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Dear Mr Gander,

Investigation under section 41 of the Airports Act 1986 on the structure of airport charges levied by Heathrow Airport Limited

Heathrow Airport Limited (**HAL**) welcomes the opportunity to provide comments on the representations made by third parties in reference to the "Investigation under section 41 of the Airports Act 1986 of the structure of charges levied by Heathrow Airport Limited - October 2013 data and analysis". The representations HAL comments on are, namely; Aer Lingus, Ryanair, Virgin Atlantic Airways and Gatwick Airport.

It should be noted that HAL does not intend to comment on every point made by the third parties and does not intend to repeat arguments or submissions it has already made. HAL confines its comments to specific points made by third parties, in particular where HAL disagrees with those comments. However, the absence of a comment from HAL in relation to a particular point made by a third party should not be taken as an indication that HAL agrees with the relevant point. HAL reserves the right to submit further evidence and comments where relevant.

Comments on Aer Lingus' response

HAL strongly disputes Aer Lingus' conclusions in paragraph 6.1 that:

- a) HAL's revised charging structure is unreasonably discriminatory in respect of the cost differential applied to domestic/ROI as opposed to other European and International departing passengers;
- b) The revised charging structure has had a significant adverse impact on users of Heathrow, in particular Aer Lingus and its passengers; and
- c) The CAA must impose conditions on HAL to eliminate the unreasonably discriminatory aspects of the revised charging schedule.

As previously stated, there is no evidence to support that HAL's revised charging structure is unreasonably discriminatory or that carriers on domestic and ROI routes from Heathrow have been disadvantaged as a result. In particular, Aer Lingus has not faced a significant adverse impact due to of HAL's charges restructure.

Aer Lingus maintains at paragraph 2.3 that HAL's cost analysis was "fundamentally flawed" and contained a number of basic errors. Whilst Aer Lingus overstates this claim, HAL has already accepted that it erred in its initial cost modelling. However, recalculation using the correct figures does not produce a cost differential that is materially different. Aer Lingus accepts that airport charges cannot necessarily be entirely cost reflective, but argues the revised charging structure goes beyond any possible "margin of appreciation". HAL disputes this claim and reiterates (in line with the CAA's findings) that the percentage differential between the charge and underlying costs is acceptable.

Further, in relation to HAL's cost model, Aer Lingus claims, at section 2.2 of its response, that "*HAL used it [the cost model] as the sole basis for its revised charging structure.*" This assertion is incorrect. HAL's decision to restructure its departing passenger charges was based on a number of criteria including management knowledge of the actual airport operation and actual passenger behaviour, current legislation, benchmarking of other airports charges and Heathrow's strategic objectives. The theoretical cost model was then used to ensure that the proposed charges structure was directionally cost reflective.

Aer Lingus claims, at paragraph 1.3.2, that as a result of HAL's revised charging structure, it has been overcharged since April 2011. In HAL's view, the financial impact on Aer Lingus of the revised charges is overstated and broadly supports the CAA's assessment. Further, a finding of unreasonable discrimination cannot be considered by reference to financial implications alone and requires an assessment of the effect on competition and the impact on end users. HAL reiterates that there is no evidence that Aer Lingus has been subject to undue discrimination as a result of HAL's charges restructure.

Aer Lingus also asserts, at paragraph 4.2.3, that its passenger numbers on routes to/from Heathrow, which had been increasing in the years prior to 2011, have been steadily falling since 2011. However, Aer Lingus fails to evidence any connection between declining passenger numbers and HAL's charge restructure. The fact that Aer Lingus' passenger numbers have declined since 2011, does not evidence that the revised charging structure has had an adverse impact on Aer Lingus' operations at Heathrow.

Comments on Ryanair's response

Ryanair concludes, in the final paragraph of its response, that if the CAA finds that the costs incurred by HAL in processing ROI/domestic passengers and other passengers are different, these differences should be reflected in HAL's charges. In support of this conclusion, Ryanair cites Article 10(1) Airport Charges Directive. Whilst HAL acknowledges Article 10(1), it supports the CAA's view that airport charges cannot necessarily be entirely cost reflective and that a degree of differential between charge and underlying costs can be acceptable.

Ryanair also makes reference to Article 102 TFEU, which prohibits discriminatory pricing by a dominant company, and to case law.

HAL is aware of the obligations imposed by both EU and UK law and fully supports these principles. HAL has made every effort to ensure its pricing practices are fair and are applied in an equal and non-discriminatory manner. HAL's structure of charges does not treat similar airport users differently or different airport users similarly. HAL reiterates the CAA's conclusion,

that there has been no evidence to show that carriers on domestic and ROI routes from Heathrow have been disadvantaged compared with carriers at other London airports.

HAL also reasserts that it is not practicable, at Heathrow Airport, to do a detailed actual cost analysis by passenger destination as all Heathrow terminals are used by all types of passenger with almost entirely common facilities. Therefore, any cost analysis has to be based on theoretical, standalone terminals for different categories of passenger. As such, the cost analysis can never be anything more than directionally indicative.

Comments on Virgin Atlantic Airways' response

HAL supports Virgin Atlantic Airways' (**VAA**) conclusion, in paragraph 2, in which VAA strongly disagrees that the current charges structure discriminates against short haul flight operations including domestic and ROI passengers.

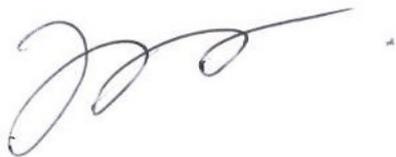
Comments on Gatwick Airport's response

In paragraph 2 of its response, Gatwick Airport (**Gatwick**) agrees with the CAA, that a percentage differential between the charge and underlying costs can be acceptable. HAL supports this view. HAL agrees with Gatwick's view that the financial impact of the revised charges on Aer Lingus could be overstated.

Also, HAL notes that Gatwick refer to what appears to be a fundamental difference on market definition, as between the CAA's recent market power assessments and its consideration of the relevant market(s) under Section 41. Notwithstanding the different "frames of reference", Heathrow considers it reasonable to assume that the application of competition analysis and a market definition process should result in similar outcomes and/or conclusions. We note for example the CAA's reliance on the European Commission's consideration of certain cases and the evidence submitted by parties to the European Commission. In particular, paragraphs 3.10 and 3.12, which sets out airline views on the substitutability of London airports.

Please do not hesitate to contact me directly if you have any questions or require any further clarifications.

Yours sincerely



James Jamison
Senior Counsel
Regulation and Competition