

Regulatory Policy Group
Economic Regulation

Andrew Williams Fry
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28 October 2013

Dear Andrew,

CAA's FINAL PROPOSALS – GATWICK ACC INTERIM SUBMISSION

Please find attached the interim submission by the Gatwick ACC to the CAA's final proposals for Gatwick Airport Limited (GAL).

As you are aware the CAA's final proposals were for GAL's proposed commitments backed by a licence and monitoring framework. To this end the ACC have provided comments on:

- The draft conditions of use prepared by GAL, the CAA notes that these conditions of use were based on an earlier version of the commitments, although the ACC highlights areas where there are inconsistencies with the latest version of the heads of terms; and
- The draft licence appended to the final proposals.

The CAA will take into account these comments and any further comments made by the Gatwick ACC and other stakeholders in developing the licence that it may propose to grant in February 2014. Many of the comments made by the ACC refer to GAL's commitment proposals. The CAA is not directly able to amend GAL's commitment proposals at this stage. I am therefore passing on these comments so that GAL can take these into account when preparing your response to the final proposals and any further developments to the commitments. The CAA has not yet had chance to examine these comments in detail. However I would like to emphasise that if, following consideration of all the responses to the final proposals, the CAA considers that there remain concerns with the commitments, then the CAA reserves the right to address these through further licence conditions or amendments to the proposed monitoring framework where this is necessary to further the interests of users of air transport services.

While not ruling out concerns in other areas, the CAA considers it would be useful to highlight two areas where the CAA has drawn attention to the risks to end users in the final proposals and where licence conditions might therefore prove to be appropriate if concerns remain that are not adequately addressed in the commitments. You will note that in both cases the ACC is suggesting changes are made to the commitments. GAL should not assume that the CAA does not have concerns in other issues because it has not chosen to highlight them in this letter.

Civil Aviation Authority

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To assist interested parties with consideration of these issues, we have considered how such licence conditions might be framed were they to prove necessary. The precise form would however depend on responses to the final proposals.

The two areas are:

- Second runway costs, where the CAA's intention would be to ensure that GAL would only be able to pass on efficient costs which are consistent with CAA policy on the treatment of second runway costs; and
- Premium charges, where the CAA's intention would be to prevent the levying of additional charges for services that are currently funded through airport or ancillary charges.

Possible licence conditions in respect of these areas of concerns could be as follows:

Second runway costs:

“Condition C1.5A: The licensee can only amend the indicative price path in the commitments to allow for the recovery of the reasonable costs of a second runway at the airport if:

- (a) they are efficiently incurred, taking into account value for money including scope, aggregated direct and indirect costs for the airlines affected by the project, programme timing risk and benefit to users of air transport services; and
- (b) the CAA agrees to the amendments.

Second runway costs are defined as the capital, operating and financing of:

- (a) applying for planning permission for a second runway; and
- (b) the subsequent development of the second runway and associated airport infrastructure.”

The CAA would expect to consult as appropriate on any amendment to the indicative price path on second runway costs.

Premium charges

“Conditions C1.5B: Premium Service Charges are defined as charges for services that, as at 1 April 2013 were not covered by:

a) airport charges, defined as:

i) charges levied on operators of aircraft in connection with the landing, parking or taking off of aircraft at the airport (including charges that are determined by reference to the number of passengers on board the aircraft), including any separate charge for aerodrome navigation services; and,

ii) charges levied on aircraft passengers in connection with their arrival at, or departure from, the airport by air; or

b) ancillary charges, defined under the commitments as selected ancillary service charges and other ancillary service charges”

Next steps

The CAA would like GAL and other stakeholders to consider the issues raised by the ACC's interim response and the possible licence conditions set out in this letter as part of the responses to the CAA's final proposals, to be received by **4 November**.

The next steps once the consultation has closed are as follows:

- **Week commencing 6 January 2014.** The CAA will publish its decision on the market power test for GAL. Assuming that the MPT for GAL is met the CAA will, as required under section 15 (1) of the Act, publish the formal notice proposing to grant a licence which will include the proposed licence conditions. The CAA intends, given the extensive consultation on the form of regulation that will already have taken place by that stage, that the notice will set out the near final version of the licence.
- **Week commencing 10 February 2014.** If, after considering representations, the CAA does not make amendments to any of the conditions such that they differ significantly from those in the section 15(1) notice, the CAA will grant the licence and publish the a copy of the licence and a further notice which will specify, among other things, the date on which the licence is to come into force. The CAA's current expectation is that this would be 1 April 2014. If the CAA does make amendments so that any of the conditions differ significantly from those in the notice to grant a licence, the CAA will need to repeat the section15(1) notice process to include those revised conditions. The CAA considers that amendments of a technical, clarificatory or minor nature would not require a further section15 notice procedure to be undertaken.
- After the CAA has granted the licence, GAL and any other person with a relevant interest will have six weeks to decide whether or not to seek permission from the Competition and Markets Authority to appeal against any of the conditions in the licence.

As this letter builds on the final proposals I will be copying to the ACC and placing a copy on our website.

I look forward to your response to the final proposals.

Yours sincerely,



Tim Griffiths

cc: Gatwick ACC

Attachments: Interim responses to the final proposals from the ACC, BA and Virgin.