. The London Cab Drivers Club also asked its members to express views on whether the HALT levy was value for money. Of the 100 responses, 85 said that the levy did not represent good value for money.

9. The conclusions BAA drew from these various surveys were:

- a) Whilst the various responses received did not neatly respond to the questions raised, there did appear to be a very high level of support for the presence of the taxi information desks;
- b) Whilst no clear answer was given to the question, do the benefits outweigh the costs, there did seem to be high level of agreement that 50 pence represents good value for money;
- c) On the question of future funding of the HALT service, again most respondents simply did not respond, but then they were equally unresponsive regarding the questions of whether they would prefer the service to be funded in some other way;
- d) Overall there was a clear signal that the desks should be retained and a fairly strong signal, from HALT members at least, that this service should not be tendered. In the absence of any view on how else the service might be provided it could only be assumed that the respondents assumed HALT would continue to administer the desks.

10. BAA presented the results of the various surveys and the conclusions it drew from them as its full response to the condition and within the six month period specified in the condition.

Other views

11. The Heathrow Airport Consultative Committee ("HACC"), a statutory body representing public and passenger interests at Heathrow, also wrote to the CAA independently about the HALT service. It thought that the CC was wrong to make a public interest finding in particular as it was founded on complaints from a very small proportion of taxi drivers. It supported the system provided by HALT and stressed the importance of passengers being given information about taxis and especially on charges.

The CAA's findings

12. The CAA was satisfied on the basis of the evidence that the taxi information service at Heathrow met the test of the CAA's objectives in section 39(2) of the Airports Act 1986 in that it served to further the reasonable interests of users of Heathrow Airport. The CAA shared the CC's view that conclusions about the HALT levy could be underpinned if the service was tested through a tendering process or other means. However, in the absence of any real support for this, the CAA did not propose to take regulatory action to force BAA (HAL) to tender for the service although it would, of course, be open to the airport to do so at some point in the future if circumstances were to change. Consequently, the CAA did not propose to intervene in the present arrangements for the supply and funding of the taxi information desks beyond as described below.

13. The CAA found that the lack of a written contract between BAA (HAL) and HALT relating to the taxi information service was unsatisfactory. This could only

create uncertainty and, as was apparent from the submissions of taxi drivers, mistrust. To address this the CAA therefore expected BAA (HAL) to take steps within a reasonable period, to formalise the present oral contract with HALT. The CAA believed that a written contract should provide for periodic reviews of the charges to be levied on taxi drivers and include a mechanism to ensure that the interests of users were taken properly into account both as regards the nature of the service to be made available and its costs. A written contract would also provide a sounder basis for tendering of the service in the future if this were considered desirable. At the same time, the CAA said it would look to BAA (HAL) to satisfy itself that the current service was being provided in as cost-effective a way as possible, perhaps by means of benchmarking the service against comparable information services at Heathrow.

The CAA's consultation

14. The CAA issued a paper consulting on its conclusions on 5 December 2003. The paper was published on the CAA's website² and also sent to those individuals and organisations which had participated directly in the CAA's proceedings. As it considered that the matter was likely to be of interest to taxi drivers more widely the CAA looked to BAA to ensure that its paper was drawn to the attention of the general taxi community at Heathrow.

15. However, shortly before the deadline for representations (which was 6 February 2004) the CAA was informed that the necessary steps had not been taken to ensure that taxi drivers at Heathrow were aware of the paper.³ The CAA was asked separately by the London Cab Drivers Club to postpone the deadline for comments until after the Annual General Meeting of HALT which was due to be held in April 2004. As it made clear in the consultation paper the CAA had no powers to intervene in the relationship between taxi drivers and HALT nor was it able to comment on nor influence the constitution, governance or working arrangements of HALT. However, the CAA recognised that the London Cab Drivers Club represented taxi drivers and wanted to give it enough time to fully express its views. Therefore, the CAA extended the deadline for representations until 30 April 2004.

16. The CAA received three representations in February, from HACC, the London Cab Drivers Club and from an individual taxi driver. It received three further representations in April, all from individual taxi drivers, including one from the driver who had responded earlier in February.⁴ The CAA notes that BAA (HAL) did not respond.

Representations

17. Although the CAA had clearly set out in the consultation paper the limits of its legal powers (particularly that it could not intervene in the relationship between taxi drivers and HALT nor was it able to comment on nor influence the constitution, governance or working arrangements of HALT) some taxi drivers and the London Cab Drivers Club raised points about HALT's constitution and governance. The CAA confirms that it is unable to influence these matters.

² The paper can be accessed via the following link:
www.caa.co.uk/erg/ergdocs/airports03/erg_ercp_heathrowtaxi.pdf

³ The CAA has evidence that, subsequently, HAL brought the paper to the attention of taxi drivers by placing a notice in the taxi feeder park at Heathrow.

⁴ The submissions have been placed on the CAA's website and can be accessed via the following link:www.caa.co.uk/erg/ergdocs/erg_ercp_heathrowtaxidecision.pdf.

18. Some taxi drivers questioned whether the taxi information desks provided a benefit to users and that the benefit was provided in a cost-effective manner. The London Cab Drivers Club called the desks a 'costly luxury', while one driver suggested that the system was too high-tech and that the supply of cabs from the feeder park could be controlled by a simple two-way telephone system. Another driver pointed out that the survey of taxi drivers which BAA had carried out had received only 35 responses out of 7,000 Cabtag holders. HACC did not comment on the cost-effectiveness of the desks but said they did provide a benefit to operators.

19. HACC did not support the tendering of the taxi information desks, rather it believed that they needed to be under the more active control of BAA(HAL)'s management. It recommended that information about taxis should be part of an integrated system providing passengers with information about all aspects of onward travel from the airport. As an interim measure it supported the CAA's view that the present arrangement between BAA(HAL) and HALT should be formalised by means of a written contract. HACC concluded that the CAA should not take lasting and binding decisions which would prejudice the achievement of improvements to the provision of information to passengers which it was currently investigating with BAA (HAL).

20. A taxi driver said that BAA should pay for the desks as most of the information given out was of a general nature and of no real benefit to taxi drivers.

Assessment

21. In its consultation paper the CAA gave its legal assessment of the matter, including its powers under the Airports Act and the statutory objectives it was bound to follow. It also assessed whether the taxi information desks were of benefit and whether they were provided in a cost-effective manner. Finally it considered whether the lack of a formal written contract between BAA (HAL) and HALT raised any concerns.

22. In its legal assessment, the CAA noted that when performing any of its regulatory functions under Part IV of the Airports Act it, unlike the CC, was bound by the statutory objectives of section 39(2) of the Act. These included the objectives of furthering the reasonable interests of users of airports within the United Kingdom and of encouraging investment in new facilities at airports in time to satisfy anticipated demands by such users. Users for this purpose were defined in section 82 to include airlines and passengers using air transport services operating from the airport. The CAA agreed with the CC⁵ that taxi drivers did not fall within the definition of users and therefore its primary concern must be with the interests of users in their section 39(2) sense⁶. The CAA's legal assessment is unchanged, except to note that the imposition of the minimum restrictions that are consistent with the performance of its functions is another of its objectives in section 39(2).

23. The CAA said in its consultation paper that it was apparent from the responses to the various surveys conducted by BAA and by other organisations that the general, though not unanimous, view of taxi drivers was that the HALT service was of benefit, that the benefits outweighed the costs and that the service should not

⁵ BAA plc: A report on the economic regulation of the London airports companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd), paragraph 2.545, Competition Commission (October 2002)

⁶ The CAA notes that while the CC must have regard under section 43(5) of the Airports Act 1986 to the furtherance of the reasonable interests of persons granted rights, in this case taxi drivers, the CAA's duties are those of section 39 alone.

be provided in another way. While some respondents disagreed with this statement, the CAA has seen no new evidence that would cause it to change its view. The CAA, given its statutory responsibility towards airport users also examined whether provision of the taxi information desks was of benefit to users as defined in the Act. Its preliminary conclusion was that it was of benefit and has seen no new evidence to refute that view. The only representative of airport users that responded to the consultation, the Heathrow Airport Consultative Committee, re-iterated its support for the retention of the current arrangements.

24. The CAA noted before that there were, however, some potential concerns and, in particular, the uncertainty about the continued and reliable supply of the taxi information service due to the absence of a formal written contract between BAA (HAL) and HALT setting out the terms and conditions on which the service was provided including the arrangements for its funding. The CAA notes that HACC concurred with this view and continues to be concerned about the lack of a written contract.

Conclusion

25. The CAA notes that BAA (HAL) and HACC are currently investigating the wider provision to passengers of information on onward travel. It believes agreement between the airport and its users (in this case a representative of passenger interests) is preferable to the action of a regulator and welcomes this investigation. It notes its statutory objective of imposing minimum restrictions and the concerns of HACC that it should do nothing that might jeopardise the achievement of improvements to travel information for passengers. Consequently, the CAA does not consider that it should impose a further condition upon BAA (HAL).

26. The present condition concerned the provision of information by BAA (HAL) to the CAA to satisfy it that the HALT levy should continue to be imposed. This obligation has been fully discharged and the CAA sees no need to retain the existing condition.

27. The CAA continues to believe that it would be desirable for BAA (HAL) to formalise the arrangement with HALT by means of a written contract. However, it recognises that this is primarily a matter for BAA (HAL) management, and that the CAA has a duty to impose the minimum restrictions necessary to regulate BAA (HAL) effectively. Nonetheless, it would expect BAA (HAL) to keep the CAA informed of developments in this regard.

Decision

28. The CAA hereby revokes with immediate effect the condition as to the levy imposed on taxis in respect of Heathrow Airport that was published as Annex 11 to the CAA's document: "Economic Regulation of BAA London Airports (Heathrow, Gatwick and Stansted) 2003-2008 CAA Decision February 2003".

Dr Harry Bush CB
Member of the Civil Aviation Authority
2 June 2004