

DATED 4 November 2013

CIVIL AVIATION AUTHORITY

Economic Regulation at Gatwick

From April 2014: Final Proposals (CAP1102)

**RESPONSE ON BEHALF OF
THE INDEPENDENT AIRPORT PARKING ASSOCIATION**

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Introduction, Definitions and Interpretation

1. This document is IAPA's Response to the CAA's Final Proposals for Economic Regulation at Gatwick from April 2014 (CAP1102) ("the Final Proposals").
2. IAPA made a response dated 25 June 2013 to the CAA's Initial Proposals for Economic Regulation of Heathrow, Gatwick and Stansted Airports ("the First Response") and a response dated 30 July 2013 to the CAA's letter dated 8 July 2013 concerning GAL's proposals for the Licence to be issued to it by the CAA ("the Second Response").
3. Words and phrases defined in the First Response and the Second Response shall have the same meanings when used herein. The interpretation provisions in paragraph 2 of the First Response shall also apply to this Response.
4. In this Response "the Commitments" refers to the document submitted by GAL to the CAA titled Final Airport Commitments - Finalised Draft September 2013.

Parties to Section B of the Commitments

5. Section A of the Commitments deals with General Conditions.
6. Section A includes the following provisions:

"Parties: Gatwick Airport Limited (GAL) and the airlines operating at Gatwick Airport

Regulatory Background: ...

These Airport Commitments will create binding contractual arrangements between GAL and the airlines operating at Gatwick.

Conditions of Use: GAL undertakes to incorporate the Airport Commitments into GAL's Conditions of Use, for the benefit of all airlines who may operate at Gatwick Airport during the period covered by the Airport Commitments.

..."
7. Section B of the Commitments contains the price commitment.
8. Point (4) of the part of Section B dealing with the published airport tariff indicates that the tariff will include Ancillary Services Charges for services provided at the airport, inter alia, for "Facilities for bus & coach operators."
9. The part of Section B titled Specified Activities Charges states that "Gatwick Airport Limited shall ensure that those charges relating to Specified Activities are set at a level which is fair, reasonable and non-discriminatory." Specified Activities include facilities for bus & coach operators.
10. Paragraph 11.11 of the Final Proposals states:

"The CAA considers that the proposed conditions ensure that the commitments remain in the Conditions of Use until such time as the CAA

makes a licence modification under section 22 of the Act and that they are directly enforceable by the airlines through normal contractual purposes. By including the commitments in the licence and making it clear that they are also license conditions means that the CAA is also able to intervene if necessary.”

11. As presently drafted the providers of Specified Activities are not a party to the Commitments although the Commitments relate to charges for Specified Activities. Accordingly unlike airlines the providers of Specified Activities would not be able to enforce the Commitments through normal contractual processes.
12. IAPA proposes that the providers of Specified Activities should also be parties to the Commitments so that the Commitments, so far as they relate to Specified Activities, are enforceable by them through normal contractual processes.
13. The Commitments which relate to the Specified Activities principally benefit the providers of the Specified Activities and customers of those activities. As the party intended to benefit by the Commitments the providers of Specified Activities should have the right to enforce them.
14. Unless the providers of Specified Activities are able to directly enforce the Commitments it is likely that the CAA will be required, in the first instance, to enforce the Commitments as licence conditions.
15. We suggest that if the CAA did not take appropriate steps to enforce the Commitments relating to Specified Activities it is more likely that the CAA will face proceedings for judicial review or maladministration in the event that it either fails to enforce the Commitments relating to Specified Activities or does not enforce them in a proper manner. Such actions are far less likely if the CAA is able to advise providers of Specified Activities that in the first instance they should enforce the Commitments directly against GAL.

Independent Adjudication

16. Section A of the Commitments provides that the Conditions of Use which benefit all airlines who operate at Gatwick Airport will incorporate a Dispute Resolution Procedure.
17. The judgment of Lord Justice Mummery in the Attheraces Case included the following:

“4. The proceedings presented the trial judge (Etherton J) and this court with a range of factual and legal problems of a kind which even specialist lawyers and economists regard as very difficult. This is the view of Professor Richard Whish in *Competition Law* (5th Ed - 2003): “The law on abusive pricing practices is complex and controversial” (p.685) and “In practice it is immensely complex to determine what is the appropriate price for access to an essential facility” (p.693).

7. The nature of these difficult questions suggests that the problems of gaining access to essential facilities and of legal curbs on excessive and discriminatory pricing might, where negotiations between the parties fail, be solved more satisfactorily by arbitration or by a specialist body equipped with appropriate expertise and flexible powers. The adversarial procedures of an ordinary private law action, the limited scope of expertise in the ordinary

courts and the restricted scope of legal remedies available are not best suited to helping the parties out of a deadlocked negotiating position or to achieving a business-like result reflecting both their respective interests and the public interest.”

18. At paragraph 36 of the First Response we stated:

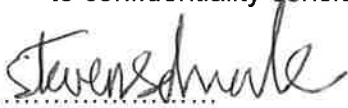
“The complexity of competition law and the costs of litigation means that, in practice, the remedies for breach of SMP which, in theory, are available through the courts do not act as a restraint on the abuse by airport operators of [their] SMP when dealing with OAPO’s.”

19. At paragraphs 38 and 40-42 of the First Response we referred to disputes between OAPOs and airport operators at Heathrow, Luton and Leeds Bradford Airports where the high costs of litigation have either been a bar to the OAPOs seeking remedy through the courts for breach of the airport operators’ SMP or where those costs were a restraint to the OAPOs seeking such a remedy.

20. For these reasons IAPA proposes that the Commitments be amended so that the Dispute Resolution Procedure which would be available to airlines would also be available to the providers of Ancillary Services in connection with the Specified Activities.

Further Information

21. IAPA will be pleased to clarify any of the points made in this Response and, subject to confidentiality considerations, to provide further documents and information.



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