

12 February 2016

Mr Pedro Pinto
Civil Aviation Authority
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United Kingdom
Email: economicregulation@caa.co.uk

By e-mail only

Re: Response to CAA's Draft Market Power Test Guidance

Dear Mr Pinto,

I refer to the CAA document CAP1354 entitled 'Market Power Test Guidance – Draft for Consultation' ("the Document").

Market power assessments require the CAA to determine whether a particular airport enjoys substantial market power ("SMP"), and requires regulation. In order to ensure that airports operate in a competitive environment, it is vital that the CAA undertakes assessments in a proper manner, and correctly analyses factors that indicate market power, such as those outlined in sections 4.27-4.36 of the Document.

In its 2013 provisional decision on Stansted's ("STN") market power, the CAA correctly found that "the *central strategic importance of London in [airlines'] networks... considerably reduces their ability to relocate aircraft to non-London airports in the UK and to continental Europe*", and that London airports suffered from "*capacity constraints*". In light of these underlying market conditions, the CAA found that STN "*holds a degree of market power, which may currently be substantial, and is likely to become substantial*", and required regulation.

However, in its final decision in January 2014, the CAA deregulated STN on the misguided basis that long-term bilateral agreements signed in summer 2013 by STN with Ryanair and easyJet indicated that the airlines had "*countervailing buyer power*". This was a flawed conclusion which was based on the CAA's incorrect analysis of the situation. STN's willingness to enter into these agreements was a strategic regulatory move by Manchester Airports Group ("MAG"), STN's owner, in the early days of its ownership of STN. It occurred at a crucial point of the CAA's evaluation of STN's SMP where MAG was anxious to demonstrate (artificially) that a threat from an airline to remove capacity was sufficient to force it to reverse its exploitative behaviour. It is

notable that MAG only agreed to these deals after the CAA published its provisional decision in January 2013 where it concluded that STN enjoyed SMP, and required regulation.

In addition, these agreements were not concluded at market rate, but were simply the “best” of the bad outcomes that Ryanair and easyJet could hope for given STN’s SMP. These agreements therefore do not represent the exercise of buyer power by airlines but rather demonstrate the existence of STN’s monopoly market power, as advised in Ryanair’s correspondence with CAA of 11 November 2013 and 19 December 2013 (attached).

The CAA’s misguided decision to deregulate STN indicates that it failed to comprehend that market power is a function of underlying conditions in the relevant market. The agreements between STN and the airlines did not alter these underlying market conditions, and the fundamental issues which result in STN’s SMP, remain in place. The continued importance of London to airlines’ networks and the capacity constraints at London airports, mean that STN still enjoys SMP, and airlines have no ability to restrict STN’s SMP.

The CAA’s failure in 2014 to require continued regulation at STN means that there is now a real danger that STN will raise prices once our deal expires, as regulation will not be in place to protect us (or easyJet). If STN refuses to enter into another long-term deal with Ryanair, on equal or better conditions than our current deal, the situation would be analogous to that on which the CAA based its 2013 provisional decision where it confirmed STN had SMP.

In such a circumstance, which would clearly result in a substantial change in market conditions, the CAA would be required to conclude that STN has SMP, and requires regulation. Furthermore, in order to ensure that market conditions and competition are not distorted in such an event, the CAA must undertake and conclude a new investigation of STN’s market power in time to allow for STN to be regulated at the latest when our deal expires.

We stand ready to assist should you have any queries or require clarification. If so required, please do not hesitate to contact me.

Yours sincerely,

Matthew Krasa
Manager – EU & Competition Law

Annexes:

- 1 Ryanair Response to CAA consultation CAP1104, 11 November 2013
- 2 Ryanair letter to CAA, 19 December 2013