

# **BRITISH AIRWAYS PLC**

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

### **CONSULTATION ON THE CAA's ALLOCATION OF SCARCE BILATERAL CAPACITY RIGHTS: REVIEW OF STATEMENT OF POLICIES ANNEX 8 OFFICIAL RECORD SERIES 1 AND HEARING PROCEDURES**

1. British Airways welcomes this Consultation which provides the opportunity to comment on possible changes to the Authority's procedures in cases of scarce capacity, and to Annex 8 itself. The experience of the recent scarce capacity procedure concerning India raised a number of issues, even if a subsequent bilateral round meant that the outcome of that procedure had very little effect in fact.
2. While expressing our view on the matter of appeal to the Secretary of State in a previous DfT consultation we also took the opportunity to give our view on the conduct of hearings, which we would like to see taken into account in this consultation. Our view is repeated in paragraph 4 of this response.
3. The Authority sets out a number of questions in its Consultation document referring to the draft replacement Annex 8 attached. BA responds as follows:
  - ***Is it helpful to the proper consideration of the competing proposals that some guidance is given to the airlines on the presentation of their economic case?***
  - It is essential for the Parties to understand the CAA's view of the economic issues in any particular case. The experience of the procedure on India suggests that this could be more effective if done differently. Given the absence of a common starting point in terms of market size and share etc., each airline will be able to make its case using its own statistical sources and in-house modelling. A serious problem in preparing the evidence for the India hearing was that the CAA required format was so prescriptive and detailed that a major exercise was required in BA to adapt the company's in-house network model and statistical systems to produce the required output. It is highly desirable that the company can use its own in-house systems to produce a coherent case for the Authority.
  - In spite of the efforts made by all the parties to the India hearing the Authority found that one airline's data could not be compared with that of another. This suggests that the prescriptive approach did not produce the expected outcomes.
  - If the airlines are to be able to argue their case using in-house data it is important for them to know what areas to address. The list in draft paragraph 6 contains the main elements and leaves up to the applicant to define the main traffic flows affected by its proposals. This is a significant improvement.
  - ***To the extent that you consider guidance to be necessary, does the proposed text strike the right balance between the need to ensure consistency on core elements of the evidence, and the***

***flexibility sometimes requested by parties wanting to present different aspects of their case?***

- BA would propose a formal procedure to take place between the submission of written evidence and the hearing. The CAA at this point should circulate to parties a statement of the issues which it intends to cover at the hearing. This should then be formally debated with the parties at a meeting where the Authority could hear arguments that its draft statement of issues should be amended. Once the Authority has decided, on the basis of this meeting, the final form of its statement of issues, these should guide the Hearing. By this means much irrelevant argument could be removed from the hearing.
- Market definition is the central feature of any competition analysis, and the Authority should make clear to the parties how it intends to define the relevant market, so that this can be a matter of serious debate at the hearing.

***Should the emphasis be on ensuring maximum transparency at the hearing, even if this means that the Authority is less able to consider potentially valuable commercially confidential information in reaching its decision? Or should the Authority, as proposed in the attached draft Annex 8, also be free to consider commercially confidential information from an airline that is not made available to the other parties at a hearing, albeit whilst placing less weight on such restricted information?***

- This question is of vital importance to an established operator taking part in a hearing where the other parties are not yet operating on the route in question. British Airways felt strongly that the provision of pricing and yield information to the Authority in the India route case should be on a confidential basis, as it would be of great use to BA's competitors, being commercial information of great value which is normally kept confidential.
- As a practical suggestion, the Authority, when drawing up its list of key issues, could request such commercially sensitive data. If it is relevant to one of the (small) number of key issues which are to be debated at the hearing.

***Should the CAA set out its views on the definition of the market in its Statement of Key Issues sent out in advance of the hearing? Or would it be better if, as now, there is the opportunity to consider at the hearing all the relevant facts determining market definition, without prior assumption.***

- The Authority should set out its views on market definition in its draft Statement of Key Issues, which should be followed by a meeting of the Parties. If market definition remains a key issue after that meeting, it should be possible to challenge it at the hearing. On the other hand the parties may agree with the

Authority's view and thus market definition would be an underlying assumption at the hearing, well known to all parties, forming the background to debate on other key issues.

**4. Procedures for Scarce Capacity Hearings**

BA considers that the present CAA hearing format would be improved as part of the overall review. Following the process of distilling the issues proposed above, the CAA during the hearing would examine each party's case without the need for an adversarial cross-examination and re-examination of witnesses by the parties themselves.

**5. Draft Annex 8**

This is a great improvement on the current version. BA supports the idea of allowing the parties to shape their own evidence. It was a great problem to shoehorn the output of BA's own capacity model into the Authority's proforma. It is also helpful to have a list of issues to be addressed, which are largely those which we address ourselves in making route and scheduling decisions.

On the point of confidentiality, BA's view is that confidential data should be given equal weight to public information (although the Authority should set a high standard with regard to what information it will agree to regard as confidential).

**British Airways plc**  
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