

## **Scarce Capacity Hearing**

### **Example skeleton Panel Brief**

This example skeleton Panel Brief is intended to guide the Parties to any scarce capacity hearing on the likely format of any Panel Brief. Clearly, the actual format and content of any Panel Brief for any particular scarce capacity hearing will depend upon the specifics of the case in question

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## **STATUTORY FRAMEWORK AND GUIDANCE**

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This section provides an introduction to the issue and includes a description of the process followed to date and the CAA's statutory objectives and guidance in relation to scarce capacity allocation.

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## **LICENSING BRIEF**

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This section provides some general information on licensing and sets out the position of the applicants in terms of the licences that they hold.

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## **BACKGROUND STATISTICS**

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This section presents high-level background statistics on the route, for instance traffic levels and passenger characteristics.

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## **AIRLINE PROPOSALS**

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This section compares and contrasts the individual proposals from the applicant airlines and identifies any key issues that the Panel expects to be covered at the scarce capacity hearing.

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## MARKET DEFINITION

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This section compares and contrasts the views and evidence presented by Parties on the relevant market definition(s) for the case in question and identifies any key issues that the Panel expects to be explored in this context at the scarce capacity hearing.

Clearly, the key areas of interest for the Panel in relation to the relevant market definition will depend upon the specifics of the case itself. However, defining the relevant market will typically require that consideration be given to both the product and the geographical aspects of the services under consideration. The Panel can be expected to be interested in market definition to the extent that it is material to consumer benefit. Therefore, in line with the OFT's guidelines, the Panel can be expected to be concerned with excluding those elements that are not relevant and focusing on those that are, as opposed to seeking to define the market uniquely, if this is not necessary.

The elements that the Panel would expect to be considered to be relevant are<sup>1</sup>:

- Whether, and if so the degree to which, business and leisure passengers on the route can be seen as separate markets.
- (Where relevant to the case), whether, and if so the degree to which, different London airports can be seen as separate markets.
- Whether, and if so the degree to which, indirect services can act as effective substitutes for direct services on the route.
- Whether, and if so the degree to which, the proposals of applicant airlines would affect the choices of connecting passengers.
- The interaction between any proposed cargo services on the proposed passenger services and vice versa.
- The degree to which barriers to entry other than the bilateral capacity cap<sup>2</sup> influence the market definition.

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<sup>1</sup> This list is not in order of importance and nor is it intended to be interpreted as an exhaustive list of the areas that the Panel will be interested in all cases. Clearly, the key areas of interest for the Panel in relation to market definition will depend upon the specifics of the case itself.

<sup>2</sup> That is, that contained in the relevant Air Services Agreement.

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## CONSUMER BENEFITS

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This section compares and contrasts the views and evidence presented by Parties on the consumer benefits they consider will be realised by the proposed services and identifies any key issues that the Panel expects to be explored in this context at the scarce capacity hearing.

Clearly, the key areas of interest for the Panel in relation to consumer benefits will depend upon the specifics of the case itself. However, it is possible to identify in advance a number of areas that the Panel might ask Parties to explore at the hearing in relation to consumer benefits. These are<sup>3</sup>:

- The expectation that the proposed consumer benefits will be realised – eg the views of Parties on whether the services proposed by the applicants are likely to be implemented in full and sustained over time.
- The ‘static’ fare benefits likely to accrue from each of the applicants’ proposals. In general, economic theory suggests that an increase in supply in a market will result in supply and demand reaching a new equilibrium at a lower price. This leads to an associated benefit for consumers. (These benefits are related to the amount of capacity added and not to the choice of carrier, unless the choice of carrier itself dictates the capacity added).
- The ‘dynamic’ fare benefits likely to accrue from each of the applicants’ proposals. As described above, adding capacity on a route can be expected to result in a decrease in fares overall. An additional driver for lower fares is competition. Whilst such benefits may not be realised immediately, where competition is currently constrained by a restriction on supply (e.g. a frequency limit), over time one would expect additional competition in a market to drive cost reductions, fare innovation (in the form of a broader range of different, perhaps more flexible, fare types) and a reduction in prices.
- The frequency benefits. It has been shown empirically that certain passengers, especially those passengers travelling for business, value frequency of service highly, in that it provides them the flexibility to choose

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from more than one outbound and inbound leg each day and the ability to change their travel plans at short notice.

- Schedule benefits. As well as valuing frequency of service, certain time-sensitive passengers may also place a premium on the time of day for the departure / arrival of the service or the days of the week the service operates. Further, for passengers that are not local to the airport in question, the convenience of connections with other services is likely to be important.
- Product benefits. Certain types of passengers may place a value on product related factors such as seat size and pitch, baggage allowance, frequent-flyer programmes etc. Business class passengers in particular might place a premium on a high quality product offering, both in flight and on the ground, the latter including such factors as access to a business lounge, business-only check-in, chauffeur service, etc. These value-added products may be one result of the competitive stimulus created by new entry.
- 'Operational' benefits. Depending on the nature of the route in question and the competitors on the route, passengers may value such operational factors as reliability and punctuality.
- Other benefits. As was stated previously, consumers other than passengers, for instance cargo shippers, can be considered relevant. Benefits to such consumers are considered under 'other benefits'.

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**Appendix****STATEMENT OF KEY ISSUES**

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This note sets out the key issues and questions (as highlighted throughout the Panel Brief) that the Panel has raised based on the Parties' evidence supporting their applications for capacity allocation. Whilst the CAA hopes that this will be a useful document in indicating issues that it expects the Parties to address at the hearing, this does not preclude any other issues being raised by either the Panel or Parties at the hearing.