

# Heathrow Airport Limited operator determination





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**NOTICE OF DETERMINATION UNDER SECTION 11 THE CIVIL AVIATION  
ACT 2012**

**HEATHROW AIRPORT LIMITED (“HAL”)**

**The Civil Aviation Authority has made the following operator determination for the purposes of section 10 of the Civil Aviation Act (“the Act”).**

**HAL is the operator of the airport area consisting of London Heathrow Airport (“Heathrow Airport”) as it has overall responsibility for the management of all of that area, excluding the fuel facilities as described below.**

**HAL is not the operator of the airport area which comprises of the Northern Receipt Fuel Facility, the Southern Receipt Fuel Facility, the Sandringham Road Fuel Farm, the Perry Oaks Fuel Farm, the Airport Transfer Pipes and the Fuel Hydrant Systems located at London Heathrow Airport (together, the “fuel facilities”) as it does not have overall responsibility for the management of all of that area.**

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## CHAPTER 1

# Purpose of this document

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- 1.1 The purpose of this document is to set out the CAA's reasons for the operator determination for the purposes of section 10 of the Act. The CAA has determined that HAL is the operator of the airport area comprising Heathrow Airport as it has overall responsibility for the management of that area. The CAA has also determined that HAL is not the operator of discrete areas (including but not limited to the whole or part of any area of land, buildings or other structure) as it does not have overall responsibility for the management of those areas.
- 1.2 The operator determination is relevant where more than one person controls or may control the matters listed in section 9(4) of the Act to some extent<sup>1</sup>. It can also have a bearing on determining the "airport area" and the "relevant operator" for the purpose of conducting a market power determination (MPD) under sections 6 and 7 of the Act and, where appropriate, granting any licence that is required pursuant to sections 15 to 18 of the Act.
- 1.3 The operator determination is made for the purposes of the Civil Aviation Act 2012 only and does not have any bearing on HAL's aerodrome licence issued pursuant to Article 211 of the Air Navigation Order 2009.
- 1.4 Under sections 11(1) and (2) of the Act, as soon as practicable after making an operator determination, the CAA is required to send a copy of this notice to the following persons:
- the person in respect of whom the determination was made; and
  - such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

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<sup>1</sup> Section 9(3) of the Act

## CHAPTER 2

# Background and Chronology

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- 2.1 In May 2013, the CAA published its consultation<sup>2</sup> (the Consultation) on its 'minded to' consideration of the market power test (MPT)<sup>3</sup> in relation to Heathrow Airport, pursuant to its duties under the Act. That Consultation stated that the CAA was 'minded to' find that the MPT was met in relation to the core area, as defined in section 5(4) of the Act<sup>4</sup>, of the airport area comprising Heathrow Airport<sup>5</sup> on the basis that Tests A, B and C under section 6 of the Act were met in relation to HAL as the relevant operator.
- 2.2 In January 2014, the CAA published its MPD<sup>6</sup> which found that the MPT was met in relation to the core area of the airport area comprising Heathrow Airport in relation to HAL as the relevant operator. Therefore the core area is a dominant area for the purposes of section 5 of the Act and consequently, Heathrow Airport is also considered to be a dominant airport. Accordingly, under section 3 of the Act, HAL must have a licence in respect of the core area in order to be able to charge for airport operation services provided in this area and any other area that forms part of Heathrow Airport in respect of which HAL is the operator. This does not include any discrete area in respect of which the CAA concludes that HAL is not the operator as part of an operator determination under section 10 of the Act.
- 2.3 In the course of the consultation process following the CAA's Initial Proposals for Economic Regulation at Heathrow (Initial Proposals)<sup>7</sup>

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<sup>2</sup> See <http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14785>

<sup>3</sup> Section 6 of the Act.

<sup>4</sup> The core area in relation to an airport is defined in section 5(4) of the Act as the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport, passenger terminals and the cargo processing areas.

<sup>5</sup> Under section 5(3) of the Act, "airport area" can consist of an airport in its entirety.

<sup>6</sup> See CAP 1133

<sup>7</sup> Published in April 2013

<http://www.caa.co.uk/docs/33/CAP%201027%20Economic%20regulation%20at%20Heathrow>



and letter to stakeholders in May 2013<sup>8</sup>, HAL submitted that it had no control over the provision of fuel supply and storage infrastructure at the airport, although it did consider it had a degree of management control of the fuel hydrant system.<sup>9</sup> As part of the consultation process following the CAA's Final Proposals for Economic Regulation at Heathrow (Final Proposals).<sup>10</sup> HAL submitted that it was not responsible for the supply of fuel and was not the operator of the fuel facilities for the purposes of the Act<sup>11</sup>. The CAA regards those submissions as a request for an operator determination pursuant to section 10(5) of the Act to the effect that HAL is not the operator of the fuel facilities.

- 2.4 The CAA therefore sought information from HAL to confirm to what extent it had 'overall responsibility for the management' of the fuel facilities according to the matters listed in section 9(4) of the Act. The extent to which HAL controls those matters is relevant to determining whether the fuel facilities should, or should not, be included in the airport area covered by the licence.
- 2.5 In the Final Proposals, the CAA proposed the airport area considered in the Consultation, as the basis for the airport area in the proposed licence. This is because the Act envisages a link between the airport area that will be the subject of the MPD and the relevant market for the purposes of Test A.<sup>12</sup> Accordingly, the airport area for which the licence is granted covers all those parts of the core area of Heathrow Airport, except for any specific areas where the CAA has concluded that HAL is not the operator as part of an operator determination.
- 2.6 After reviewing the terms of the leases for the fuel facilities, the CAA

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[%20from%20April%202014%20initial%20proposals.pdf](#).

<sup>8</sup> <http://www.caa.co.uk/docs/78/20130531LetterToHeathrowStakeholders.pdf>.

<sup>9</sup> See Page 116 <http://www.caa.co.uk/docs/78/HALApr13.pdf>.

<sup>10</sup> Published in October 2013 <http://www.caa.co.uk/docs/33/CAP%201103.pdf>.

<sup>11</sup> See Page 45

<http://www.caa.co.uk/docs/78/Heathrows%20Response%20to%20CAA%20Final%20Proposals%20non%20confidential.pdf> and page 31<http://www.caa.co.uk/docs/78/hal%20q6final.pdf>

<sup>12</sup> In particular, under section 7(7) of the Act, when choosing an airport area that is to be subject to a MPD, the CAA must have regard to the relevant market or markets. Sections 6(6) (a) and (b) of the Act also tie the definition of 'relevant market' to the airport area.

considered that HAL does not have overall responsibility for the management of those facilities. The reasons for this initial finding were set out in the Final Proposals.<sup>13</sup> The CAA therefore proposed to exclude the fuel facilities from the airport area covered by the licence.

- 2.7 Since publishing the Final Proposals, the CAA sought further information from HHO<sub>CO</sub><sup>14</sup> and HAF<sub>CO</sub><sup>15</sup> who have long term leases with HAL to operate the fuel facilities. The analysis of this further information confirms the CAA's findings as set out above in paragraph 2.6.
- 2.8 In the course of the consultation process following the Final Proposals, some stakeholders raised the issue of fuel resilience in relation to additional storage infrastructure being developed in Grass Area 17A.<sup>16</sup> The CAA is not considering this project within the scope of this operator determination<sup>17</sup> as it has not been finalised and there are no facilities providing a service for the supply of fuel. Grass Area 17A will still be included in the airport area covered by the licence as it forms part of the core area. If additional fuel storage infrastructure is built in this area in the future, the CAA will consider carrying out another operator determination in accordance with its statutory duties under section 1 of the Act.

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<sup>13</sup> See pages 215-216 of the Final Proposals <http://www.caa.co.uk/docs/33/CAP%201103.pdf>.

<sup>14</sup> Heathrow Hydrant Operating Company Limited

<sup>15</sup> Heathrow Airport Fuelling Company Limited

<sup>16</sup> See <http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=15407>.

<sup>17</sup> Which covers the current receipt, storage and distribution infrastructure as set out above.

**CHAPTER 3****Operator of core area**

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- 3.1 Heathrow Airport was a designated airport for the purposes of section 40 of the Airport Act 1986 (the 1986 Act). Under the 1986 Act, HAL was considered to be the operator of the airport and as such was given the necessary permission by the Secretary of State to levy airport charges. Furthermore, HAL is the holder of Heathrow's aerodrome licence.
- 3.2 In its responses to the Initial Proposals and the Final Proposals, HAL has only contested that it is not the operator of the fuel facilities. Accordingly, save for any particular areas where the CAA has made an operator determination to the contrary, the CAA considers that HAL is the operator of Heathrow Airport for the purpose of the Act.

## CHAPTER 4

# Fuel supply at Heathrow Airport

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- 4.1 This section provides an overview of fuel supply at Heathrow Airport and the roles and responsibilities of the parties involved.

**Figure 1: Map of Heathrow Airport**



Source: HAL

### Overview of fuel supply to Heathrow Airport

- 4.2 Fuel arrives at Heathrow airport via underground pipelines and is then delivered into one of two receipt facilities, the Northern and Southern Fuel Receipt facilities.<sup>18</sup>

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<sup>18</sup> Some fuel is also delivered into the airport by truck.

- 4.3 The fuel is then transferred via the Northern or Southern transfer pipelines into the two fuel farms (the Perry Oaks Fuel Farm and Sandringham Road Fuel Farm) for settling and storage. These fuel facilities are highlighted red in Figure 1 above.
- 4.4 The fuel is then delivered via three hydrant systems known as CTA, T5 and Cargo (the Fuel Hydrant Systems) to underground valves within the fuel hydrant systems that are situated underneath aircraft stands. The valves are then connected to the aircraft wing via hydrant dispenser vehicles which are operated by 'into plane companies'.

### **Roles and Responsibilities**

- 4.5 The fuel supply and distribution chain into Heathrow Airport involves several parties. Fuel supply into the airport is managed, and delivered by, or for and on behalf of, the fuel suppliers who have a key role in determining quality of fuel delivered and the continuity supply of fuel. HAL retains freehold title over the land and fuel facilities which are leased to HHOpcO and HAFCO<sup>19</sup> on a long term basis. Airlines have separate arrangements in place with 'into plane companies' for the transfer of fuel to their aircraft.
- 4.6 For the purposes of this operator determination, the CAA is only considering the services provided in the fuel facilities. This encompasses the receipt and storage of fuel at Heathrow Airport and its conveyance via the Fuel Hydrant Systems to aircraft stands.

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<sup>19</sup> HAFCO is the lessee of the two receipt facilities, transfer pipelines and Perry Oaks fuel farm, HHOpcO is the lessee of the hydrant systems and Sandringham Road fuel farm.

**CHAPTER 5****Reasons for the determination**

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- 5.1 In making an operator determination, section 10(4) of the Act requires the CAA to determine whether a person has overall responsibility for the management of an airport area by having particular regard to the extent to which the person controls or may control the matters listed in section 9(4) of the Act.
- 5.2 The terms 'overall responsibility' and 'control' are not defined in the Act and therefore assume their ordinary meaning. The CAA has an element of discretion in determining the relative importance of the matters listed in section 9(4) of the Act and the weight that it gives to the extent of such 'control' in determining 'overall responsibility'. The CAA has therefore sought to exercise this discretion reasonably and in a proportionate and targeted manner in line with its statutory duties under section 1 of the Act.
- 5.3 The CAA considers that whether there is or may be control depends on the amount and type of decision-making power or influence the person holds over the type, quality and price of services provided in the area and the access and development of the facilities concerned. In determining to what extent 'control' is sufficient to constitute 'overall responsibility', the CAA has balanced various factors and considers that operational management and decision-making is a particularly relevant factor. The CAA has also considered the extent of control exercised within a commercial leasing arrangement by a landlord/lessor and its impact on the tenant/lessee's day to day operational management of the facilities for the purpose of supplying fuel.
- 5.4 The CAA sets out below how it has had regard to the matters under section 9(4) of the Act. It then concludes by considering whether HAL has overall responsibility for the management of the fuel facilities.

### **Extent of HAL's control over matters in section 9(4) of the Act**

5.5 In assessing the extent of control HAL has over the matters set out in section 9(4) of the Act in the area comprising the fuel facilities, the CAA must have particular regard to:

- (a) the types of services that are or may be provided in the area;
- (b) the prices that are or may be charged for services provided in the area;
- (c) the quality of services provided in the area;
- (d) access to the area; and
- (e) the development of the area.

5.6 The CAA considers that in the absence of a specific definition of 'services'<sup>20</sup> under section 9(4) of the Act, that this is synonymous with airport operation services (AOS) as defined under section 68 of the Act.

5.7 The CAA considers the following AOS to be of particular relevance in making an operator determination in relation to the aircraft maintenance facilities at Heathrow Airport:

- The supply of fuel is an AOS (as defined in section 67(8) (a) and 68(2) of the Act).
- The grant of permission to have access to or use the land and facilities that forms part of an airport, or its facilities, for the purpose servicing aircraft (as defined in section 68(5)(a) of the Act)<sup>21</sup> including the provision of facilities.

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<sup>20</sup> Other than section 72(2) of the Act which specifies that reference to providing a services however expressed, includes providing a facility (and related expressions are to be interpreted accordingly).

<sup>21</sup> Section 68(5)(b) of the Act states that a person who permits others to access or use land for the purpose of supplying fuel is to be treated as providing AOS in that area.

**(a) Types of services provided**

- 5.8 The extent of HAL's control over the types of services provided in the area, comprising the fuel facilities, is limited to that which it exercises as the landlord under a commercial lease, in so far as it has granted the lessees permission to access the land to operate the fuel facilities for the purpose of the receipt, storage and conveyance of fuel from the receipt facilities to the aircraft stands. The leases also set out the lessee's rights and obligations.
- 5.9 HAL has restricted in the leases the type of services/activities that can be provided by the lessees to those which are required for, and connected to the receipt, storage and conveyance of fuel from the receipt facilities to the aircraft stands. Otherwise, it has no control or involvement in the supply of fuel to the receipt facilities at the airport, the day to day operational management of processing and distributing fuel at the airport or the types of services 'into plane companies' provide, other than providing airside access.

**Conclusion**

- 5.10 While HAL has permitted others to access the land and facilities and has restricted the services/activities that can be provided under the leases, it does not supply and distribute the fuel itself, and is not involved in the day to day operational management of the fuel facilities. Therefore, HAL has very limited control over the types of services provided.

**(b) Prices charged for services provided**

- 5.11 Whilst HAL charges rent to the lessees for the use of its land and facilities<sup>22</sup>, which is subject to relevant negotiations, it has no control or involvement in the actual prices charged for the services provided in the area comprising the fuel facilities.
- 5.12 HHOpcO and HAFcO and the 'into plane companies' have their own commercial arrangements in place within the fuel supply chain, which

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<sup>22</sup> The starting rent for the use of its land and facilities in each of the HHOpcO/HAFcO leases was agreed following commercial negotiations and is defined in the leases. It is varied on an annual basis according to changes in the Retail Price Index or fuel volume.



HAL is not party to.

### **Conclusion**

- 5.13 HAL only determines the rent charged, subject to relevant commercial negotiations, for the fuel facilities as set out in the leases, and has no direct control over the prices the lessees charge for services provided in the area, comprising the fuel facilities, which are set through separate arrangements which HAL has no control over.

### **(c) Quality of services provided**

- 5.14 HAL has no involvement in the day to day operational activities carried out by the lessees relating to the quality of services provided in the fuel facilities. HAL is not involved in the process of checking fuel is on specification and fit for purpose upon arrival at the airport or as it is processed through the receipt facilities, fuel farms and hydrant systems for delivery to the aircraft stands. Furthermore HHOpc is classed as the operator for the purposes of the Control of Major Hazards Regulations (COMAH), although HAL has a key role in COMAH emergency response planning and obtaining relevant permissions.<sup>23</sup>
- 5.15 In terms of maintaining continuity of fuel supply, HAL has very little day to day control, although it does provide some support services, for example the infrastructure for a safety system that can shut down the hydrant in the event of an emergency. In the event of a fire, there is also a HAL fire station on the airfield.<sup>24</sup> HAL also sets some contractual standards in the leases for the facilities to be maintained and kept in good repair.

### **Conclusion**

- 5.16 HAL has no direct control over the quality of services provided in the area comprising the fuel facilities other than providing access to the land and facilities, in its role as operator of the Heathrow Airport and landlord of the facilities.

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<sup>23</sup> See <http://www.hse.gov.uk/comah/index.htm>.

<sup>24</sup> See <http://www.caa.co.uk/default.aspx?catid=1823>.

**(d) Access to the area**

- 5.17 HAL's control over access to the fuel facilities extends to the extent that they are part of the airport<sup>25</sup> and personnel must first pass through HAL's airside security<sup>26</sup> to access those facilities. HAL has also stated that in general terms it accepts it is responsible for general access to the airport in accordance with aviation safety and security regulation.<sup>27</sup> Airside access is granted to those who have legitimate business reasons for operating airside and who meet security and safety requirements, without exception. Under the leases, the lessees are also granted rights of access by HAL so as to facilitate access to the fuel facilities.
- 5.18 HAL has some limited tangential control over access to parts of the Fuel Hydrant Systems in that they are located across the airfield and HAL has the ability to limit airside access, primarily for safety and security reasons, which could impact the delivery of fuel to aircraft stands. It should also be noted that the Airports (Groundhandling) Regulations 1997 (the Regulations) require HAL to ensure "free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties".<sup>28</sup> This includes the groundhandling 'support service' of 'fuel and oil handling' which comprises the storage of fuel amongst other things.<sup>29</sup> At present, HHOpcO and HAFCO do not hold ground operations licences. HAL is proposing to issue a ground operations licence, following a period of

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<sup>25</sup> The fuel facilities are located landside and airside. The Northern Receipt Fuel Facility is both landside and airside. The Southern Receipt Fuel Facility and Sandringham Road Fuel Farm are landside. The Perry Oaks Fuel Farm, Fuel Hydrant Systems and Airport Transfer Pipes are airside.

<sup>26</sup> See <http://www.heathrowairport.com/static/HeathrowAboutUs/Downloads/PDF/idcstandard.pdf> for further information.

<sup>27</sup> <http://www.caa.co.uk/docs/78/HALApr13.pdf> page 116.

<sup>28</sup> Regulation 8(a) of the Airports (Groundhandling) Regulations 1997.

<sup>29</sup> See Schedule 2, page 32 of HAL's Draft Ground Operations Licence. Schedule 3, page 42 (Performance Standards) states that "fuel and oil handling operation should be conducted in accordance with all lease requirements, applicable law, applicable standards and good industry practice".

[http://www.heathrowairport.com/static/HeathrowAboutUs/Downloads/PDF/Ground\\_Operations\\_Licence-Draft.pdf](http://www.heathrowairport.com/static/HeathrowAboutUs/Downloads/PDF/Ground_Operations_Licence-Draft.pdf)

consultation with its existing licensees, to all providers of groundhandling services and companies operating airside at Heathrow.<sup>30</sup> HHOpcO and HAFCO consider they have all the necessary rights under their leases and therefore believe that they do not require ground operations licences

- 5.19 HAL has limited rights of entry into the receipt and storage facilities themselves which are controlled by the lessees who have their own security arrangements in place under which only authorised persons are permitted entry. The limited circumstances in which HAL can enter the receipt and storage facilities are specified in the leases, which require reasonable notice to the lessees except in emergencies.

### **Conclusion**

- 5.20 HAL has some control over access to the fuel facilities as they are located at the airport, and personnel must first pass through HAL's airside security in order to access the facilities themselves. Furthermore, section 68(5)(b) of the Act states that a person who permits others to access or use land for the purpose of supplying fuel is treated as providing AOS in that area. HAL is therefore providing an AOS in one sense as it permits the lessees to access and use its land for the purpose of supplying fuel. However, it has limited control over access to the receipt and storage facilities themselves and HAL personnel can only enter these facilities in specified circumstances on reasonable notice to the lessees or in emergencies.
- 5.21 Therefore HAL controls airside access, which is already within the scope of the licence under the Act, and has a limited degree of control over the access to the receipt and storage facilities themselves.

### **(e) Development of the area**

- 5.22 Whilst HAL accepts in general terms that it is responsible for the overall development of the airport<sup>31</sup>, the extent of HAL's control over the development of the area, comprising the fuel facilities is subject to

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[http://www.heathrowairport.com/static/HeathrowAboutUs/Downloads/PDF/Consultation\\_Proposal - Revised Ground Operations Licence \(2013\) - V2 Final.pdf](http://www.heathrowairport.com/static/HeathrowAboutUs/Downloads/PDF/Consultation_Proposal_-_Revised_Ground_Operations_Licence_(2013)_-_V2_Final.pdf)

<sup>31</sup> See page 116 <http://www.caa.co.uk/docs/78/HALApr13.pdf>

a more complex set of arrangements and the CAA considers that there is a degree of interdependency and reliance between the parties involved.

- 5.23 Historically, the scope of a given project has been undertaken by the party best positioned to manage the cost on delivery risk inherent to that specific project.<sup>32</sup> There have been some previous joint projects in which HAL has typically undertaken basic site clearance and enabling works<sup>33</sup> and HAFCO has undertaken the mechanical aspects of construction, for example the Perry Oaks Fuel Farm as the most recent example.
- 5.24 HAL has however undertaken some hydrant related construction (it constructed the T5 hydrant and is currently constructing the replacement hydrant in T2). HHOpCO normally has some oversight over the design to ensure separately constructed infrastructure is compatible. HAL has also noted that it has a 'degree of management control of the Fuel Hydrant Systems.'<sup>34</sup> It is also worth noting that a small number of fuel assets are in the regulatory asset base (RAB), usually relating to the enabling works delivered by HAL or hydrant system construction. Regardless of the complexities of these arrangements, the CAA considers that HAL has no day to day control or involvement in the general maintenance and development of the fuel facilities.
- 5.25 Also, from time to time, the lessees seek to develop existing facilities, and in doing so require relevant statutory permissions as well as HAL's prior consent in specific circumstances as set out in the leases, for instance, the Sandringham Road Fuel Farm project.

## Conclusion

- 5.26 HAL has very little day to day control or involvement in the general maintenance and development of the existing fuel facilities, other than requiring relevant permissions under the leases. However, as all

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<sup>32</sup> This was set out in HAL's Infrastructure Stakeholder Board (June 2012) and was also reflected in HAL's business plan in February 2013.

<sup>33</sup> Such as water mains, electricity connections and access to the road network.

<sup>34</sup> See page 116 <http://www.caa.co.uk/docs/78/HALApr13.pdf>

parties have undertaken and paid for various development projects, it is clear that there is a degree of interdependency and reliance between the parties. Both parties have a symbiotic relationship in that they both have a common interest in ensuring the fuel infrastructure used for the receipt and storage of fuel at the airport and its conveyance via the Fuel Hydrant Systems to aircraft stands is compatible and fit for the purpose.

**CHAPTER 6****Conclusion on overall responsibility for the management of the fuel facilities**

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- 6.1 Having regard to the extent to which HAL controls or may control the matters listed above, as set out in section 9(4) of the Act, the CAA considers that HAL has very limited day to day operational control over the types, prices and quality of services provided in the fuel facilities. It has some control over access as the fuel facilities are located at the airport, although it has a limited degree of control to the receipt and storage facilities themselves. HAL is responsible for the overall development of Heathrow Airport and has some limited control over the development of the facilities through the leases in that the lessees must seek relevant permissions. However as all parties have undertaken and paid for various development projects, there is a degree of interdependency and reliance between the parties in relation to the development of fuel infrastructure.
- 6.2 Therefore, the CAA considers that for the purposes of section 10 of the Act, HAL does not have overall responsibility for the management of the airport area comprising the fuel facilities.
- 6.3 It should also be noted that under section 18 of the Act, the CAA can include in the licence such conditions as it considers necessary or expedient having regard to its duties under section 1 of the Act, as well as conditions it considers necessary or expedient to guard against the risk of abuse of substantial market power. These can include licence conditions relating to activities carried on outside the airport area for which the licence is granted<sup>35</sup>. Therefore even though HAL is not the operator of the airport area occupied by the fuel facilities for the purpose of this operator determination, it is open to the CAA to impose licence conditions on HAL that relate to any activities carried on there if this is consistent with its duty under section 1 of the Act to further the interests of users of air transport

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<sup>35</sup> Section 21 (1) of the Act

services regarding the range, availability, continuity, cost and quality of airport operation services.