

# CAA's 'Airports Review – Policy Update' of 15<sup>th</sup> May 2006

## Response of the Stansted ACC

The CAA published its 'Airports Review – Policy Update' on 15<sup>th</sup> May 2006, the main objective of which was to provide a summary of the responses to its initial consultation of December 2005 and an update on its current policy approach for the setting of new price controls at BAA's designated airports.

The CAA stated (in para 1.9) that although the primary purpose of the paper was for information, it would be happy to receive any comments and make them available to other parties.

The Airline Consultative Committee at Stansted Airport ("the ACC") sets out its response to the CAA's latest publication below. The structure of this paper follows the structure of the CAA's document. It is also noted that BAA has responded to the CAA's document and that this response was made publicly available on 11<sup>th</sup> June 2006. Some of the ACC's observations in this paper will also make reference to that response.

### **Introduction**

1. The CAA makes reference to the Regulatory Process and to comments made by the ACC in earlier consultation documents. The ACC notes that the CAA says that it has nothing to add to the points it made in Annex A and Annex E of its December consultation document, by way of response to the process issues previously raised by the ACC. However, the ACC wishes to make it clear that its objection to the appointment of Stephen Littlechild to the Advisory Group remains, on the grounds previously given, notwithstanding the fact that the CAA has stressed the advisory role of the group, and that it will not be involved in taking any decisions during the course of the review.
2. With regard to constructive engagement at Stansted, the ACC notes what the CAA has said in Annex E of its December consultation paper. However, the ACC considers that the CAA should have played a more constructive role in requiring BAA to provide sufficient information to users to allow the process of constructive engagement to progress, in line with the requirements for enhanced information disclosure set out at the time of the last review. Despite these reservations about the CAA's failure to intervene to date to enforce the agreement on enhanced information disclosure set out in Annex 4 to the CAA's 2004 decision, the ACC will be pleased to contribute to the review of BAA's performance in this area.

## Context for the Reviews

### *Ownership of BAA*

3. In view of recent events concerning the ownership of BAA, it is not yet clear exactly how emerging developments will impact on the regulatory proposals. The ACC notes the CAA's views and concerns on this matter, particularly in relation to the financing of investment, and welcomes the CAA's recognition that it has a statutory duty to protect the interests of users through price control regulation.
4. The ACC is surprised at BAA's view, expressed in para 4 of its most recent submission, that the remit of the CAA in this area is unclear. The ACC believes that the CAA's statutory duty towards furthering the interests of users under the Airports Act is very clear and will remain unchanged as long as there is a need for regulation of the airports in the South East, either singly or in combination, regardless of any changes of ownership.
5. The ACC considers that the BAA's suggestion, in its recent response (para.19), that the interests of passengers should rank above those of airlines is disingenuous and a crude attempt to mislead the regulator by implying that reductions in air fares across the London system are related merely to the existence of spare airport capacity at Stansted rather than a regime of low airport charges capable of sustaining a competitive low fare offer. To the extent that premature and/or excessive investment at Stansted gives rise to higher air fares, the asserted benefits to users at Heathrow and Gatwick, due to competitive downward pressures on air fares overall, will simply not arise.
6. The ACC notes the CAA's concern that a side effect of the change in ownership of BAA could be an increase in indebtedness, with consequent effects on BAA's investment programme. The ACC has concerns, however, about the CAA's suggestion that it may strengthen investment incentives by tying a greater proportion of revenues to the specific delivery of the investment programme. This is wholly unacceptable unless the investment programme is the subject of proper consultation and agreement with users. To do otherwise would result in perverse incentives to increase investment, ahead of and in excess of that required, passing the risk associated with a high level of debt from BAA and its owners to the users.
7. The ACC notes that the CAA points out in para 2.23 the potential scope for adding new or strengthening existing regulatory conditions, if this is required to protect users' interests, and the ACC looks to the CAA to take firm action in this regard as necessary.

## **Market Context**

8. The ACC re-iterates its view that the CAA documentation to date does not present an adequate assessment of the market conditions and prospects for growth at Stansted. A separate paper has now been submitted by the ACC dealing with this and with the forecasts for Stansted. The ACC looks forward to an ongoing dialogue with the CAA on these fundamental issues.

## **Legal Framework**

9. The ACC re-iterates its view, noted in para 3.12, concerning the undue emphasis placed by the CAA on incentives to invest, at the expense of user interests. The CAA has yet to respond adequately to this point. The views set out in para 3.42, concerning encouraging investment, and in para 3.44, concerning the balancing of statutory duties, indicate that the CAA has not properly addressed how it intends to balance its regulatory duties in this regard.
10. The CAA states that *“in certain circumstances it may not be necessary or desirable for the CAA to reach a definitive view on the precise nature or timing of particular investments”*. In theory, an effective regulatory regime with an appropriate rate of return based on optimal capital structures will, in itself, deliver timeliness, as in NPV terms there would be no incentives for premature or late delivery. The only remaining incentive would be for delivery ‘just in time’ to meet demand, so as to benefit immediately from cash flows from airport charges. However, if a particular investment threatens to seriously damage the interests of users, as the ACC believes to be the case at Stansted, there is a case for the CAA to take a more direct view on the nature and timing of that investment. The ACC therefore expects the CAA to take the interests of users into account in taking a view on capital investment at Stansted, and if this means taking a view on the nature and timing of that investment, the CAA should be fully prepared to do that if it is to fulfil its statutory duty.
11. The ACC agrees with the view expressed by BA in its individual response (referred to in para 3.17) that there is no justification for advancement of revenues to encourage investment as this would not further users’ interests or promote airport efficiency. The ACC also agrees with BA that one way to minimise any conflicts between the CAA’s statutory duties, and between those duties and the Future of Air Transport White Paper, is to ensure that investment proposals better meet users’ needs (para 3.24). This is essential in terms of the encouragement given in the White Paper for development at Stansted and the importance of ensuring that the specific investment proposal is cost effective, having regard to the needs of users.

12. The ACC is particularly concerned at the suggestion that the CAA will, in considering pricing proposals for the next quinquennium, give equal weight to the needs of current and future users. Whereas at Heathrow and Gatwick there is considerable consensus as to who current and future users may be, at Stansted there are divergent views. On the one hand, future users may be the same or predominantly the same as the existing users, in which case significant weight should be attached to their views. On the other hand, there is considerable uncertainty over the extent to which the nature of traffic at Stansted may change in future sufficient to justify the scale of investment proposed by BAA.
13. The CAA's view that there is no difference between current and future users in terms of (long term) capital expenditure decisions, may be acceptable under the proviso that charges against and delivery of capacity are coincident. This may be the case at Heathrow and Gatwick. However, in circumstances where revenues are advanced (price profiling, for example), the costs of future users would be subsidised by current users. If the CAA were to place undue weight on the needs of these unidentified future users as the basis for justifying increased airport charges to fund development, this would result in an undue burden being placed on existing users, again transferring risk from the airport operator to users in the short term.
14. The suggestion that the balance between current and future users in terms of capex would be achieved by the "*normal use of time-discounting in project appraisals*" has to be caveated by the need to ensure that capex is not over-specified to meet the possible needs of future users to an extent not required by current users. This is a particular risk given the scale of expenditure proposed by BAA at Stansted, driven by speculation about long term traffic potential, which generates a high immediate funding requirement by causing the costs of G2, particularly in terms of land take, to rise above that required to meet the reasonable needs of existing users for the foreseeable future.
15. In terms of (short term) operational expenditure decisions, the CAA's view that the interests of current users should take precedence is welcomed.
16. The ACC has also argued previously that the current regulatory regime fails to provide sufficient incentive for BAA to minimise costs, through allowing inflated capex and opex into the regulatory building blocks. This argument was set out in some detail in the ACC's response to the December consultation and it is therefore disappointed that the CAA appears (in para 3.40) to dismiss the argument without properly addressing it. Whilst BAA has lacked the market power at Stansted in the early part of Q4 to enable it to exploit the headroom allowed by regulation, this is no longer the case as it has signaled clearly its intention to charge up to the cap, which it justifies on the basis of inflated costs at the time of the last review, in the final year of Q4. The importance, therefore, of providing the correct incentives in Q5 to ensure BAA minimises costs and that the benefits of cost reductions are passed through to users cannot be overstressed.

17. Para 3.48 refers to the CAA's intention to commission consultancy advice during the course of the review (and specific reference to commissioning particular studies is made throughout the paper). The ACC welcomes further analysis of specific issues, but would ask that the precise terms of reference for these studies should be shared with users and users should be given an opportunity to be consulted. The ACC has raised separately with the CAA the costs of consultancy advice which it has been forced to procure as a result of the failure by BAA to consult properly and to share information. In order to negotiate on anything approaching equal terms, the ACC has been forced to incur these additional costs, but unless they are met by the industry then the process is demonstrably unequal.

## **Regulatory Approach**

### ***Market Analysis***

18. The ACC notes the CAA's views expressed in para 4.34 about the characterisation of passenger demand and that it would welcome further views on this. It has since supplied the CAA with a detailed paper on passenger forecasts, setting out evidence in relation to:

- the drivers of growth at Stansted;
- market maturity;
- price elasticity of demand.

This paper also sets out the impact of these demand drivers on future growth projections for Stansted.

19. Individual ACC members have also shared with the CAA confidential evidence in relation to the price sensitivity of the Stansted market and the impact of this sensitivity on individual routes and airlines' decisions as to where to base additional aircraft. The ACC believes that the evidence submitted should inform the CAA's consideration of the relevant demand drivers for Stansted. The ACC would welcome the opportunity to provide input into the CAA's analysis of competition between airlines at different airports (para 4.42).
20. The ACC notes that the CAA is collecting additional evidence on passengers' choice of airports and to the price sensitivity of demand and look forward to discussing these findings with the CAA. It is important to bear in mind, however, that relatively small shifts in passenger behaviour can undermine the viability of individual routes. The loss of capacity and route choice can have a compounding effect in a discretionary travel market, which needs to be taken in to account when considering the effect of changes in passenger demand on supply of airline capacity. The ACC agrees with BA (para 4.12) that supply side considerations are material to the analysis of the market and that these considerations will be driven not just by the availability of airport capacity but the cost of using that capacity.

### ***Options for dealing with uncertainties and with ‘lumpy investment’***

21. The ACC notes the CAA’s views in relation to dealing with lumpy investment and specifically in relation to revenue advancement and price profiling (para 4.48ff and also 10.59ff) and that it intends to consider the case for revenue advancement and options for price profiling at Stansted. The ACC does not believe that a case has yet been made for these options on either theoretical or practical grounds and would wish to be closely involved with any further consideration that the CAA may wish to give to these issues. The ACC reiterates that the primary concern at Stansted is the sheer scale of the investment being proposed and the fact that this is likely to impact on user charges in an unreasonable way. In the absence of any agreement on the nature and timing of such investment, it seems academic and premature to consider the mechanism by which it might be funded.
22. The ACC takes issue with BAA’s recent statement when, in para 16, they state that there appear to be “*reservations about the desirability of Stansted development*”. As has been made clear on many occasions, the ACC supports the development of new capacity at Stansted. The issues that BAA appears not to understand concern the scale, cost and timing of the proposed investment, and the impact these will have on users.
23. A central issue for the ACC remains the suggestion by the CAA that there might be price discovery or revenue advancement at Stansted in order to inform decisions about when new capacity is needed and can be paid for. Whilst the ACC welcomes the commitment of the CAA to consider how to reduce the dependency of the price control framework on accurate forecasts of future demand, given the high level of uncertainty attaching to future forecasts at Stansted, there remain grave dangers in volume risk sharing or revenue advancement approaches which may result in prices rising and costs being incurred in the short term which are unrecoverable in the longer term. A possible solution may lie in an approach which allows prices to rise only to fund agreed development proposals. This would require a framework in which the costs and benefits of any development proposal would be shared with users, sufficient to enable an informed decision to be taken on the scale, cost, and timing of any development having regard to the impact on aeronautical charges, the additional capacity to be provided, alternatives and any wider costs or benefits. This would appear consistent with ICAO recommended practice, as described by the CAA in para 4.51.
24. An allowance of flexibility in airport charging would unfairly transfer investment risk to users and so, being relatively low-risk for the investor, the premature delivery of such investments would be incentivised. The best way to incentivise timely investment would be to allow an airport operator to begin recovering its costs on delivery of capacity when it is required, in a similar manner to most commercial situations. This would suggest some form of capacity trigger approach, accompanied by proper safeguards on consultation.

25. Overall, the ACC believes that the concerns about revenue advancement set out by the CAA at para 4.55 remain valid. The ACC rejects the view set out by the CAA in para 4.56 that an increase in prices at Stansted in Q5 would, in some way, be justified by the extent of discounting in Q4. Economic regulation of airports is not an end in itself but is intended to ensure that airport operators holding substantial market power are not able to exploit that market power to the detriment of users. Regulation is meant, as far as possible, to reproduce charges which would prevail in a competitive market. Hence, to the extent that BAA has been forced to lower charges in Q4 in response to market conditions and at a time when it had not attained market power at Stansted (at the start of the quinquennium), it would be wholly inappropriate for the CAA to reimburse the BAA after the event, so cushioning it from the disciplines of the market. This would set a dangerous precedent for Q5 and beyond, creating the impression that BAA is entitled to earn a fixed return on planned investment at Stansted regardless of whether that investment was actually needed or justified by the market.
26. The ACC agrees with the CAA statements at para 4.7, that these issues are better managed through an incremental approach to investment, with proper consultation between BAA and its users on the form, cost, and timing of investment required. The ACC concurs with BA, which stated that scaling back investment proposals may be a more appropriate response to mitigating the impact of lumpiness.
27. The ACC looks to the CAA to demonstrate that the impact on demand of any proposed revenue advancement to fund development would be consistent with the scale and timing of the development actually required. The ACC rejects outright the suggestion that there should be experimental gaming in respect of prices at Stansted, placing a burden of cost on airlines and passengers, in order to prove that development on the scale proposed by BAA in G2 can be deferred and scaled back. This is particularly the case when BAA continues to expend substantial sums on the development, without adequate controls under the regulatory framework. In other words, price discovery would merely transfer the risk of development from BAA to the users and would constitute pre-funding in its worst form.
28. The above comments need to be seen in the light of statements by BAA in its original defence documents against possible acquisition that regulation effectively guarantees a return to shareholders. This confirms the view of the ACC that regulatory proposals which advance revenues to BAA against a planned RAB effectively cushion BAA from competition and transfer all risks from BAA and its shareholders onto users.

## Regulation Between Airports

29. The ACC welcomes the CAA's comments concerning stand alone regulation and its intention to retain this approach for the Q5 and subsequent periods. BAA's claim for system regulation appears to be based in part on claimed benefits to users at Heathrow and Gatwick, through lower air fares, as a result of new capacity being provided early at Stansted. This is purportedly based on research which demonstrates that lower fares offered at Stansted have resulted in downward pressure on air fares at the other airports. However, it is important to recognise that this stems from low fare airlines attracted to Stansted by low airport charges and would be placed in jeopardy by provision of excess capacity at Stansted with resultant increased costs. This issue is addressed in the Forecasting Paper already submitted by the ACC.
30. ACC also notes the CAA's view that no case has been made by BAA for 'early' investment at Stansted. The BAA's recent response to the CAA's May consultation suggests that its reference to 'early' investment was made in relation to stand alone regulation and that BAA's view was that stand alone regulation would be likely to lead to the provision of a second runway at Stansted later rather than earlier. BAA goes on to suggest that this would be contrary to Government policy to build a second runway at Stansted "*as soon as possible*", this being interpreted by BAA, according to their recent submission, to mean by the time that demand for travel into and out of the London system would exceed existing capacity across the system as a whole.
31. The ACC does not accept BAA's interpretation of the White Paper, namely that it requires a second runway to be built at Stansted before it is commercially justified. The critical issue, affecting not just this review but any planning application, is the timing of need in relation to Stansted's own traffic performance rather than some arbitrary notion that excess demand at Heathrow and Gatwick will spill to Stansted. This issue has been addressed in the ACC's Forecasting Paper.
32. The ACC concurs with the view that premature provision of additional capacity will distort competition between airports.

## Scope of Regulatory Charges and the Single Till

33. With regard to the treatment of non-regulated charges, the ACC notes what the CAA has to say in para 6.32, that non-regulated charges should be discussed with users as part of the constructive engagement process. However, this ignores the fact (recognized elsewhere in the document) that constructive engagement is not working at Stansted. Furthermore, the ACC believes that BAA are failing to provide full transparency of costs in relation to certain non-regulated specified charges, which have risen significantly above inflation. The ACC believes that it is open to BAA to manipulate the regulatory mechanism by increasing non-regulated charges above cost, and that this is what it has done. Although the CAA has no power to regulate these charges directly, it would be able to include them within the regulatory till for Q5 and it does have a statutory duty to protect the interests of users. The ACC would expect the CAA to address this issue in its forthcoming consultation paper. The ACC also wishes to participate in the CAA's proposed review of the existing transparency conditions, particularly to highlight the shortcomings in the current reporting procedures and the lack of transparency related to costs.
34. With regard to the removal of assets from the RAB, the CAA has not addressed the point that users pay for a return on certain assets (e.g. land) whilst these are included in the RAB, but when such assets are disposed of, although the RAB value is reduced, there is no compensation to users for having remunerated the assets during the period they were held and during which time no benefits accrued to the users. Furthermore, when land is sold, the RAB is reduced only by the price originally paid so that it is only BAA that benefits from the capital gain.
35. The ACC is concerned that modifications to the treatment of disposals to provide greater commercial incentives on BAA could result in users effectively providing up front financial support for commercial projects falling outside of the regulatory till. This is obviously a more particular concern if certain activities are removed from the till, as proposed by BAA. The issue is of particular concern given the large area of land which BAA is already acquiring for G2 development at Stansted and which it intends will be included within the RAB. Much of this land is intended for unspecified ancillary commercial development which could fall outside of a redefined regulatory till. Indeed, one of BAA's option selection criteria was the extent of such land available for commercial development. This is only in the interests of users if full commercial returns from the development of such land remains within the single till.
36. The ACC notes the suggestion that BAA should develop proposals with the airlines for how its incentive to grow new businesses could be strengthened through modifications to the regulatory till. It is difficult to see how this can be accomplished given BAA's withdrawal from the process of constructive engagement at Stansted. The ACC would be interested to participate in a discussion of these issues to evaluate how greater commercial incentives on BAA could benefit users.

37. The ACC continues to believe that the costs of surface access to airports should be met by the users of the surface access infrastructure directly and not recovered through airport charges. Hence, such surface access costs should be excluded from the RAB. However such costs are funded, it will be important to ensure that any contribution from airport users, airlines or passengers, is proportional to airport requirements alone without cross subsidy to non-airport users. To that end, transparency of information is vital whether the costs are being included in the RAB or not.

### **Competition and Regulation within airports**

38. The ACC is concerned that the CAA has dismissed further consideration of competition within airports. The ACC continues to believe that benefits could be obtained by allowing competitive development of terminals at airports. This is particularly relevant in the case of Stansted G2, where shortage of land is potentially not a constraint, given that substantial areas of land have already been acquired. The introduction of competition would allow the options for more appropriate low cost terminal infrastructure to be explored, as opposed to the over-specified development proposed by BAA. To the extent that these excess costs are already included in the RAB and BAA charge up to the cap, as it intends to do in 2007/8, the users will already be adversely affected by lack of competitive pressure on airport infrastructure costs. These issues need to be further explored to ensure that the most cost effective provision of capacity is realized.

### **Regulatory Building Blocks – compiling the evidence**

39. The ACC set out its views on the regulatory building blocks in some detail in its response to the December consultation. A key point running through all of the ACC's work in this area is that the compilation of evidence relies on the provision by BAA of full and transparent information and an effective consultation process. This is not happening at Stansted.
40. The ACC notes the CAA's response to its concerns in para 8.35 and that it is commissioning a review of BAA's compliance with the provisions of Annex 4 to the February 2003 Decision. The ACC will be responding separately to this consultation by the due deadline of 30 June.
41. The ACC also notes that other work is intended to be commissioned by the CAA on the detail of the regulatory building blocks (see paras 8.41, 8.45 and 8.48). The ACC welcomes these reviews and further analysis, but the terms of reference need to be shared with users and users need to be given an opportunity to be consulted.

42. The ACC is concerned that, based on its knowledge of and involvement in the Opex benchmarking exercise, it is not clear that this exercise is considering the major drivers of opex but, rather, appears to be focusing on a number of marginal activities. In order for an opex benchmarking to be meaningful it should identify the major opex drivers and include verifiable metrics.
43. The ACC also notes that the CAA intends to consider service quality at Stansted and to seek the views of airlines on proposals from BAA. The ACC looks forward to participating in this process.
44. The ACC also notes that the CAA has commissioned work to examine the efficiency and effectiveness of BAA's capital programme at Stansted. The ACC has contributed to this process and has raised concerns that more information has been supplied to the CAA's consultants regarding the justification for individual projects than has been shared with users. This makes it impossible for users to comment properly on the need for individual projects and highlights, once again, the inadequacies of BAA's consultation. The ACC looks forward to having the opportunity to comment on the work of the CAA's consultants as a matter of urgency.
45. The ACC also notes that the CAA intends to commission similar work on the G2 proposals, once a preferred option has been finalised by BAA. The ACC looks forward to participating in that review and, to that end, has already sent the CAA its comments on the G2 options presented by BAA.
46. The ACC notes that the CAA has commissioned a number of other studies (set out in paras 8.45 and 8.46) but has not set out how, for the most part, it will seek the views of users. The ACC is concerned that outputs from these studies are intended to be published only after the CAA's initial price control proposals, denying users the opportunity to comment on these important building blocks. It is essential that users are given the opportunity to comment now, as part of the consultation process.

## **Cost of Capital and Regulatory Finance**

47. The ACC notes (from para 9.62) that the CAA intends to commission a study on the cost of capital. Further analysis is welcomed, but the terms of reference need to be shared with users and users must be given an opportunity to be consulted.

48. The ACC considers that the appropriate cost of capital for BAA and its component airports needs to be seen in the light of the proposal to return substantial amounts of capital to shareholders as part of its bid defence. This suggests that there was considerable head room in the existing regulatory cost of capital. This view is reinforced by analysts' views, referred to in the ACC's earlier submission, that BAA has been operating under a benign regulatory regime, guaranteeing high returns to shareholders. Regulation is seen in the financial markets as guaranteeing BAA very high returns and this would suggest that the current regime has not been adequate to safeguard users from abuse of BAA's market power.
49. The ACC notes that the CAA has engaged advisors to consider the appropriate cost of capital and would welcome an opportunity to contribute to this process.

### **Incentive Structures and other Price Control Design Issues**

50. **Service Quality** – the ACC notes the CAA's reference to service quality issues in paras 8.39, 10.36 and 10.76. The ACC has previously indicated that it intends to give further consideration to a possible service quality regime at Stansted and would want to be involved in this process.
51. **Volume Risk Sharing** – the ACC notes the CAA's intention, referred to in para 10.54, to develop possible options on this at Stansted, despite rejecting it for Heathrow and Gatwick and despite there being no evidence that this has support. The CAA's view appears to be that uncertainty over forecasts can be alleviated if risk is shared. However, this would potentially lead, as the CAA acknowledges, to airlines having to pay higher charges when trading conditions are more difficult.
52. The ACC still considers that volume risk sharing would pass the burden of risk unduly from the BAA to the airlines, particularly in circumstances where BAA's forecasts are substantially higher than those of the airlines. Were demand to fall below those forecasts in circumstances where BAA had proceeded with capital investment to meet the projected demand, it would be wholly unfair to expect airlines to pay higher charges for capacity which they would not require. The arguments against this are largely the same as those relating to revenue advancement.
53. Only in the circumstances where outturn demand is higher than projected, might there be a case for increased revenues to pay for additional capacity. In that instance, the volume risk might better be construed as some form of capex trigger in terms of paying for additional capacity when it is needed, i.e. to disincentivise premature investment.

54. **Revenue Profiling** – the ACC has referred to this issue previously in paragraphs 21-28 of this submission and strongly believes that the case has not been made for BAA to be able to flexibly profile revenue and recoup all their costs at an early stage of a project through extra charges, given that this merely shifts the investment risk away from BAA and incentivises premature investment, because BAA will be able to recoup their investment in any event. This approach favours the commercial interests of the regulated monopoly at the expense of the users, who should not be required to bear this risk.
55. **Capex triggers** – the ACC notes that the CAA supports the principle of capex triggers and would like to consider it further (para 10.66ff). Whilst the ACC is also open to further consideration of this issue, there are practical difficulties with this approach, in that clear agreement would be needed between the airport and the airlines on the measurable outputs from capital investment. There may be an opportunity to open fruitful dialogue with the new owners in this regard. The key issue for Stansted is to ensure that triggers provide the right incentive to invest ‘just in time’ to meet demand. In this regard, the function of the capex trigger would be somewhat different from the concept originally envisaged at Heathrow and Gatwick, which was aimed at rewarding BAA for delivery of user critical projects. In this case, the aim would be to provide a mechanism whereby charges could not be increased to pay for development until such time as users had agreed the need for and the cost and scale of development proposed.
56. **ATM Incentive** – the ACC notes the CAA’s view expressed in paras 10.33 and 10.71. Such an incentive could form part of a package of measures at Stansted designed to avoid premature expenditure on a second runway and would have to be considered in the context of the consideration of capex triggers set out above.
57. **Actual vs Planned Capex** – the ACC welcomes the CAA’s intention (para 10.83) to continue to give further consideration to this option. The ACC is of the view that actual capex would be a more appropriate basis for the RAB but this would require firm control over BAA in terms of commitment to capital expenditure only with the agreement of users. The use of actual capex as the basis of regulation does run the risk of overspending by the airport operator in order to generate higher returns, placing an onus on there being safeguards in place to prevent such excess or premature investment.

## **Public Interest Issues and the Use of the Section 41 mechanism**

58. The ACC notes the CAA’s intention to publish the outcome of consultation in June 2006, and reserves the right to respond further at that time.