APD12

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

CAA WITHDRAWN DECISION

17 December 2012

DECISION ON AN INVESTIGATION UNDER REGULATION 11(1) OF THE CIVIL AVIATION AUTHORITY (ECONOMIC REGULATION OF AIRPORTS) REGULATIONS 1986

Before: Mr I Osborne Member of the Authority

SUMMARY

S1 On 28 January 2011, bmi complained, under section 41 of the Airports Act 1986 (the Act), that in re-structuring its airport charges from 1 April 2011, Heathrow Airport Limited (HAL) had unreasonably discriminated against bmi, passengers on domestic services and short haul airlines. bmi was particularly concerned with HAL's decisions to equalise per passenger charges on domestic, Republic of Ireland (ROI) and other European routes, and to continue not to vary landing charges by aircraft weight.

S2 After considering written representations from stakeholders, including other Heathrow airlines, other airports and regional bodies, the CAA held a hearing on 27 January 2012 attended by HAL and Aer Lingus. On 12 March 2012, the CAA published its decision there was not a sufficient basis to conclude that HAL's conduct amounted to unreasonable discrimination.

S3 Aer Lingus contested the decision, sending the CAA draft grounds for judicial review. The CAA decided that it should give stakeholders another opportunity to comment on HAL's structure of charges and, after considering their responses, it should explain the reasons for its decision more fully. The CAA, therefore, on 20 July, informed the parties that its decision of 12 March should be treated as a provisional decision. The CAA has considered further comments from HAL and Aer Lingus, and is now publishing its decision.

S4 The CAA has found that HAL's landing charges are discriminatory as they do not reflect the lower direct costs of handling small aircraft. However, the discrimination is not unreasonable, as the charges incentivise the efficient use of Heathrow's limited runway capacity.

S5 The CAA has found that HAL's passenger charges are unreasonably discriminatory as they do not take account of the material difference in the airport's costs of handling domestic/ROI and other passengers. The CAA found that HAL had no adequate justification for the discrimination.

S6 The CAA has examined whether HAL's revised passenger charges have had adverse effects on airline competition and passengers that would require remedying. The CAA found no adverse effects sufficient to justify the imposition of a remedy. In particular, the CAA found that ROI passenger numbers had increased since the new charges were introduced. Overall domestic passenger numbers had fallen, although there were increases on some routes, but it was difficult to distinguish the causes of the decline. The CAA believes that HAL should keep its charging structure under review.

S7 The CAA considers that there were shortcomings in HAL's consultation with airlines over its re-structuring of charges. However, consultation is not a matter which can be addressed under section 41. If these shortcomings are repeated they could be considered under the provisions of the European Airport Charges Directive (ACD).

1 INTRODUCTION

1.1 This document sets out the CAA's decision of its investigation, under section 41 of the Airports Act 1986, into whether Heathrow Airport Limited unreasonably discriminated against any particular user or class of user of the airport in its landing charges and per passenger charges when re-structuring its airport charges from 1 April 2011. This document also considers whether, if the CAA decides there has been unreasonable discrimination, the CAA should impose a condition on HAL to remedy or prevent the adverse effects of the unreasonable discrimination.

Structure of document

1.2 The document is structured as follows:

- section 1 sets out the timeline of the complaint and the CAA's investigation and the statutory framework in the Act under which the CAA has powers to investigate HAL's conduct, how HAL consulted users when re-structuring its charges and the results of its re-structuring. It then includes summaries of bmi's complaint about HAL, Aer Lingus' representations on the matter (when bmi was acquired by the International Airlines Group (IAG) Aer Lingus became the main complainant), HAL's response to the allegations, and representations from other parties;
- section 2 contains the CAA's approach to investigating an airport operator's conduct under section 41;
- section 3 considers whether HAL unreasonably discriminated against any particular user or class of users of Heathrow. The section contains a consideration of the appropriate users and classes of users for this investigation, whether HAL discriminated against any of these users or classes of users, and, if there was discrimination, whether the discrimination was unreasonable or HAL had a reasonable objective justification for its conduct;
- section 4 considers the effects of HAL's new charging structure on competition, Aer Lingus and passengers on domestic and Republic of Ireland routes, to assess whether there are adverse effects from HAL's conduct that require a remedy;
- section 5 states the CAA's conclusions having regard to its statutory duties under the Act;

- section 6 sets out the CAA's decision; and
- section 7 comments on other matters that arose during the CAA's investigation, in particular whether HAL's consultation with users was sufficiently transparent.

Timetable for the complaint and the CAA's investigation

1.3 HAL introduced a new structure of airport charges to apply from 1 April 2011. Following HAL's announcement of the new charges, bmi complained to the CAA under section 41 of the Act on 28 January 2011 that HAL had unreasonably discriminated against:

- bmi and passengers on domestic services by equalising per passenger charges on domestic and other European routes;
- short haul carriers by basing landing charges solely on movements and noise characteristics; and
- bmi by not introducing the revised structure of charges over time.

1.4 Following a preliminary investigation, the CAA considered that HAL's justifications for its revised charging structure needed to be transparently and objectively substantiated. The CAA launched its formal investigation on 6 July 2011 by consulting interested parties on the matter[1].

1.5 The CAA received responses to its consultation from HAL, bmi, Aer Lingus, Virgin, a joint response from US airlines (American, Delta, United and US Airways), Gatwick Airport Limited, Belfast City Airport, the Consumer Council for Northern Ireland, and Oliver Hogan/David Starkie2.

1.6 bmi, HAL and Aer Lingus asked to take part in an oral hearing before a CAA Panel. Subsequently, bmi decided not to attend the hearing. The CAA heard evidence from HAL and Aer Lingus on 27 January 2012.

1.7 On 12 March 2012, the CAA published its decision following its investigation. The CAA found that there was not a sufficient basis to conclude that HAL's conduct amounted to unreasonable discrimination.

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[1] 'Investigation under Section 41 of the Airports Act 1986 of a complaint made by bmi against Heathrow Airport Limited – a consultation' (July 2011) available on the CAA website at: http://www.caa.co.uk/docs/5/HeathrowBmiConsult.pdf.

[2] The responses are on the CAA website at http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=12293.

1.8 On 26 April 2012, Aer Lingus informed the CAA that it was considering applying to the High Court for a judicial review of the CAA's decision. On 10 May 2012, Aer Lingus sent the CAA a draft of its Statement of Grounds for judicial review.

1.9 On 20 July 2012, the CAA published a notice saying that it would consider the points raised by Aer Lingus and that the CAA's decision of 12 March should be treated as a provisional decision. The CAA requested comments on its provisional decision by 10 August 2012.

1.10 Aer Lingus and HAL responded to the CAA's notice. On 30 August 2012, the CAA sent Aer Lingus' response to HAL, and a redacted version of HAL's response to Aer Lingus.

1.11 On 13 September 2012, Aer Lingus and HAL sent the CAA their respective comments on each other's responses.

Statutory Framework for the CAA's investigation

1.12 The economic regulation of airports in Great Britain is governed by the Act. Under the Act, an airport operator with an annual turnover exceeding £1m must obtain a permission to levy airport charges. There is a permission to levy airport charges in respect of Heathrow Airport.

1.13 Under section 41 of the Act the CAA may, if it thinks fit and where there is a permission to levy airport charges in force, impose a condition on an airport operator where it appears that it is carrying out a course of conduct specified in section 41(3). One of the courses of conduct is:

(a) the adoption by the airport operator, in relation to any relevant activities carried on by him at the airport, of any trade practice, or any pricing policy, which unreasonably discriminates against any class of users of the airport or any particular user or which unfairly exploits his bargaining position relative to users of the airport generally.

1.14 Users of the airport are defined in section 82 of the Act as:

- a person for whom any services or facilities falling within the definition of "relevant activities" are provided at the airport; or
- a person using any of the air transport services operating from the airport.

This definition includes both airlines operating at the airport and passengers flying to or from the airport.

1.15 Relevant activities are defined in section 36(1) of the Act as the provision at the airport of any services or facilities for the purposes of:

(a) the landing, parking or taking off of aircraft;

(b) the servicing of aircraft (including the supply of fuel); or

(c) the handling of passengers or their baggage or of cargo at all stages while on airport premises (including the transfer of passengers, their baggage or cargo to and from aircraft).

1.16 In its initial complaint against HAL bmi also mentioned section 41(3)(b) of the Act. This is concerned with the granting by the airport operator of rights to another party to carry out relevant activities at the airport. However, as bmi's complaint was concerned with charges levied directly by HAL on airlines, the CAA did not consider that section 41(3)(b) had relevance in this case. It did not therefore pursue this aspect of bmi's complaint further.

1.17 In carrying out its regulatory functions, including assessing whether it appears that an airport operator has engaged in conduct described in section 41 of the Act, section 39 of the Act requires that the CAA does so in the manner it considers is best calculated:

- to further the reasonable interests of users of airports within the United Kingdom;
- to promote the efficient, economic and profitable operation of such airports;
- to encourage investment in new facilities at airports in time to satisfy anticipated demands by the users of such airports; and
- to impose the minimum restrictions that are consistent with the performance by the CAA of its functions.

1.18 Under section 42(3) of the Act where the CAA receives a representation from a non-UK airline that an airport operator may be carrying out one of the courses of conduct in section 41, the CAA has to notify the Secretary of State of the representation. In its decision, the CAA has to take into any account any advice given to it by the Secretary of State on practices at airports outside the UK. In this case, the CAA notified the Department for

Transport of Aer Lingus' representation on 12 January 2012. The CAA received no advice from the Department.

1.19 Under Regulation 11 of the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, the CAA has to carry out an investigation if it appears that an airport operator may be pursuing a course of conduct described in section 41(3) of the Act. The Regulations do not prescribe the form of the CAA's investigations beyond obligations to consider representations made during the investigation and to publish a report with its findings once the investigation has been completed. A decision on the form and content of the decision may be taken only by a member of the CAA. The CAA therefore has broad discretion in deciding how to conduct an investigation. The CAA's process allows both written and oral representations to be made to it.

1.20 In December 2006, the CAA published its policy and processes for handling section 41 cases[3]. It said that it would handle cases in a way that was consistent with its statutory powers and duties in the Act and, to avoid the danger of arbitrary or distortionary regulatory interventions, would expect to adopt an approach that was consistent with the application of competition law, except where the circumstances of a particular case suggested it should follow a different approach The rationale for this is that the exercise of its functions under section 41 is sufficiently akin to the power of the Office of Fair Trading (OFT) when it applies competition law for the CAA to have regard to the analytical framework that would be adopted by the OFT when handling comparable cases under the Competition Act 1998. The CAA observed that, in practice, this is likely to result in decisions which would be consistent under both section 41 and national (and EU) competition law. The CAA made clear that it would, however, remain open to argument, in any particular case, that its powers and duties may lead it to a different conclusion than would result from applying the Competition Act.

1.21 In the present case, this means that the CAA will have regard to the approach taken to discriminatory conduct under competition law in considering whether it appears that HAL has pursued a course of conduct that amounts to unreasonable discrimination under section 41. We expand

[3] The CAA's use of section 41 of the Airports Act 1986 – the CAA's policy and processes (December 2006), available at http://www.caa.co.uk/docs/5/ergdocs/section41policy.pdf.

on the relationship between section 41 and competition considerations below.

Statutory remedy

1.22 Should the CAA find at the end of this investigation that it appears that an airport operator has pursued a course of conduct described in section 41 it can, if it thinks fit, impose conditions on the airport operator to remedy or prevent what it considers to be the adverse effects of that conduct. Under section 41(6) the CAA would have to notify the airport operator of any conditions it proposed to impose and if, within one month, the airport operator objected to the proposal the CAA could not proceed with the implementation of its proposed conditions, but could instead make a reference to the Competition Commission under section 43(3).

CAA price regulation of Heathrow Airport

1.23 Heathrow Airport is designated by the Secretary of State under section 40(10) of the Act for price control. In March 2008, the CAA set a price control that limits the maximum per passenger revenue that HAL can receive from the totality of airport charges at the airport for each of the five years from 1 April 2008 to 31 March 20134.

1.24 The current price control does not prescribe the structure of airport charges at Heathrow and HAL can therefore structure its charges within the constraint of the overall price cap. In its March 2008 decision the CAA said that the structure of charges was first and foremost the responsibility of the airport operator following consultation with its airline users. The CAA did not therefore propose to involve itself in the determination of the structure of airport charges although it would consider under its section 41 powers any case brought by an airline which alleged unreasonable discrimination through changes in the structure of charges[5]. HAL's airport charges consist of the following separate charges on airlines: landing charge, air navigation services (ANS) charge, per passenger charge and aircraft parking charge.

[4] In March 2011, the CAA extended the price control for an additional year so it now expires on 31 March 2014.

[5] Economic Regulation of Heathrow and Gatwick Airports 2008-2013 – CAA decision (March 2008) paragraphs 3.28 and 3.29. Available at http://www.caa.co.uk/docs/5/ergdocs/heathrowgatwickdecision_mar08.pdf.

bmi's and Aer Lingus' concerns related to the landing and per passenger charges.

HAL's consultation with airlines

1.25 In 2010 and 2011, HAL consulted airlines on re-structuring its airport charges. The steps in its consultation process are set out below:

- January–June 2010 – informal meetings with airline community.
- 2 August 2010 – HAL consultation document proposing changes in the structure of charges.
- 29 October 2010 – HAL decision document[6] revising its structure of landing and per passenger charges from 1 April 2011. HAL had proposed amending the structure of its aircraft parking and ANS charges as well, but did not amend them in its final decision. Instead, HAL decided to consult further with airlines on these charges. (On 18 March 2011, HAL published a consultation document proposing changes in the structure of aircraft parking charges.)
- 12 November 2010 – HAL consultation document[7] proposing its airport charges for 2011/12. The proposals reflected HAL's revised structure of charges and increases allowed under the price cap set out in the CAA's March 2008 decision.
- 7 January 2011 – HAL decision on charges for 2011/12[8].
- 1 April 2011 – new charges came into force.

1.26 A summary of HAL's previous structure of passenger and landing charges, the structure of charges proposed in HAL's consultation and the revised structure implemented by HAL on 1 April 2011 is at Appendix A. The main changes brought about by the new structure are:

- passenger charges are now structured so that there is a charge for all passengers on European routes, and a charge for all other passengers. Previously, there were separate charges for domestic, ROI and international passengers;

[6] Available at http://www.heathrowairport.com/assets/Internet/Heathrow/Heathrow%20downloads/Static%20files/airport_charges_final_decision_291010.pdf.

[7] Available at www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=12293.

[8] Available at www.caa.co.uk/defauld.aspx?catid=5&pagetype=90&pageid=12293.

- a 25% discount to the passenger charge has been introduced for transfer passengers; and
- for landing charges the Chapter 3 minus noise category has been abolished and the Chapter 4 noise category has been divided into 3 sub-categories.

1.27 HAL's passenger and landing charges for 2010/11 and 2011/12 are at Appendix B.

Summary of bmi's complaint

1.28 bmi complained that the effects of certain parts of HAL's re-structuring of charges from 1 April 2011 would have a particularly damaging effect on bmi's business at Heathrow. The changes would result in bmi incurring significant losses and force bmi to withdraw certain routes in circumstances where it was unable to mitigate substantially the significant financial impact of doing so. bmi complained that:

- the decision to equalise domestic passenger charges with those for EU passengers unreasonably discriminated against bmi and passengers on domestic routes;
- the decision to base landing charges solely on movements and noise values ignoring the higher infrastructure costs generated by the operation of larger aircraft unreasonably discriminated against short-haul carriers; and
- the decision to implement these charges decisions in 2011/12 rather than introducing them gradually over time unreasonably discriminated against bmi.

1.29 bmi said that the impact of the increase in charges for domestic passengers from £13.43 to £20.25[9] was a significant change. HAL had failed to demonstrate that the increase was justified by reference to cost. The former charges recognised that domestic passengers used fewer facilities and infrastructure than international passengers. HAL had ignored the impact of the change on bmi, which was unique in its reliance on the domestic market.

[9] In its October 2010 decision document on airport charges, HAL said that £20.25 would be the European passenger charge if the structure had been applied to the level of airport charges allowed under the price cap for 2010/11. The actual European passenger charge from 1 April 2011 was £21.80 taking into account the higher price cap for 2011/12.

HAL had argued that the transfer passenger discount would offset the increase in domestic charges. However, only 30% of bmi's domestic passengers were transfer passengers, whereas 60% of Heathrow's domestic passengers overall were transfer passengers.

1.30 bmi thought that HAL's passenger charges unreasonably discriminated against passengers as the effect of the increase for domestic passengers would be a loss of routes and there were no suitable alternatives either by surface transport or routes switching to another London airport.

1.31 bmi said that HAL's landing charges did not take into account that aircraft weight reflects infrastructure usage as larger aircraft exert more pressure on the runway and required more extensive infrastructure. bmi noted that HAL's approach was not followed at other airports, even those that are congested, as most have weight based charges. bmi said that HAL's approach meant that short haul carriers contribute an unreasonable proportion towards the costs associated with landing charges and as a result unreasonably subsidised users of larger aircraft.

1.32 bmi thought that the time allowed for implementation of the charges denied bmi the proper opportunity to undertake the necessary restructuring in the available time. bmi said that HAL had ignored the International Civil Aviation Organisation (ICAO) principle of gradualism.

Summary of Aer Lingus' representations

1.33 In its written representations, Aer Lingus supported bmi's complaint. It said that HAL had substantial market power and it would not be commercially viable for Aer Lingus to switch its services to other London airports. Aer Lingus thought that:

- HAL's costs of handling domestic and ROI passengers were materially different from HAL's costs of handling international passengers. HAL relied on the transfer passenger discount to mitigate the discriminatory effects of its passenger charges. However, Aer Lingus thought, the discount provided no assistance to airlines such as itself which carried below average numbers of transfer passengers;
- HAL's landing charges unfairly penalised airlines such as itself and bmi that used smaller aircraft and had to spread the fixed landing charge over a smaller number of passengers; and

- HAL's failure to introduce the change gradually was a clear breach of ICAO principles.

1.34 Aer Lingus claimed that it would be forced to pass on the higher charges to passengers. Consequently, this risked that its network would be severely diminished adversely impacting both origin and destination and connecting services to the detriment of passengers.

1.35 When it had sight of HAL's modelling, Aer Lingus thought that HAL had underestimated the cost difference of handling domestic/ROI and other European passengers. HAL had calculated the difference to be 11%, but Aer Lingus thought that the correct difference was 18%[10]. Aer Lingus said that HAL's errors would have been discovered earlier if it had not refused to share its calculations with airlines. HAL had provided no objective justification for its revised charges. Aer Lingus thought that as HAL had for many years applied a charging regime that reflected the lower costs attributable to serving domestic/ROI passengers, there was a heavy burden on it to justify a significant move away from that long established approach.

1.36 As noted above, on 10 May 2012, Aer Lingus sent the CAA a draft of its Statement of Grounds for judicial review in relation to what is now the CAA's provisional decision. In summary, its case was that:

- the CAA's decision was flawed by a failure to give adequate reasons, particularly in relation to the question of whether the cost differential between domestic/ROI and other European passengers was sufficiently material to constitute unreasonable discrimination when seen in the context of what the CAA described as three mitigating factors;
- the CAA's treatment of the three allegedly mitigating factors was irrational;
- the CAA's decision to take into account whether the new charging structure would damage the competitive structure of the market was an error of law, and the CAA had in any event applied the wrong legal test in considering that question;

[10] Aer Lingus' points on HAL's modelling are considered in more detail in paragraphs 3.21 to 3.23.

- the CAA's decision to take the effect on competitive structure into account breached the requirement of procedural fairness by denying Aer Lingus the opportunity to comment on the CAA's approach and the evidence relied on; and
- the CAA's decision not to exercise any degree of review of HAL's allocation of the indexation of its regulated asset base (RAB) was wrong in law and lacked any factual basis.

Summary of HAL's response

1.37 HAL said that the European passenger charge was not directly discriminatory as it was applied on the same basis to all airlines using Heathrow. In reviewing its airport charges HAL mentioned that it had reviewed the cost of providing airport facilities to domestic, ROI and other European passengers and found no material difference between the costs of providing facilities to them. Given this, HAL said there was no objective justification for a charging differential between them. Furthermore, passengers departing to domestic, ROI and other European destinations use equivalent facilities at Heathrow and, therefore, applying dissimilar charges to the passenger groups would not be permitted.

1.38 HAL said it could not modify charges to reflect the uniqueness of individual airlines using the airport as all airlines were unique. As part of its review, HAL said it had considered the impact the restructure would have on airlines. The review showed that bmi was not more acutely affected by the new structure relative to other airlines.

1.39 In its initial response to bmi's complaint HAL said its approach to landing charges was based solely on environmental factors. Its landing charges were objectively justified as the level of the charges varied according to the environmental effect of each aircraft landing at the airport. The landing charge could not be discriminatory as it applied equally to all aircraft using the airport. In its August 2010 consultation on its structure of charges, HAL said that it considered that basing landing charges, in whole or in part, on the weight of aircraft would weaken incentives for airlines to make the most efficient use of runway capacity.

1.40 HAL argued that it could not have different implementation dates for the new charges for different airlines. It thought that this aspect of the complaint did

not concern discrimination and was therefore outside the scope of section 41.

1.41 HAL mentioned that bmi's claim that its charges might lead to bmi prematurely pulling off routes was incorrect as bmi had already announced its intention to further reduce its domestic flights shifting this capacity to continental European and Middle Eastern routes.

1.42 Prior to the hearing, HAL submitted a note on legal issues to the CAA. In the note, HAL contended that:

- under the Airport Charges Directive[11] it could not be contended that in adopting a solely costs-based assessment, excluding consideration of commercial revenues, HAL had acted unreasonably in applying its margin of discretion;
- under section 41, the CAA did not have the power to determine the fairness of HAL's consultation procedure leading to the adoption of its pricing policy;
- as the transfer passenger discount reflected the costs associated with transfer passengers it was objectively justified and therefore lawful regardless of whether in practice it was effective in leading to an increase in passenger numbers; and
- the application of competition law is restricted to acts which affect competition. This was not the case here as all airlines which operate domestic routes are subject to the same passenger charges. Similarly all airlines which operate routes to the ROI are subject to the same passenger charges.

Summary of other representations

1.43 Virgin considered that as all Heathrow's facilities were common use that HAL's decision to implement differential departing passenger charges was flawed. It thought that the transfer passenger discount was based on an incomplete analytical model and created harmful competitive effects against non-hub carriers. Virgin considered that retaining a mixed weight/Air Transport Movement ANS charge distorted prices by requiring larger aircraft to subsidise smaller aircraft. As each element of HAL's re-structuring of

[11] The ACD has been implemented in the UK by the Airport Charges Regulations 2011 (ACR).

charges was linked, Virgin thought that the CAA could only investigate HAL's pricing decision in the round rather than looking at one aspect of the charging structure.

1.44 American, Delta, United and US Airways made a joint representation. They said that: HAL's consultation process lacked transparency, that the implementation timeline had a negative impact on airlines, that the 40% premium for long-haul passengers was not cost related and ignored the higher retail benefits that long-haul passengers generated for the airport, and that weight based ANS charges were not cost-related.

1.45 Gatwick Airport thought that charges need not match costs exactly, particularly in the case of a single till regulatory environment and that there may be relevant non-cost related objective justifications for charges. Gatwick also thought that incentivising a more efficient use of runways could be an objective justification for the structure of landing charges and that a lack of gradualism was not objectionable per se.

1.46 Belfast City Airport supported bmi's complaint drawing attention to the importance of the Heathrow link to Northern Ireland travellers. The airport was concerned that the increase in charges might impact on the commercial viability of bmi's route to Heathrow and lead to a reduction in frequency or a removal of the service entirely. The Northern Ireland Department for Regional Development and Consumer Council for Northern Ireland[12] had similar concerns, both stressing the importance of Heathrow routes to connecting passengers and the Northern Ireland economy.

1.47 Oliver Hogan and David Starkie commented on bmi's assertion that "larger aircraft exert more pressure on runways, taxiways and apron". They thought that bmi had over-simplified the relationship between aircraft size and damage caused to runways, taxiways and aprons

[12] In a letter to the CAA prior to the CAA's formal investigation.

2 The CAA's approach to investigations under section 41

2.1 This section sets out the CAA's approach to considering an airport operator's conduct under section 41.

2.2 As mentioned in section 1 the CAA must treat section 41 cases in a manner consistent with its duties under section 39 of the Act and would expect, but is not compelled, to use an approach consistent with the application of competition law.

2.3 bmi's complaint is that HAL had pursued one of the courses of conduct specified in section 41 of the Act, specifically because its new charging structure represented unreasonable discrimination against bmi, and/or passengers on domestic services and/or short haul carriers at Heathrow. Aer Lingus added that the charging structure discriminated against Aer Lingus and operators of smaller aircraft. The complaint is therefore one of unreasonable discrimination. In this regard, we note that:

- discrimination, being the course of conduct of which bmi and Aer Lingus complain, is also one of the forms of conduct which may constitute an abuse of a dominant position under Article 102 of the Treaty on the Functioning of the European Union and/or the Chapter II prohibition in the Competition Act 1998, in particular where it involves the application of dissimilar conditions to equivalent transactions with other trading parties, thereby putting them at a competitive disadvantage[13]; and
- whether discrimination can be unreasonable under section 41 will turn, at least in part, on whether there is an objective justification for otherwise discriminatory conduct. Similarly, under competition law, discriminatory conduct which might otherwise constitute an abuse of a dominant position may be objectively justified and hence not infringe competition law[14].

[13] Case law has also developed the proposition that discrimination can also involve the application of similar conditions to unequivalent transactions.

[14] This refers to the concept of objective justification developed by the European Court and Commission. See for example Case 27/76 United Brands v Commission [1978] ECR207, Paras 189-192. The right of a dominant company to take proportionate steps to protect its position is an aspect of this.

2.4 bmi and Aer Lingus therefore raise issues which are comparable to issues which may arise under competition law in these respects, and we will have regard to the framework of competition law where relevant[15].

2.5 In considering whether conduct that is otherwise discriminatory has an objective justification, we will have regard to the market power of the party alleged to have carried out a course of conduct and to the effect of the conduct on competition. In United Brands, it was held that even if the possibility of a counter-attack (in that case by a refusal to supply) is acceptable, that counter-attack must still be proportionate to the threat taking into account the economic strength of the undertakings confronting each other. Where the degree of market power is greater, the risk of harm must be greater and therefore the justification must be more clearly demonstrated to be proportionate[16].

2.6 Similarly, conduct which has significant negative effects on competition will require stronger and more cogent justification. In British Airways[17], the Court of Justice stated that the assessment of the economic justification for conduct (in that case, a system of discounts or bonuses) is to be made on the basis of the whole of the circumstances of the case, including whether the exclusionary effect arising from the conduct in question which is disadvantageous for competition may be counterbalanced, or outweighed, by advantages in terms of efficiency which also benefit the consumer. This decision indicates that the degree of harm must be balanced against the potential benefits from efficiency enhancements[18]. It follows that the greater the negative effects of the conduct in question, the greater the strength of the justification required to outweigh those effects. A similar approach is set

[15] For completeness, we note that, although not relevant to this case, the course of conduct specified in the remaining limb of section 41(3)(a) is that an airport operator has unfairly exploited its bargaining power relative to users of the airport generally. This is akin to a complaint of abuse of dominant position.

[16] United Brands, above paragraph 190.

[17] Case C-05/04P British Airways plc v Commission [2009} ECR I-9291 paragraph 86.

[18] This is an approach favoured by some competition economists. See for example W. Bishop "Price discrimination under Article 86: Political Economy in the European Court" 1981 44 MLR 282, 286-8.

out in the European Commission's Guidance Communication on Article 102[19].

2.7 We consider that this approach properly reflects our statutory duties, and in particular, our duty to further the reasonable interests of users, including both airlines and passengers. Harm to the competitive process between airlines will adversely affect not only the airline or airlines concerned, but also passengers, who are likely to benefit from competition between airlines, both in terms of price and service offering. In assessing the effect on competition, the CAA may have to take into account whether the airline in question is an efficient user of the airport's facilities.

2.8 If we find that HAL has pursued one of the courses of conduct alleged, we can, if we think fit, impose conditions to remedy or prevent the adverse effects of that course of conduct. We note that we have a power, and not a duty, to impose a remedy in such circumstances.

2.9 In considering whether (and if so how) to exercise our power to impose a remedy, we will have regard to (1) whether the airport operator in question has substantial market power and (2) the effect of the course of conduct on competition and passengers. We consider that this approach reflects and is consistent with our statutory duties, for reasons explained above. It is also consistent with the fact that any remedy must be directed at the adverse effects arising from any course of conduct. In addition, we also note that:

- the CAA's starting assumption is that to impose a condition on an airport operator without substantial market power would be likely to cut across its duty to impose minimum restrictions. Airport operators without such market power are less likely to act unreasonably against users, as the users are more likely to respond to such conduct by using an alternative airport. We will therefore consider whether an operator has substantial market power before imposing any remedy. (As noted above, the degree of market power is also relevant to a finding that conduct is harmful and therefore likely to be found to be unreasonable within the terms of section 41 as it will affect the

[19] Communication from the Commission – Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, 2009/C45/02.

strength of objective justification needed to offset any harm as set out at paragraph 2.5 above);

- whilst harm to competition may militate in favour of the imposition of a remedy, an absence of harm or potential harm to competition is a relevant consideration in the context of our duty only to impose minimum restrictions; and
- in addition to considering the effect on competition, we will also consider whether any other aspect of our statutory duties has a bearing on the imposition of a remedy.

2.10 Aer Lingus contends[20] that the CAA should only look at whether any discriminatory conduct tends to distort competition, not whether it has had actual effects on competition, and that in the present case, the discriminatory impact of the changes made warrants the conclusion that this test is satisfied (given the increased financial impact on Aer Lingus). Aer Lingus cites cases such as British Airways v Commission[21], Tomra[22] and a state aid case concerning air travel tax in support of its position.[23]

2.11 The CAA considers that it is entitled under section 41 to look at the effect of the changes in charging in reaching a view on whether there is unreasonable discrimination and in considering what, if any, remedy should be imposed. It does not consider that it is precluded from doing so by any aspect of the legal test.

2.12 As a starting point, it is clear that the element of distortion of competition cannot simply be inferred from the discriminatory impact of the charges, which is how Aer Lingus puts its position. This was confirmed by the Court of Justice of the European Union in Post Danmark where the court confirmed that the fact that the practice of a dominant undertaking may be described as "price discrimination", that is to say, charging different customers or different classes of customer different prices for goods and

[20] In its rebuttal submission to HAL's representation on the re-issued provisional decision.

[21] British Airways v Commission [2007] ECR I-23331.

[22] Tomra Systems v Commission, judgment of 19 April 2012.

[23] The European Commission's decision concerning an air travel tax imposed on airlines by the Irish Government (Case SA. 29604). This decision is dated 25 July 2012 and as far as the CAA is aware is not published. Accordingly the CAA is unable to attach weight to this decision.

services whose costs are the same or conversely, charging a single price to customer for whom supply costs differ, cannot of itself suggest that there is an exclusionary abuse[24].

2.13 The CAA notes that the test established in EU law is one of tendency to distort competition. Under that test, an infringement may be established without it being shown that there are actual effects on competition. However, it does not follow that, under competition law, an authority is precluded from considering the position in fact, and from looking at whether conduct has actually affected competition. On the contrary, the CAA considers that. if there is evidence of the actual effects which conduct has had on the market, that is evidence which the CAA should take into account in considering the matter.

2.14 It is also necessary to consider how a test of tendency to distort competition might apply in the present case. Focussing on the passenger charges, the new structure of charges applies equally to all passengers, regardless of which airline they use to travel on a particular route. Given that, the CAA considers that it is particularly appropriate in the present case to go further and consider the actual effects of the new charging structure on competition, in so far as they can be ascertained.

2.15 The CAA notes that, in case law cited by Aer Lingus, a finding of tendency to distortion of competition was not reached solely on the basis of the discriminatory impact of the charges. For example, in British Airways v Commission, the Commission demonstrated that British Airways, a competitor in the market where the conduct ultimately took effect, had a dominant position and that the market was already distorted by that fact. It also established as fact that the commission structure had a noticeable effect at the margin, and could lead to exponential changes in the revenue of travel agents. The schemes were accordingly found to have a fidelity building effect. The Commission did therefore undertake some examination of the specific effects of the pricing practices being adopted by British Airways.

2.16 The CAA considers therefore that it is entitled to examine the overall circumstances of the case including evidence of how the pricing conduct

[24] Post Danmark A/S v Konkurrencerådet, Case C-209/10, 27 March 2012 , Para 30.

complained of has or has not affected the market to date. It does not consider that it is precluded by the statutory test from doing so. The CAA has therefore looked at whether HAL's structure of charges has affected competition both between airports and between airlines and the effects of HAL's charges on passengers on domestic and ROI routes in its investigation.

2.17 Accordingly, the approach taken in this decision is as follows:

- first, we consider whether bmi and/or Aer Lingus are particular users of Heathrow and whether airlines and passengers on domestic/ROI services and/or short haul carriers at Heathrow, and/or operators of small aircraft are classes of users at Heathrow;
- second, we consider whether HAL's new charging structure constitutes discrimination against airlines and passengers on domestic/ROI services, or short-haul carriers at Heathrow, or operators of small aircraft at Heathrow (as classes of users of Heathrow) or bmi and Aer Lingus (as particular users of Heathrow);
- third, we consider the issue of objective justification, and some of the criticisms made of HAL's position advanced by bmi, Aer Lingus and other respondents;
- fourth, we consider the effect of HAL's new charging structure on competition and passengers; and
- fifth, we draw our conclusions, having regard to our statutory duties as a whole.

3 Has HAL unreasonably discriminated against a user or class of user?

3.1 This section looks at whether HAL has unreasonably discriminated against a user or class of user of Heathrow. In doing this we consider the first three points in paragraph 2.17, namely:

- whether bmi and/or Aer Lingus are particular users of Heathrow and whether airlines and passengers on domestic/ROI services and/or short haul carriers at Heathrow, and/or operators of small aircraft are classes of users at Heathrow;
- whether HAL's new charging structure constitutes discrimination against airlines and passengers on domestic/ROI services, or short-haul carriers at Heathrow, or operators of small aircraft at Heathrow (as classes of users of Heathrow) or bmi and Aer Lingus (as particular users of Heathrow); and
- the issue of objective justification, and some of the criticisms made of HAL's position advanced by bmi, Aer Lingus and other respondents.

User and class of user

3.2 Users of airports are defined in section 82(1) of the Act. The definition encompasses both airlines and passengers who use the air transport services operating from the airport. As an airline operating at Heathrow, Aer Lingus is a user of the airport. bmi was also a user of the airport, but since it made its complaint bmi has been taken over by IAG and is no longer a user in its own right. Consequently the CAA has not considered whether there has been unreasonable discrimination against bmi as a particular user of the airport.

3.3 bmi and Aer Lingus mentioned three separate possible classes of users in their submissions to the CAA. Two separate airline classes were suggested: short haul carriers and operators of small aircraft. The two classes are similar but the CAA does not consider them to be equivalent for these purposes. In particular it notes that whereas short haul carriers usually use small aircraft the definition does not preclude carriers who use larger aircraft on short haul routes.

3.4 In considering whether HAL's landing charges are unreasonably discriminatory the CAA considers it preferable to use Aer Lingus' suggestion

of operators of smaller aircraft as bmi's complaint about landing charges appeared to be about aircraft size and not the distance flown.

3.5 As the per passenger charge varies according to destination, the CAA considers it appropriate to distinguish airlines by destination and, therefore, defines a class of user to be considered as carriers on domestic and ROI routes. As passengers are also users, the CAA considers that passengers on domestic and ROI routes might also be a class of user that could have been subject to unreasonable discrimination with respect to the per passenger charge.

3.6 The CAA considers, therefore, that its investigation should look at whether there has been unreasonable discrimination against:

- Aer Lingus;
- operators of small aircraft;
- carriers on domestic and ROI routes at Heathrow; and
- passengers on domestic and ROI routes at Heathrow.

Has HAL discriminated against any class of users of the airport or any particular user?

3.7 Price discrimination for the purposes of section 41 can cover applying dissimilar terms for transactions which are equivalent in terms of cost of supply or similar terms for transactions which are dissimilar in terms of cost of supply[25]. The effects of such discrimination can affect the ability of the dominant supplier's rivals to compete effectively or they can affect the customer's ability to compete where the difference in treatment raises its cost in comparison with its competitors[26]. Discrimination thus defined can be directed at a user or class of user.

3.8 Two transactions are being considered by the CAA in this case: the levying of a per passenger charge on airlines operating at Heathrow and the levying of a landing charge for the use of Heathrow's runway[27]. The CAA did

[25] Deutsche Lufthansa AG v ANA – Aeroports de Portugal SA (Case C-181/106).

[26] For example, Case T-229/94 Deutsche Bahn AG v Commission [1997] 4 CMLR 220 and Alpha Flight Services v Aeroports de Paris [1998] OJ L230/10 [1998] 5 CMLR 611.

[27] Virgin's representation and the joint representation from four US airlines mentioned ANS charges. However, the CAA received no evidence that these charges were discriminatory,

consider whether the relevant transaction is the wider use of Heathrow's facilities associated with an air transport movement. This is because an airline operating a passenger carrying aircraft cannot choose just to use the runway and pay landing charges. Both it and its passengers also have to use other airport facilities and consequently it has to pay other airport charges. However, the issue in section 41 in relation to a designated airport is not one of compliance with the price cap nor necessarily an examination of the totality of airport charges. It requires the CAA to consider whether in relation to any relevant activity the airport has adopted a course of conduct which unreasonably discriminates against a particular user or class of users. As recorded in paragraph 1.15, section 36(1) sets out a number of relevant activities and landing of aircraft is one of those specified. It is HAL's conduct in relation to the landing charge and per passenger charge which is the focus of the current complaint and therefore the transactions which will be assessed to see if HAL has engaged in discrimination.

3.9 bmi and Aer Lingus (in its written submissions) complained that HAL's decision not to introduce its new structure of charges gradually over time was discriminatory. The CAA also considers this below.

Landing charge

3.10 HAL's landing charges are not differentiated by aircraft weight. The same price, therefore, is applied to the landing of a small aircraft as to the landing of a large aircraft with the same noise classification. This would not be discriminatory if the landing of a small aircraft is equivalent to the landing of a large aircraft in terms of the costs imposed on the airport. However, if these are not equivalent transactions, HAL's charges could be considered discriminatory. bmi provided some reasons why large aircraft impose higher costs on an airport than small aircraft. These were:

- large aircraft exerted more pressure on runways, taxiways and aprons thus driving higher runway, taxiway and apron operational and maintenance costs:
- large aircraft require longer runways, and wider runways, taxiways and aprons, thus requiring higher capital costs; and

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they were not included in either bmi's complaint or Aer Lingus' representations, and, consequently, the CAA did not analyse them during its investigation.

- large aircraft require greater airport operational resource to operate and maintain the longer runways and taxiways and larger aprons.

3.11 The CAA has been provided with no evidence on whether these factors lead to the direct costs imposed on HAL by aircraft of differing sizes being materially different, but the CAA considers it more likely than not that small aircraft impose lower direct costs than larger aircraft[28]. This leads the CAA to conclude that HAL's common charge in the peak discriminates against operators of small aircraft in the sense of applying an identical charge to transactions which are not equivalent in terms of cost of supply.

3.12 Given this conclusion, and given that HAL cannot produce a schedule of charges which applies distinct charges to every individual airline that uses the airport, the CAA does not consider it necessary to consider as a separate issue whether there has been discrimination against Aer Lingus as a particular user of the airport.

Per passenger charge

3.13 HAL levies different per passenger charges for airlines operating European and non-European routes. Before 1 April 2011, HAL had three categories of per passenger charge: for domestic, ROI and other international routes. From 1 April 2011 it also introduced discounts for transfer and transit passengers. bmi and Aer Lingus contended that the new per passenger charges discriminated against airlines and passengers on domestic and ROI routes as the charges did not recognise the lower costs that such passengers impose on HAL compared to passengers on other routes.

3.14 HAL denied there was any discrimination. In its written submissions to the CAA and in its consultations with airlines, HAL said that it had based its passenger charges on an analysis of the asset costs of handling three categories of passengers – domestic/ROI, other European and non-European. The complexity of the current four terminals had made it impossible, HAL said, in practice to analyse actual differences in passenger usage. HAL, therefore, based its analysis on theoretical terminals for

[28] The ICAO Airports Economics Manual (Doc 9562) says that aircraft weight is 'an accepted parameter to reflect how wear and tear and use of airport-provided facilities tend to increase as the weight of aircraft increase', (paragraph 5.15).

different passenger types, the terminals having different space requirements for the different passenger groups.

3.15 HAL's cost modelling assumed a direct relationship between space required and asset cost. It saw the key drivers of asset costs as peaks in passenger flow, passenger characteristics (such as nationality, number of bags carried, regularity of travel and size of party and dwell time in terminal), and aircraft characteristics (such as maximum number of passengers on a flight and dwell time of aircraft between flights). In its modelling HAL largely used the results of an exercise it had undertaken in 2005 to determine the terminal usage by different categories of passengers[29].

3.16 In its modelling HAL divided its asset base (excluding rail) into assets used for passengers, aircraft landing/take off, and aircraft parking. Passenger assets were then divided into terminal buildings and 'other'. Assets in 'other' included: roads, car parks, campus wide services (such as gas and electricity), IT systems and campus wide baggage systems. HAL did not consider that these 'other' assets were used differently by passengers solely as a consequence of their flight's destination or origin, and, therefore, the value of the assets was allocated equally to all passengers. The difference between the asset register and the average RAB from the CAA's Q5 decision was allocated pro-rata across all passengers as part of other passenger assets.

3.17 HAL considered but did not take account of operational costs in its modelling. It said that it was largely a fixed cost business and that operational costs varied according to a passenger's use of assets, so it did not expect that taking such costs into account would materially alter its modelling results.

3.18 HAL also did not take commercial revenues into account in its modelling. It said that the majority of commercial revenues. e.g. property, non-regulated charges and parking, did not vary with passenger destination and would need to be allocated on some basis. It acknowledged that retail revenues

[29] At the hearing, HAL said that it had made some adjustments to its 2005 modelling where the previous figures did not reflect passenger experience today. Specifically, it had added allocations for passenger usage of the international departure lounge and connections facilities by domestic and ROI passengers whereas no allocation of either had been made to these passengers in 2005.

from domestic and ROI passengers were lower than from long haul passengers, but said that the overall picture was complex and could vary from year to year. It also said that the ACD set out a cost-based approach to pricing, and that it had acted within its margin of discretion in pricing by not taking commercial revenues into account.

3.19 Airline respondents had different views on the reasonableness of HAL's cost modelling. Virgin and US carriers thought that HAL's decision to differentiate passenger charges was flawed as Heathrow's facilities were in common use. Virgin also said that HAL had not justified its decision not to take account of commercial revenues. bmi and Aer Lingus accepted that HAL had some discretion in how it carried out its modelling and did not consider the basis of the modelling itself as unreasonable.

3.20 The CAA does not consider that HAL acted unreasonably by differentiating passenger charges. The costs that passengers impose on an airport vary with the amount of time that passengers spend at an airport and on the amount of baggage they carry. As there is information available on passenger dwell times and baggage requirements, the CAA considers that it is legitimate for HAL to take this information into account when setting passenger charges.

3.21 Aer Lingus mentioned that when HAL had taken operational expenditure into account in its 2005 modelling it had made little difference to the results. However, both Aer Lingus and bmi thought that HAL had erred in its allocation of asset costs by spreading the increase in terminal asset values due to indexation across all passenger types equally, rather than allocating it in the same ratio as total terminal assets. bmi also thought that campus wide baggage systems should have been allocated to transfer passengers[30].

3.22 HAL's modelling, shared with parties in the course of the CAA's investigation, showed that the cost of handling domestic/ROI passengers was 11% lower than the cost of handling other EU passengers. However, Aer Lingus discovered an error in HAL's modelling. HAL had inadvertently

[30] HAL said that it could have allocated campus wide baggage systems differently between transfer and point-to-point passengers. This would have changed the cost differential between passengers slightly but not enough to have an impact on the 25% transfer passenger discount.

used a wrong figure from the 2005 results and using the correct figure increased the differential to 16%[31]. HAL accepted this point at the hearing.

3.23 Aer Lingus' contention that HAL's allocation of RAB indexation was incorrect further increased the differential to 18%[32]. HAL disagreed with Aer Lingus' view over RAB indexation. The CAA recognises the logic of Aer Lingus' argument that the indexation of terminal assets should be allocated between domestic, ROI, European and non-European passengers in the same way as terminal assets have been allocated. Although there are often arguments for and against different approaches to cost allocation, HAL has not offered a clear justification for the approach it took. However, the CAA also notes that the difference between the two approaches is small (2%), in circumstances where the cost allocation is not highly precise and will contain an inevitable margin of error.

3.24 Having considered the matter, the CAA has concluded that nothing in this decision turns on whether the correct differential is 16% or 18%. The CAA uses 16% in discussing the issues below purely because it was common ground between the parties that the differential was at least 16%, on the basis of the available modelling. The CAA however also uses the 18% figure where it is relevant to distinguish between the two values.

3.25 HAL said that cost modelling could only approximate the passenger experience which was similar for domestic, ROI and other EU passengers, so the model could not be absolutely determinative of airport costs.

3.26 The CAA agrees that modelling can only approximate reality, and that it is sensible to compare the results of modelling with observations of what actually happens. Given this lack of precision HAL should be entitled to exercise a degree of judgment as to how closely its charges should reflect the results of its modelling. However, this margin for judgement is not unlimited and the limits should reflect how accurate the modelling is likely to be.

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[31] The figure HAL had used for operational space required for 'other EU' passengers' was the figure from the 2005 model for 'All EC flights *including* domestic' rather than the *appropriate* 2005 figure for 'EC & EEA excluding Ireland and domestic'. *(emphasis added).*

[32] In June 2012, Aer Lingus sent the CAA an Expert Report by Dan Elliott which agreed with Aer Lingus' views on how HAL allocated the RAB indexation.

3.27 In this case, although the domestic, ROI and other European passengers experience broadly the same airport processes the figures largely reflect how long the different passengers spend in the terminal. A passenger can experience the same processes, but, other things being equal, the longer each member of a class of passengers spends in the terminal the more space would need to be allocated to accommodate that class of passengers. The time that passengers on different routes spend in the terminal can be measured and the results are likely to be fairly accurate.

3.28 The CAA therefore considers that HAL's modelling provides the starting point for an assessment of the costs that domestic and ROI passengers impose on HAL.

3.29 A key point in the CAA's investigation and the focus of the hearing was whether a cost differential of 16% was of sufficient materiality to warrant a separate domestic/ROI charge and whether the decision not to differentiate charges was capable of being discrimination within the meaning of section 41 in the sense of treating dissimilar situations in the same way. HAL thought that you could not look at the per passenger charge in isolation but should consider the total cost impact of all the charges on airlines. In doing so the impact is 7% on Aer Lingus and 2.5% on bmi. HAL regarded neither impact as material. Aer Lingus thought the cost differential was material. bmi's submissions were produced before HAL's modelling error had been discovered, but it thought that the differential (which it considered was at least 11%) was material enough to justify a separate charge.

3.30 As mentioned in paragraph 3.8, the CAA considers that it is assessing whether the individual charges are discriminatory, and therefore does not consider HAL's approach is valid for this particular question. The CAA agrees with Aer Lingus and bmi that in assessing the per passenger charge the cost difference is material.

3.31 Virgin also contended in its representations that HAL's transfer passenger discount harmed non-hub carriers and was discriminatory. bmi said there was a lack of transparency over the transfer passenger charge and intuitively considered the 25% to be too high. HAL said that the discount was based on the value of assets used exclusively by originating passengers; assets used exclusively by transfer passengers and assets used by both originating and transfer passengers. The analysis concluded

that a transfer passenger used 77.7% of the asset cost base of an originating passenger, because transfer passengers did not access or use landside assets. HAL had rounded the figures to produce a 25% discount for transfer passengers. At the hearing, Aer Lingus did not dispute the discount which it thought was cost related.

3.32 In the absence of any contrary evidence, the CAA considers that the proximity of the amount of the discount to the costs produced by HAL's modelling is enough to show that the transfer passenger charge is not discriminatory.

3.33 In conclusion, although the CAA notes that the available cost modelling is not precisely accurate, the available information does show a material difference in the cost of HAL handling passengers on domestic and ROI routes compared to handling passengers on other European routes. As HAL levies the same charge on domestic, ROI and other European passengers, the CAA considers that HAL's per passenger charges discriminate against carriers and passengers on domestic and ROI routes. The CAA has not however found that the transfer passenger discount is discriminatory. Given its conclusion, and given that HAL cannot produce a schedule of charges which applies distinct charges to every individual airline that uses the airport, the CAA does not consider it necessary to consider as a separate issue whether there has been discrimination against Aer Lingus as a particular user of the airport.

Implementation of charges

3.34 Part of bmi's complaint was that HAL acted unreasonably in not introducing its new structure of charges gradually over a period of time. HAL said that it did not phase in its new charging structure over time, as different aspects of it affected different airlines in different ways, so phasing might increase rather than lessen the impacts on individual airlines in the short term. It also thought that if there was a risk that its charges did not comply with the ACD then the charges needed to be changed in one go to ensure compliance.

3.35 Gatwick Airport agreed that a lack of gradualism was not discriminatory.

3.36 bmi accepted that the principle of gradualism was not mandatory, but thought that the combination of the large increase in charges for domestic passengers plus the lack of time for bmi to adapt generated a

disproportionately harmful impact on bmi's domestic passengers. It said that most competitive airports provided incentives for new routes which shared risk over three years, and bmi thought that a similar three year time period for the increases for domestic passengers would have provided it with the opportunity either to reduce the costs of its domestic business or to switch to more profitable routes.

3.37 At the hearing, Aer Lingus said that gradualism was not a key consideration as given its commitment to Heathrow over many years it would not have responded to the changes by significantly reducing the frequencies of its services.

3.38 The CAA does not consider that the lack of gradualism was itself discriminatory. The CAA notes that the implementation of the charges applied to all airlines and passengers in the same way. The CAA does not consider that bmi has made a case that there is harm to a particular group of passengers which warrants any finding that the lack of gradualism amounted to discrimination.

3.39 However, the CAA notes that if airport operators do not adequately consider implementation issues, they may run a higher risk of causing harm to passengers and airlines. Further, whilst gradualism cannot be an excuse for perpetuating an anti-competitive situation or for non-compliance with a legal requirement, the CAA considers that airport operators should in general have regard to the ICAO principle of gradualism, even though it does not provide a basis for the specific complaint which bmi has made in this matter[33].

Conclusion on discrimination

3.40 The CAA, therefore has found that:

- HAL's landing charges discriminate against operators of small aircraft as a class of user of Heathrow;
- HAL's per passenger charges discriminate against carriers on domestic and ROI routes as a class of user of Heathrow ;

[33] See paragraph 3.11 of 'Appeal to the Civil Aviation Authority under Regulation 20 of the Airports (Groundhandling) Regulations 1997 made by Ryanair Limited against Gatwick Airport Limited and BAA Airports Limited – the CAA's decision' (May 2011). Available at: http://www.caa.co.uk/docs/5/GH111GALRyanair.pdf.

- HAL's per passenger charges discriminate against passengers on domestic and ROI routes as a class of user of Heathrow;
- HAL's transfer passenger discount is not discriminatory;
- HAL's non-gradual implementation of the new charging structure was not discriminatory; and
- neither HAL's landing charges nor its per passenger charges discriminate against Aer Lingus as a particular user of Heathrow.

3.41 The CAA must now go on to consider whether the discrimination it has identified is unreasonable. This requires considering whether there is a legitimate reason, or objective justification, for the discrimination in the landing and per passenger charges.

Does HAL have an objective justification for its charging structure?

Landing charge

3.42 HAL said in its August 2010 consultation on its structure of charges that runway slots at Heathrow were a scarce resource with over 99% of runway slots utilised. It, therefore, chose to base its landing charges on aircraft movements rather than on weight as this encouraged airlines to operate fuller aircraft leading to a more efficient use of runways and other airport infrastructure. HAL thought that weight based charges would not provide appropriate incentives for airlines to increase passenger load factors.

3.43 Gatwick Airport and Virgin thought that incentivising a more efficient use of HAL's runways was an objective and justifiable reason for a charging structure. At the hearing, Aer Lingus accepted HAL's approach to landing charges, saying 'Heathrow is an incredibly slot-constrained airport with massive levels of utilisation that has to value the space of the approach slot. It is in our combined interests for the biggest aircraft possible to operate to bring as many passengers'.

3.44 bmi accepted noise values and NOx emissions as reasonable justifications of landing fees. However, it thought a cost relatedness criterion should also be used, otherwise the charges paid by narrow-bodied aircraft were inconsistent with the infrastructure they used. bmi suggested aircraft maximum take off weight as the basis for a cost related charge.

3.45 The CAA considers that the evidence supports a conclusion that HAL had a valid objective justification for its landing charges in this case based on its

aim of encouraging a more efficient use of its limited runway capacity, as expressed by slots being used by those who value them the most[34]. As landing charges do not vary by the size of aircraft or number of passengers on the aircraft, an airline would be incentivised to maximise the fare revenue it can obtain from using the slot by carrying more passengers, either by increasing the load factors on its aircraft or by using a larger aircraft. Alternatively the airline could sell or lease the slot to another carrier which would generate higher fare revenue. As there is an active secondary market in Heathrow runway slots, airlines should be able to sell or lease slots to airlines. The CAA, therefore, considers it realistic for HAL to expect that movement related charges will incentivise a more efficient use of the runway. Given the balance of airline views, HAL's acute capacity shortage and the absence of any evidence to challenge HAL's reasonable expectation that the charges would achieve a more efficient use of the runway, the CAA considers that HAL has a valid justification for its structure of landing charges and that the discrimination in its landing charges is not unreasonable. The CAA, therefore, concludes that in setting its landing charges for 2011/12 HAL did not unreasonably discriminate against operators of small aircraft.

Per passenger charge

3.46 At the hearing HAL put forward four reasons why it thought a separate charge for domestic/ROI passengers was not warranted. These partly focused on presenting an objective justification of its new structure and in explaining why its effects were not unreasonably discriminatory. In terms of arguments aimed at objective justification, HAL said:

- there was a presumption in the ACD for a standard EU charge, which HAL said was the starting point for its consideration of passenger charges; and

[34] This measure of efficiency is a function of the number of passengers using the slot and the value that those passengers place on using the airport at a particular time. The measure is consistent with the CAA's statutory duties to 'further the reasonable interests of users of airports in the UK' as a passenger's interest is reasonable if they value the use of the slot sufficient to pay the going price for it; and to 'promote the efficient, economic and profitable operation of airports' as this measure is a standard economic definition of efficiency. The CAA, therefore, can support this measure of efficiency.

- there was a need to have a charging structure that was practicable, therefore the airport had discretion to choose the granularity of its pricing structure. If all passenger charges were based on the cost of handling passengers according to their destination the charging structure would be too complex and unwieldy. Indeed, separating out domestic and ROI services could also lead to marked differentials, and there were other airlines which faced larger percentage price rises than bmi and Aer Lingus.

3.47 HAL also mentioned that in terms of the effects of its charging structure:

- the structural changes to airport charges only resulted in an increase of about 7% in the total amount that Aer Lingus paid in airport charges at Heathrow, according to HAL's modelling. This will be looked at below where the CAA considers the effects of HAL's charges; and
- the cost modelling could only approximate the passenger experience which was similar for domestic, ROI and other European passengers, so the model could not be absolutely determinative.

3.48 HAL noted that within the Q5 price control any restructuring of charges would be cost neutral. In addition, it was inevitable that with over 90 airlines operating at Heathrow, there would be winners and losers and the fact that some airlines had complained ought not to be taken as evidence of unreasonable conduct in and of itself.

3.49 The CAA agrees that any restructuring of charges by HAL will be cost neutral under the price control and that there will be winners and losers when an airport alters its charging structure. It remains however necessary to consider the issue of objective justification. It has the following observations on HAL's arguments.

a) Compliance with the ACD

3.50 The CAA recognises HAL's concern that its charging structure needs to be consistent with the ACD's requirement for non-discrimination. Article 3 of the directive states that Member States should ensure that airport charges do not discriminate among airport users in accordance with Community law. Article 3 allows charges to be modulated if the reason for the modulation is relevant, objective and transparent. Whether a cost difference is material is a matter of judgement, but a cost difference would be a relevant and objective reason for differential charging. There may also be other

legitimate justifications for charging differences. Recital 2 of the ACD envisages that Member States should be allowed to determine that revenue from airport commercial activities may be taken into account in establishing airport charges. The CAA, therefore, does not consider that the ACD necessarily requires HAL to have identical passenger charges for domestic, ROI and other European passengers, nor does it agree with HAL that the ACD precludes a consideration of commercial revenues. In the CAA's view there could be merit in taking account of commercial revenues when considering the structure of airport charges, particularly as the price cap on airport charges is set on a single till basis that takes account of commercial revenues. However, it notes Aer Lingus' and HAL's views that the consideration of commercial revenues is not straightforward, and that HAL has discretion in how it determines its charges. The CAA, therefore, does not consider it unreasonable for HAL not to take specific account of commercial revenues in setting its passenger charges.

3.51 In conclusion, although the CAA welcomes HAL's concern that its charges should comply with the ACD, the CAA does not consider that there are compliance issues that prevent HAL levying a separate domestic/ROI charge. The CAA, therefore, does not regard concerns about ACD compliance as a justification for any discrimination against carriers on domestic and ROI routes.

b) Striking a balance between reflecting actual costs and avoiding an overly complex charging structure

3.52 In its March 2012 provisional decision the CAA accepted HAL's view that its charging structure cannot exactly match the costs imposed on the airport by every individual passenger or airline. In setting its charges HAL therefore has to exercise judgement as to how to structure its passenger charges. Aer Lingus and bmi concentrated on the equalisation of domestic, ROI and other European charges, but among other alternative structures could be the retention of a separate domestic charge and a separate ROI charge, or charges set by the distance of the destination from Heathrow. Given the theoretical nature of cost models, HAL should be able to apply a pragmatic judgement so long as it has a reasonable basis on which to do so.

3.53 In its Statement of Grounds for judicial review, Aer Lingus argued that the CAA had to decide whether the per passenger charges HAL set were

discriminatory. Aer Lingus considers that the fact that there may be a number of acceptable structures within HAL's margin of discretion was irrelevant. In any event, as far as Aer Lingus was aware, there was no discussion during HAL's consultation on charges about a more granular charge apart from a separate charge for domestic and ROI passengers. Furthermore, Aer Lingus contended that as a result of the Common Travel Area between ROI and the UK and the absence of immigration facilities, flights to domestic and ROI destinations were a unique category.

3.54 In response to Aer Lingus' views, HAL said that if it was required to set airport charges according to Aer Lingus' methodology it could potentially need to have as many as 183 separate charges, one for each destination served from Heathrow. HAL added that the cost differential was sensitive to the particular destination or group of destinations modelled. Whilst HAL's modelling showed that the cost of handling domestic/ROI passengers was 16% lower than handling other EU passengers, the cost differential between domestic passengers only and other EU passengers was lower at 9% and the difference between ROI passengers only and other EU passengers was lower still at 5%. HAL considered that having so many different charges would be completely impractical, overly complex and unmanageable. This seems to the CAA to amount to an argument that its charging structure was in part justified by a need to strike a balance between cost reflectivity and complexity.

3.55 The CAA does not agree with Aer Lingus that the reasonableness of HAL's judgement as to how to set its charges cannot be considered in the context of the other approaches which it might have taken. Whilst the CAA is supportive of cost-based pricing it recognises that there are practical limits to the extent to which charges can precisely reflect HAL's costs. Reference to other possible approaches may illustrate the limitations of that being proposed by a complainant. For example, HAL noted that the Rest of the World category includes a 2 hour 25 minute flight to Budapest and a 12 hour 50 minute flight to Singapore. This shows that even the category on which the parties agreed (Rest of the World) is unlikely to involve cost reflective charges. It is appropriate for the CAA to evaluate Aer Lingus' argument, that HAL had no justification for treating domestic and ROI passengers in the same way as other European passengers with this wider perspective in mind.

3.56 Further, whilst the CAA has assessed whether the charge is discriminatory principally on the basis of cost reflectivity, the question of whether any discrimination is justified is a broader consideration that must take account of the CAA's statutory objectives. These include furthering the reasonable interests of all airport users and the efficient and economic use of the airport. Aer Lingus' arguments that the CAA's task is to adjudicate between it and HAL on the narrow point of one charge is not in the CAA's view a reasonable interpretation of its functions under section 41.

3.57 The CAA accepts HAL's overall point that a simpler charging structure may be easier and cheaper to administer than a more complex structure. However, the CAA is not convinced that the cost savings from moving from the three passenger destination structure (domestic, ROI and international) to a two destination structure (European and other) are likely to be large. There were previously separate charges for domestic and ROI passengers, so the CAA does not consider that introducing a joint domestic/ROI charge would be overly burdensome for HAL nor cause unnecessary confusion for airlines. HAL has not provided evidence of particular problems caused by the previous structure, which would suggest that Aer Lingus' proposed structure would equally be unworkable.

3.58 The CAA notes HAL's points that the differential between domestic and ROI passengers and other European passengers are 9% and 9% respectively. However, the CAA has not been provided with sufficient explanation of these numbers to be able to place weight on them in reaching its conclusions.

3.59 In conclusion, the CAA does not consider that the need for simplicity and to avoid over complexity in the setting of charges provides a clear justification for treating all European passengers in the same way, rather than subjecting domestic and ROI passengers to a distinct charge as Aer Lingus has proposed which took account of the cost differential that HAL's own model identified.

c) Additional factors HAL took into account

3.60 In its March 2012 provisional decision, the CAA noted that although HAL put forward to airlines a cost-relatedness justification for its charges, in its August 2010 consultation with airlines HAL also set out a number of additional factors it took into account in its overall pricing strategy some of

which, such as encouraging efficient use of scarce assets, could provide an objective justification for its decision. These additional factors were to:

- support Heathrow's hub status by introducing a discount for transfer passengers;
- encourage efficient use of scarce resources by increasing the minimum departure charge and charging for transit passengers;
- simplify the charging structure, for example in parking charges;
- promote environmentally responsible behaviour by encouraging airlines to use aircraft with lower noise and air quality impacts; and
- safeguard legal and regulatory compliance.

3.61 In its Statement of Grounds for judicial review Aer Lingus thought there was no coherent link between equalising domestic, ROI and other European per passenger charges and encouraging the efficient use of assets. On the contrary, Aer Lingus considered that charging users so as to reflect the resource usage of their passengers would seem more likely to promote efficient use. Aer Lingus also said that at the hearing HAL had accepted that factors such as the use of scarce resources were not ultimately relevant to determining per passenger charges.

3.62 The CAA notes that at the hearing HAL did not argue firmly that any one of these factors, taken individually, would necessarily justify the structure of its passenger charges[35]. The CAA considers that they do show that HAL was trying to achieve a number of reasonable goals by re-structuring its charges.

Conclusion on whether HAL unreasonably discriminated against a user or class of users

3.63 The CAA has found that the 16% difference in HAL's costs of handling domestic/ROI and other European passengers contained in its modelling is material enough that the equalisation of the per passenger charge on domestic, ROI and other European passengers is discriminatory.

[35] At the hearing, the CAA asked HAL whether if having separate domestic/ROI and other European passenger charges would go against any of the additional factors that HAL took account of in setting its charges. HAL said "in terms of encouraging efficient use of resources, it may or may not do so depending on the impact of the departing passenger charge".

3.64 HAL's basis for imposing the new charging structure was that the charges were materially justified on the basis of the costs they imposed. However, HAL reached this view on the mistaken basis that the differential was 11% rather than 16%. The CAA further notes that HAL has not advanced a compelling case as to why the correct differential is not 18%, taking account of the RAB indexation issue.

3.65 Because HAL originally relied on the principle of cost reflectivity in support of the charges, it did not present a specific justification of the differential treatment of ROI/domestic and other European passengers. HAL has however argued that the need to strike a balance between cost reflectivity and complexity is a justification for the new charges. Although the CAA has accepted that this is a relevant factor in principle, the CAA has not found that it is sufficient reason for the differential in this case. It has also found that other objectives referred to by HAL in relation to the new charging structure generally do not provide a sufficient justification for the equalisation of passenger charges for all European passengers.

3.66 The CAA has therefore concluded that HAL's new passenger charges are unreasonably discriminatory as against airlines and passengers on domestic and ROI routes at Heathrow. This conclusion results essentially from the fact that HAL established the new charging structure on a mistaken understanding of the cost differentials between domestic/ROI and other European services. Because of this mistake, the CAA does not consider that, in this case, its assessment of whether the charges are unreasonably discriminatory depends on an assessment of the effect of the charges on competition. It is rather that the justification relied on by HAL has proven to be mistaken.

3.67 However, as set out in section 4, the CAA will consider the effect on competition, and the degree of harm caused by the new passenger charges, in considering whether any, and if so what, remedy should be imposed in the present case.

4 EFFECTS OF HAL'S RE-STRUCTURING OF CHARGES

4.1 This section considers whether HAL's unreasonable discrimination against airlines and passengers on domestic and ROI routes has produced adverse effects, or may produce adverse effects, that require remedying or preventing by the imposition of a condition. As well as considering the effects on airlines and passengers on domestic and ROI routes, the CAA considers the effects of HAL's new charging structure on competition both between airports and between airlines. Although the CAA has found no unreasonable discrimination against Aer Lingus as a particular user of Heathrow, for completeness the CAA also considers the effects of HAL's new charging structure on Aer Lingus.

Has HAL's structure of charges harmed competition?

Has HAL got substantial market power?

4.2 In written representations HAL did not accept that it had market power, but did not contend the point for the purpose of the CAA's investigation. None of the other parties disagreed that HAL had substantial market power.

4.3 On 24 February 2012, the CAA published its initial views on an assessment of Heathrow's market power[36]. The CAA's view was that the available evidence pointed towards Heathrow enjoying a very strong market position amounting to substantial market power with regard to its overall operations. The CAA has, therefore, assumed that HAL has market power for the purpose of this investigation.

Has HAL's structure of charges affected competition between airports?

4.4 There is no evidence to suggest that HAL's conduct has had an adverse effect on the effective competition between it and its horizontal competitors in the relevant market for airport services. Accordingly we do not consider this question any further.

Has HAL's structure of charges affected competition between airlines?

4.5 In cases of alleged discrimination by an undertaking in an upstream market against a player in a downstream market (such as by airport operators against an airline), it would be of particular concern to a regulator (whether

[36] Available at: http://www.caa.co.uk/docs/5/HeathrowMarketPowerAssessment.pdf.

applying ex ante sectoral powers or ex post competition law principles) if the company in the upstream market is trying to leverage its market power in that market into the downstream market so as to favour its own activities in the downstream market. HAL does not operate in the downstream airline market. HAL does have an interest in attracting large aircraft with more passengers as they provide higher profits for the airport where the additional revenue, derived from both aeronautical charges and commercial activities, exceeds the incremental costs of handling the additional passengers. However, this incentive would be reduced to some extent by HAL's need to attract passengers on short-haul routes for its hub operation. The additional profit would be limited to the current price control period given the existing single till revenue yield regulation[37]. Overall, as HAL does not operate in the downstream market as a competitor it has no obvious pecuniary interest in favouring one particular airline over another with a similar operation, in terms of increasing profits it might make in that downstream market.

4.6 The standard approach to considering issues of airline competition is to consider competition on a route by route (origin and destination) basis[38]. The CAA notes that HAL levies identical per passenger charges on all airlines on the same route[39].

4.7 Although all operators on domestic and ROI routes have faced the same price increases, at the hearing Aer Lingus said that competition had been affected to the extent that it competes for passengers against airlines flying from London on other European routes. For example, a leisure passenger to Dublin could decide to fly to another European destination (e.g. Paris or Frankfurt) instead. Aer Lingus said that competition for leisure passengers

[37] The CAA, however, is currently considering what form its economic regulation should take after the current price control expires on 31 March 2014.

[38] This approach has been taken by the Office of Fair Trading and the European Commission in many cases, including the Commission's approval of IAG's acquisition of bmi, in which the routes considered were short haul routes from Heathrow. In particular, the CAA notes that a large majority of respondents (IAG's competitors, travel agents and corporate customers) to the Commission's market investigation questionnaires agreed with the use of the origin and destination approach.

[39] Apart from cost-related discounts for transfer and transit passengers.

on short-haul routes had been affected, although it also noted that there is a tendency towards business travel at Heathrow[40].

4.8 The CAA recognises that an airline's costs of operating to Dublin have risen compared to the costs of operating to, for example, Paris. However, the CAA does not consider that this is sufficient to demonstrate an effect on competition or a tendency to distort competition between airlines flying to different destinations.

4.9 The CAA has therefore considered flight and passenger numbers to ROI destinations, as well as other domestic routes, to see whether there is evidence to suggest that travel to those destinations has been materially affected by the new charging structure. The table below shows how the number of flights and passengers on domestic and ROI routes at Heathrow differed in the first 9 months of the new charging structure in 2011 from the same 9 months in 2010.

[40] However, the CAA's passenger survey showed that about 69% of Heathrow's passengers were leisure travellers in 2011, (CAA passenger survey report 2011).

Table 1: Change in flights and passengers on domestic and ROI routes at Heathrow from April – December 2010 to April – December 2011

	% change in flights	% change in passengers	Number of passengers (April-December 2010)	Number of passengers (April-December 2011)
Aberdeen	6.0%	4.4%	482,445	503,460
Belfast	-0.4%	-4.7%	573,039	545,915
Edinburgh	2.5%	0.3%	978,975	982,384
Glasgow	-41.8%	-25.3%	787,797	588,337
Manchester	3.4%	-4.9%	596,229	566,768
Newcastle	10.5%	9.3%	332,810	363,840
Total domestic	-5.4%	-5.3%	3,751,295	3,550,704
Cork	4.3%	4.3%	292,629	305,295
Dublin	11.1%	7.1%	1,123,010	1,202,359
Shannon	4.9%	2.2%	209,764	214,267
Total ROI	9.1%	5.9%	1,625,403	1,721,921
Total domestic & ROI	-1.7%	-1.9%	5,376,698	5,272,615

Source: CAA statistics

4.10 Taken together, the traffic across all domestic and ROI routes from Heathrow has fallen in terms of both flights and passengers by approximately 2%. However, this masks differences between domestic and ROI routes. Both the number of flights and passengers fell across the domestic routes by approximately 5% overall. In contrast, there was a rise in both measures on ROI routes of 9% and 6% respectively.

4.11 Further, there are considerable differences in the changes in traffic on a route-by-route basis. For example, of the domestic routes, Glasgow traffic very considerably decreased while Newcastle, Aberdeen and Edinburgh exhibited growth in both flights and passengers. In addition, traffic on ROI routes grew in all cases. This clearly suggests that factors outwith the changes in the structure of charges have affected traffic on these routes, such that the effect of the latter cannot be isolated. Indeed, as HAL has said, the fall in Glasgow flights and passenger numbers is likely to have been in large part due to the withdrawal of bmi's service on the route, announced in March 2011. In its decision on the acquisition of bmi by IAG the European Commission noted that after bmi's exit IAG had been able to increase its average prices on its Glasgow flights from Heathrow[41]. The Commission also noted that IAG had significantly increased capacity on its Heathrow-Glasgow route following bmi's exit from the route. The consequences of this withdrawal appear to have significantly contributed to the overall change in domestic route traffic being negative.

4.12 Further, as regards the traffic increase on ROI routes, Aer Lingus said at the hearing that it had lowered fares to attract passengers, which is consistent with the fact that the airline's passenger numbers on the routes it operated from Heathrow grew by 7%. It may be that Aer Lingus' profitability on these routes had fallen as it has absorbed the cost increases itself. Overall both British Airways and Aer Lingus saw increased passenger numbers on all their domestic and ROI routes[42]. bmi's passenger numbers declined on all its domestic and ROI routes.

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[41] Case number COMP/M 644/7 – IAG/bmi "Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No. 139/2004" paragraph 57.

[42] British Airways and Aer Lingus both operated domestic routes during this period. However, only Aer Lingus operated ROI routes.

4.13 Overall, the data set out in Table 1 are inconclusive as to the effect of the change in the structure of charges at Heathrow on traffic on domestic and ROI routes between April and December 2011, as it cannot be separated from the impact of other changes in market conditions or general macroeconomic factors. However, the increase in travel to Dublin and other ROI destinations suggests that airlines on ROI routes have not seen a material reduction in their competitive position at Heathrow during the period under examination. The pattern of data relating to domestic destinations is more mixed but the existence of growth on some routes suggests the same conclusion.

4.14 HAL also provided evidence to the CAA showing the effects of its new charging structure on its top 40 airlines (in terms of both total airport charges paid and airport charges paid per passenger)[43]. The individual figures are confidential, but the numbers show that the higher charges impacted long-haul carriers as well as Aer Lingus and bmi. Unsurprisingly, the carriers which had less than average price increases (both in total and per passenger) were those on other European routes and/or with a high proportion of transfer passengers[44]. Although the figures showed that the re-structuring affected airlines in different ways, they did not show that any particular airline, or airlines on domestic and ROI routes, or any other class of airlines were affected more significantly than all other airlines[45].

4.15 In August 2012, HAL provided figures showing the difference in airport charges (both total and per passenger) for all 86 airlines that operated at Heathrow in both 2010/11 and 2011/12. This showed that over the year from April 2011 to March 2012 Aer Lingus had paid ✂[46] more in airport charges than it had in the same period in 2010/11, compared to an average for all airlines of 18% more[47]. The information showed that 29 other airlines

[43] See Appendix C.

[44] The proportion of transfer passengers is not shown in the redacted table in Appendix C.

[45] The figures showed 12 airlines whose charges had increased by more than 20% per passenger in the six months to 30 September 2011 compared to in the same period in 2010. Of these airlines 11 operated on long-haul or mid-haul routes and one on domestic and ROI routes.

[46] Confidential information redacted.

[47] The information showed the difference in total airport charges paid (for passenger flights) and airport charges per passenger for the 86 airlines that operated at Heathrow in both

faced higher increases in airport charges per passenger than Aer Lingus. These 29 airlines varied in size, although none of them paid more in airport charges in absolute terms to HAL in either year than Aer Lingus. The CAA considers that these figures also did not show that any particular airline or class of airlines was affected more significantly than other airlines.

4.16 In its August 2012 submission, Aer Lingus said that the top 40 Heathrow airlines information could not be relied upon by the CAA to show the effects of HAL's charges on airlines[48]. It said that:

- the total airport charges figures were misleading as they included the allowed regulated increase in airport charges of 14.1%. If 14.1% was subtracted from the variance column in the figures the increase due to the structure of charges would be significantly more pronounced;
- any increase in total airport charges borne by an individual airline could be attributable to factors external to changes in airport charges, such as an increase in the size of an airline's overall operations at Heathrow and/or the aircraft type used;
- the average increase in total airport charges was 19.2%, however the average increase in charges per passenger was 12.8%. Since both of these calculations included the 14.1% regulated increase, there was a marked inconsistency which questioned the probity of the data; and
- the average cost per passenger figures suffered from the same failings as the total airport charges figures. They included the regulated increase and could be materially affected by a change in any or all of a range of parameters, e.g. changes in routes flown, or number of connecting passengers or change of aircraft type.

4.17 The CAA does not accept that Aer Lingus' observations negate the value of the information in the table. It does not consider that the inclusion of the 14.1% regulated increase in the figures makes any difference to their interpretation. In its analysis the CAA compared the effects on Aer Lingus to the average effects on airlines. As the 14.1% regulated increase applies to all airlines using Heathrow, it does not affect the relative position of Aer

2010/11 and 2011/12. It was sent to the CAA in confidence. Aer Lingus has seen its position in the tables, but not other individual airlines.

[48] The airlines in the top 40 airlines table are the airlines with the highest number of passengers using their Heathrow services in the 6 months to the end of September 2011.

Lingus compared to other airlines. The CAA recognises that the figures for individual airlines would be affected by changes to their operations at Heathrow. An increase (or decrease) in the scale of an airline's operations at Heathrow would have a significant effect on the total airport charges it paid. However, the results of the CAA's analysis also comes from the per passenger figures where the effects would be less as they would only be affected by changes in the characteristics of an airline's operations at Heathrow, such as change of aircraft type or a greater proportion of non-European passengers compared to domestic, ROI or other European passengers. Furthermore, changes to the characteristics of an airline's operations that reflected the airline's reaction to the revised structure of charges would show the impact of the new charging structure. The CAA, therefore, does not consider that a 'cleansed' dataset would necessarily have shown more clearly the impact of HAL's new charging structure.

4.18 The CAA does not consider that there is a marked inconsistency in the data. As the regulated increase, revenue from total airport charges and revenue from airport charges per passenger are all different measures, the CAA does not accept that the average increase in each should be the same. In particular when passenger numbers are rising one would expect the proportionate increase in total airport charges to be higher than the regulated increase and increase in revenue per passenger. As the price control is set on a per passenger basis, one would expect the percentage changes in regulated revenue and revenue per passenger to be similar. The figures are consistent with these expectations.

4.19 The CAA, therefore, does not accept Aer Lingus' view that the top 40 Heathrow airlines information is unreliable and cannot be used as evidence for this case.

4.20 Overall, the CAA considers that the available evidence does not suggest that HAL's revised structure of airport charges has adversely affected airline competition at Heathrow to a material degree.

4.21 The CAA has also found no tendency to distort competition. As noted in paragraph 4.6 the standard approach to considering airline competition issues is to consider competition on individual routes, and HAL does not differentiate its charges on the same route. Moreover, having regard to the evidence of the actual impact on competition between airlines flying to

different destinations, the CAA is not persuaded that the new charges tend to distort competition in that regard.

Has HAL's conduct adversely affected Aer Lingus?

4.22 HAL argued that it was relevant to consider the total effect of the new charging structure on Aer Lingus, and not just the charges which Aer Lingus challenged. Aer Lingus argued that in considering whether the per passenger charge is unreasonably discriminatory the CAA should not take the effect of other components of airport charges into account.

4.23 Given the CAA's views as set out above, nothing turns on this question. However, the CAA notes that HAL's exercise was to re-structure all its airport charges (landing charge, per passenger charge and aircraft parking charge). The CAA further notes that HAL is limited by the price control in how far it can modulate its airport charges. HAL cannot raise one charge without considering whether another would have to be reduced to remain within the price control. The CAA notes that airlines with passenger flights cannot avoid any of the individual charges but have to pay them all.

4.24 The CAA therefore considers that, in considering the effects of the new charges on Aer Lingus, which may be relevant to the effect on competition, it is relevant to consider as one issue the overall effect of changes to airport charges as well as the effects of changes to one particular charge.

4.25 Aer Lingus is the only airline that operates exclusively domestic and ROI flights at Heathrow. Other airlines that operate domestic and ROI flights also have routes to other, international, destinations. The CAA, therefore, considers that looking at the effect of HAL's re-structuring of charges in 2011/12 on Aer Lingus provides the best estimate of the effect of HAL's charges on carriers operating domestic and ROI routes. The CAA has looked at two ways of considering the effects of HAL's charges on Aer Lingus:

- to consider HAL's and Aer Lingus' own calculations of the effects, comparing the difference between the actual charges levied on Aer Lingus with those that would have applied if there had been a separate domestic/ROI charge that reflected the cost differential shown by HAL's modelling; and
- looking at the effect on Aer Lingus of the charges it actually paid in 2011/12 compared to those it paid in 2010/11.

4.26 In preparation for the hearing HAL and Aer Lingus produced different figures showing the effects of the increase in total airport charges on Aer Lingus. As the figures were produced using different methodologies and were based on different underlying data, they are not directly comparable.

4.27 HAL's figures compared what Aer Lingus would have paid in airport charges in 2010/11 had the revised structure been in place for that period, with an alternative scenario in which there was a differential tariff for domestic/ROI passengers, reflecting an 11% cost differential from HAL's modelling under the revised structure. (The figures used actual data from 1 June 2009 to 31 May 2010 with an assumption that 15% of Aer Lingus passengers were transfer passengers.) HAL's figures showed Aer Lingus paying 7.2% more in overall airport charges under the revised structure than under the alternative scenario[49]. However, the CAA notes that HAL's estimate of a 7% differential is not accurate as it was based on an 11% cost differential, that HAL now admits was incorrect. Although it has not attempted to replicate HAL's calculations exactly, the CAA believes that using a differential of 16% would increase HAL's estimate from 7% to about 10%, and a differential of 18% would increase the estimate to about 12%.

4.28 Aer Lingus' figures compared how much it would pay in airport charges in 2011/12 under the new structure, to what it would pay if there was an 11% or 18% differential in passenger charges. The 11% differential showed it paying ✂[50] less overall, and the 18% differential ✂[51] less. (Aer Lingus used 2011 traffic as a baseline)[52].

4.29 The CAA, therefore, considers that the effect on Aer Lingus of moving to an equalised charge for domestic, ROI and other European passengers would

[49] At the hearing Aer Lingus said it could not replicate HAL's figures as it did not know on what basis they had been prepared. After the hearing HAL clarified to the CAA how the figures had been derived.

[50] Confidential information redacted.

[51] Confidential information redacted.

[52] At the hearing, Aer Lingus wondered whether the difference between its figures and HAL's figures could have been due to HAL assuming that Aer Lingus carried a higher proportion of transfer passengers than it actually does. The CAA can confirm that although HAL and Aer Lingus did not use identical transfer passenger proportions in their calculations, the proportions they used were broadly similar.

be between HAL's estimate of 10% and Aer Lingus' estimate of ✂[53]. This way of looking at the effects on Aer Lingus produces results that are lower than the 16% or 18% differential shown in HAL's modelling. However, the top end of this range at ✂[54] is similar to the cost differential shown by HAL's model.

4.30 An alternative way of looking at the effect of the re-structuring of HAL's charges is to consider the difference in the total amount of airport charges Aer Lingus paid in 2010 compared to 2011. In its March 2012 provisional decision, the CAA included figures provided by HAL to the CAA in confidence in December 2011. These showed that in the 6 months to 30 September 2011, Aer Lingus paid about ✂[55] more per passenger in airport charges than in the same 6 months period in 2010, compared to a 12.8% average increase per passenger for the top 40 Heathrow airlines. As noted above, further information provided by HAL in August 2012 shows that over the year from April 2011 to March 2012 Aer Lingus had paid ✂[56] more in airport charges than it had in the same period in 2010/11, compared to an average for all airlines of 18% more[57]. Both sets of HAL's figures show Aer Lingus facing a higher than average increase in its airport charges, ✂[58] higher over 6 months and ✂[59] more over a full year.

4.31 The CAA notes that these ways of looking at the effects on Aer Lingus produce results that are lower than the 16% or 18% differential shown in HAL's modelling. However, the CAA also notes that the top end of this range, at ✂[60] is similar to the cost differential shown by HAL's model. Therefore, whilst the conclusion reached, that the overall effect on Aer Lingus may be less than the 16% differential shown by the model, may to

[53] Confidential information redacted.

[54] Confidential information redacted.

[55] Confidential information redacted.

[56] Confidential information redacted.

[57] The information showed the difference in total airport charges paid (for passenger flights) and airport charges per passenger for the 86 airlines that operated at Heathrow in both 2010/11 and 2011/12. It was sent to the CAA in confidence. Aer Lingus has seen its position in the tables, but does not know the position of other individual airlines.

[58] Confidential information redacted.

[59] Confidential information redacted.

[60] Confidential information redacted.

some extent explain why the CAA has not found evidence of detriment to competition, this is not a factor on which the CAA places any weight in reaching its conclusions.

How has HAL's conduct affected passengers on domestic and ROI routes?

4.32 The CAA's duties include 'furthering the reasonable interests of users of airports in the UK'. The CAA has found in this decision that HAL's per passenger charges discriminated against passengers on domestic and ROI routes from Heathrow. The CAA, therefore, has also considered whether passengers on these routes have been harmed by HAL's per passenger charges. Aer Lingus said it had not always passed on the full amount of the per passenger charge to passengers, so the effect on fares is likely to have been less than the increase in the per passenger charge.

4.33 As mentioned in paragraph 4.10 between April and December in 2011 there was a reduction in the total number of domestic and ROI passengers. However, on a route basis passenger numbers only declined on three out of nine domestic and ROI routes. These routes were Belfast, Glasgow and Manchester. It is difficult to disentangle the effect of HAL's charges on these routes from other contemporaneous factors, including airline entry and exit of routes at Heathrow and changes in strategy as well as the state of the economy, increased competition between airports, and competition from routes served from other airports and from other modes of transport. The CAA notes that following the takeover of bmi by IAG there is a degree of flux about Heathrow's domestic routes. IAG will not be permitted to operate all of bmi's Heathrow slots and some of these slots have been reserved for Virgin to operate on domestic routes[61]. Virgin has announced it will start routes from Heathrow to Aberdeen, Edinburgh and Manchester in 2013. The CAA notes that Aer Lingus moved its Belfast International routes to Belfast City in October 2012. The effects of these changes is obviously unknown at the moment but it does show that airlines consider it viable to operate new domestic routes from Heathrow.

4.34 Overall, the CAA does not consider that HAL's per passenger charges have had a material effect on passengers on domestic and ROI routes from

[61] During the European Commission's consideration of whether to approve IAG's acquisition of bmi, IAG made a commitment to give up slots, including slots to operate seven services per day to Edinburgh and Aberdeen.

Heathrow. Passengers cannot be shown to have suffered from fare increases, or from reductions in routes or frequencies wholly or substantially triggered by the new charging structure on these routes. However, the CAA recognises that the provision of domestic and ROI routes at Heathrow may change significantly in the future, and the CAA recommends that HAL should keep the effects of its charges on passengers on such routes under review.

Conclusion on effects

4.35 Overall, the CAA has not found clear evidence that HAL's re-structuring of its passenger charges has distorted (or tends to distort) competition between airlines and has, or is likely to have significant adverse effects on passengers.

5 CONCLUSIONS

5.1 The CAA has found that HAL's new landing charges are discriminatory but not unreasonably so. The CAA has found that the landing charges are justified by the aim of encouraging efficient use of Heathrow's limited runway capacity.

5.2 The CAA has found that the non-gradual implementation of the new charging structure does not constitute discrimination for the purposes of section 41.

5.3 As regards passenger charges, the CAA has found that HAL's cost modelling is not precisely accurate. Nevertheless, on the basis of the available information, the CAA has concluded that as the cost to HAL of handling domestic and ROI passengers is materially lower than the costs of handling other European passengers, HAL's per passenger charges discriminate against carriers and passengers on domestic and ROI routes. The CAA has found moreover that HAL does not have an objective justification for this discrimination, essentially because the justification which HAL relied on (one of cost reflectivity) was based on a material error in the conclusions drawn from the cost modelling. The CAA has therefore found that the HAL's new passenger charges are unreasonably discriminatory.

5.4 The CAA has, therefore, investigated whether HAL's structure of passenger charges has adversely affected competition (or is likely to do so) or harmed domestic and ROI passengers. The CAA has not found evidence that HAL's re-structuring of its passenger charges has distorted or tends to distort competition and/or led to significantly adverse effects on passengers.

5.5 For these reasons, the CAA has concluded that the unreasonably discriminatory conduct which it has found does not, in this instance, have adverse effects which it is necessary to remedy. The CAA has therefore concluded that it should not impose any remedy requiring HAL to change the structure of its passenger charges.

5.6 The discussion below considers these conclusions in the context of the CAA's section 39 duties which it must follow when investigating airport conduct under section 41. The duties are considered in turn in relation to the new passenger and new landing charges. (Given that the CAA has found that the non-gradual implementation of the new charges is not

discriminatory, consideration of the CAA's duties in relation to that issue is not necessary.)

Does HAL's conduct further the reasonable interests of users of airports within the UK?

5.7 HAL's restructuring of airport charges has affected airlines in different ways. However, the prices set are within the price control so are net neutral; and the CAA has not found evidence that the new passenger charges have affected competition between airlines on a route by route basis. Although per passenger charges on domestic and ROI routes have increased, overall Heathrow's passenger figures on such routes have also increased since the new charges came into force. There is also growth in passenger numbers on certain domestic routes. Taking these factors together the CAA has found that HAL's revised passenger charging structure has not damaged the interests of users overall (both airlines and passengers). If HAL's landing charges lead to larger aircraft, and hence more passengers, using the runways than weight-based charges they would further the reasonable interests of airport users overall, because more people would be able to fly and the per passenger share of HAL's overall costs would be smaller.

Does HAL's conduct promote the efficient, economic and profitable operation of the airport?

5.8 The CAA agrees with HAL that its landing charges promote a more efficient and economic use of Heathrow's runways than would weight based charges. If the landing charges lead to higher passenger numbers the airport is likely to be more profitable to the airport within the price control period as its fixed costs are spread over more passengers. On HAL's evidence, the revised structure of passenger charges is likely to have little overall effect on the efficient, economic and profitable operation of the airport.

Does HAL's conduct encourage investment in new facilities at airports in time to satisfy anticipated demands by the users of such airports?

5.9 Neither party argued that HAL's charging structure would affect investment. If HAL's landing charges result in larger aircraft carrying more passengers using the airport, investment in new capacity could be required to accommodate the additional passengers. However, any effect is likely to be small.

Minimum Restrictions

5.10 The CAA has to 'impose the minimum restrictions that are consistent with the performance of its functions under the Act' The CAA has found that HAL's new passenger charges constitute unreasonable discrimination, but do not distort or tend to distort competition and/or cause harm to passengers. The CAA considers that its duty to impose minimum restrictions militates strongly against the imposition of any remedy in this situation.

Conclusion against the CAA's section 39 duties

5.11 The CAA has concluded that a finding that HAL's landing charges are not unreasonably discriminatory is consistent with the CAA's duties under the Act.

5.12 The CAA has further concluded that a decision not to impose any remedy in respect of HAL's revised passenger charges is consistent with its duties under the Act.

6 DECISION

6.1 The CAA has decided that in implementing revised landing charges on 1 April 2011, and in implementing its new charges in a non-gradual way, HAL did not pursue a course of conduct described in section 41(3) of the Act and specifically it did not adopt a pricing policy which unreasonably discriminates against a class of users of the airport or any particular user.

6.2 The CAA has found that the new passenger charges introduced on 1 April 2011 do constitute a pricing policy which unreasonably discriminates against a class of users of the airport or any particular user, specifically airlines and passengers on domestic/ROI routes. However, the CAA has concluded that it should not impose any remedy requiring HAL to change its passenger charges, and that such conclusion is consistent with section 41(2) of the Act and the CAA's duties under the Act.

6.3 This document constitutes a report by the CAA under Regulation 11(3) of the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986.

7 OTHER ISSUES

7.1 The CAA has no power under section 41 to impose a condition on HAL on the basis of transparency alone. However, it can comment on transparency in its decision, and does so in this case as it considers that HAL's processes fell short of what the CAA would expect in terms of HAL's engagement with airlines. The CAA considers it vital that HAL learns lessons for future exercises in revising charges.

7.2 A particular shortcoming discovered during the CAA's investigation was HAL's failure to share its modelling with airlines despite their requests and firm statements that the price structure was based on robust cost modelling. At the hearing, HAL justified its failure on the grounds that it would be unfair to disclose information as some airlines would not have the resources to engage in the process. HAL also said that giving airlines more information would just give them more material to challenge HAL's decision. The CAA does not consider HAL's justifications to be valid.

7.3 The failings in transparency were particularly worrying as an error in HAL's modelling was discovered during the section 41 investigation and may not have emerged otherwise. HAL accepted it had made the error that increased the cost differential between handling domestic/ROI and other European passengers from 11% to 16%. If the modelling had been disclosed earlier that error could have been identified and addressed during the consultation period.

7.4 Taking these shortcomings in the round, the CAA considers that if this pattern of conduct persists, it could raise serious issues worthy of consideration under the ACR.

7.5 When an airport operator has substantial market power, such as HAL, a successful consultation process should do more than just 'tick the boxes' of ACR or the arrangements on information disclosure and consultation in Annex G to the CAA's March 2008 price control decision. The CAA expects such airport operators to set out the principles behind their charging policies. Ideally, modelling should produce results that implement those principles and are made transparent to all airlines. Not everything can be modelled and quantification has its limits and shortcomings, but when an airport operator decides a principle, or principles, that overrides modelling results

this decision should be set out explicitly. Airlines should not have to guess why a decision has been taken and refused access to the material underpinning the decision.

7.6 Modelling should be shared with airlines, not just the results, but the key inputs, assumptions and calculations that produce the results. It is not necessary to allow airlines to audit source materials (such as rosters, invoices, etc). Enough detail should be provided to allow airlines to reproduce the airport operator's results and to model alternative approaches to an equivalent level of robustness, thus allowing a real debate between airport operator and airlines about alternatives.

7.7 The information should be available to all airlines. That some do not avail themselves of the opportunity is not a reason for not giving information to others.

7.8 The CAA will be looking at issues of consultation and transparency in the context of developing a new licence for HAL for 2014 envisaged by the Civil Aviation Bill that is currently awaiting Royal Assent. How HAL conducts itself before 2014 will have a direct bearing on the level of prescription that the CAA may consider appropriate for the licence.

7.9 Despite its conclusions as set out above, the CAA recognises that the effects of the re-structuring of HAL's charges might change over time, and it is important that HAL keeps the issue under review. In particular if it appears to HAL that its charging structure risks producing an anti-competitive effect, it should take, or be ready to take, measures to address the issue. If the effects of the new passenger charges on competition change, then the CAA would be open to requests to reconsider the matter.

R Gander

for the Civil Aviation Authority

17 December 2012

APPENDIX A – CHANGES IN HAL'S STRUCTURE OF PASSENGER AND LANDING CHARGES

	Previous structure (pre April 2011)	**Proposed structure (HAL's August 2010 Consultation)**	**Current structure (from 1 April 2011)**
Passenger charge by destination	Domestic Republic of Ireland International	European (i.e. combined domestic and rest of EU) Other	European (i.e. combined domestic and rest of EU) Other
Transfer passenger charge	Not differentiated from origin and destination charge	25% transfer passenger discount	25% transfer passenger discount
Transit passenger charge	No charge	Charged as per transfer passengers	Charged as per transfer passengers
Basis of landing charge	Movement and noise category (1) Undifferentiated chapter 4 Chapter 3 divided into three sub-categories	Movement and noise category (no change) Differentiated Chapter 4 Chapter 3 divided into 2 sub-categories	Movement and noise category(no change) Differentiated Chapter 4 Chapter 3 divided into 2 sub-categories
Emissions charge(2)	Per kg of NOx	Per kg of NOx (no change)	Per kg of NOx (no change)

Notes:

(1) The noise charge is based on ICAO and ACI noise categories for aircraft. Chapter 4 is the quietest category. From 1 April 2011, HAL divided Chapter 4 into three sub-categories.
(2) The emissions charge is based on emissions of Oxides of Nitrogen from the engine type.

APPENDIX B – HAL'S PASSENGER AND LANDING CHARGES FOR 2010/11 AND 2011/12

	2010/11 charges (£)	2011/12 charges (£)
Landing charges		
Chapter 2	£2,328.00	£4,912.05
Chapter 3 high	£1,164.00	£4,912.05
Chapter 3 base	£776.00	£1,637.35
Chapter 3 minus	£698.40	n/a
Chapter 4 or equivalent	£659.60	n/a
Chapter 4 high	n/a	£982.41
Chapter 4 base	n/a	£818.68
Chapter 4 minus	n/a	£491.21
Emissions charge (per kg of NOx)	£2.73	£6.09
Departing passenger		
Domestic	£13.43	n/a
Republic of Ireland	£17.38	n/a
Europe	n/a	£21.80
International	£22.97	n/a
Rest of World	n/a	£30.63
Europe – transfer	n/a	£16.35
Rest of World – transfer	n/a	£22.97

APPENDIX C – AIRPORT CHARGES & AIRPORT CHARGES PER PASSENGER FOR HEATHROW'S TOP 40 AIRLINES BY PASSENGER NUMBERS

Total airport charges (£) 6 months to 30 September 2010 compared to 6 months to 30 September 2011

	2010	2011	Variance%
Short	0-6m	0-6m	150.0%
Long	6-12m	>12m	125.8%
Long	0-6m	0-6m	47.4%
Mid	0-6m	0-6m	43.6%
Mid	0-6m	0-6m	42.1%
Mid	0-6m	0-6m	36.4%
Mid	0-6m	6-12m	35.6%
Long	0-6m	0-6m	35.0%
Short	>12m	>12m	34.6%
Mid	6-12m	6-12m	28.9%
Long	0-6m	6-12m	27.8%
Long	0-6m	0-6m	26.5%
Long	0-6m	0-6m	26.2%
Mid	0-6m	0-6m	26.1%
Long	0-6m	0-6m	25.0%
Long	6-12m	6-12m	24.3%
Long	6-12m	6-12m	22.9%
Long	6-12m	>12m	22.4%
Long	0-6m	0-6m	22.2%
Long	6-12m	6-12m	22.2%
Long	>12m	>12m	19.5%
Long	0-6m	0-6m	19.4%
Long	>12m	>12m	18.1%
Short	0-6m	0-6m	16.0%
Long	0.6m	0.6m	15.6%
Long	>12m	>12m	12.9%
Short	>12m	>12m	11.6%
Short	6-12m	6-12m	11.4%

Short	0-6m	0-6m	10.5%
Short	6-12m	>12m	10.2%
Short	0-6m	6-12m	6.9%
Short	6-12m	6-12m	5.9%
Long	>12m	>12m	5.9%
Short	0-6m	0-6m	5.0%
Short	>12m	>12m	4.7%
Short	0-6m	0-6m	4.2%
Short	6-12m	6-12m	1.6%
Short	0-6m	0-6m	-5.2%
Long	0-6m	0.6m	-7.0%
Mid	0-6m	0-6m	-25.0%
Total	**484.7m**	**577.6m**	**19.2%**

(1) Airlines categorised by predominant service provided. Short=short-haul, Mid=mid-haul, Long=long-haul.
(2) Categories showing total amount paid by airlines in airport charges in year. £0-6m, £6-12m, >£12m (revenue category 2010/revenue category 2011).

Total airport charges per passenger (£) 6 months to 30 September 2010 compared to 6 months to 30 September 2011

	2010	**2011**	**Variance%**
Mid	✂	✂	29.5%
Mid	✂	✂	28.8%
Mid	✂	✂	25.4%
Short	✂	✂	24.4%
Long	✂	✂	24.0%
Long	✂	✂	23.4%
Long	✂	✂	23.2%
Long	✂	✂	22.9%
Long	✂	✂	22.4%
Long	✂	✂	21.8%
Long	✂	✂	20.5%
Long	✂	✂	20.0%
Long	✂	✂	19.9%
Long	✂	✂	19.6%

Long	✂	✂	19.3%
Short	✂	✂	18.8%
Mid	✂	✂	18.5%
Long	✂	✂	17.0%
Long	✂	✂	16.7%
Long	✂	✂	15.4%
Long	✂	✂	15.3%
Mid	✂	✂	13.2%
Long	✂	✂	12.6%
Mid	✂	✂	12.0%
Long	✂	✂	8.8%
Long	✂	✂	6.0%
Long	✂	✂	5.5%
Short	✂	✂	4.8%
Short	✂	✂	4.4%
Short	✂	✂	4.2%
Short	✂	✂	3.1%
Short	✂	✂	3.0%
Short	✂	✂	2.6%
Short	✂	✂	2.3%
Short	✂	✂	2.2%
Short	✂	✂	0.6%
Short	✂	✂	-1.4%
Short	✂	✂	-3.1%
Short	✂	✂	-3.2%
Mid	✂	✂	-3.7%
Total	**15.31**	**17.27**	**12.8%**

✂ - confidential information redacted.