

**BA RESPONSE TO CAA CONSULTATION ON GATWICK MARKET POWER  
ASSESSMENT OF MAY 2013**

**26 JULY 2013**

**NON-CONFIDENTIAL VERSION**

**1. SUMMARY**

**Test A**

- 1.1 British Airways ("**BA**") strongly agrees with the CAA's conclusion that the market power test ("**MPT**") is met in relation to Gatwick airport. Given the weight of the evidence, this has to be the correct outcome. In particular, carriers based at Gatwick are severely limited in their ability credibly to threaten to switch away, with a consequent lack of bargaining power vis-à-vis GAL. This position is highly unlikely to change in the foreseeable future; on the contrary, as noted by the CAA, Gatwick is likely to benefit from the expected tightening of capacity constraints across the South East in the coming years.
- 1.2 As noted in our submission of 27 June 2013, we also welcome the CAA's rejection of GAL's arguments that its current regulated charges are below the competitive price. In Q5, GAL has raised its charges year-on-year up to the maximum level permitted by the cap, despite the conditions in the UK economy. If price regulation was removed, the clear implication is that GAL would raise its charges further, with damaging consequences to the airline industry and ultimately to consumers.
- 1.3 Although we are in full agreement with the CAA's finding that GAL enjoys substantial market power ("**SMP**"), as noted in Section 2 below we disagree with the segmentation of the relevant market between types of airline as proposed by the CAA for Gatwick. In our view any distinction between (i) Full Service Carriers and associated feeder traffic (together referred to herein as "**FSCs**") and (ii) Low Cost Carriers ("**LCCs**") and charter airlines, based on their "distinct infrastructural demands", is artificial and an unclear and arbitrary basis on which to define the market.
- 1.4 That said, we acknowledge that both the CAA and Competition Commission ("**CC**") have made clear that market definition is simply a framework for the assessment of market power, and that the key consideration is the strength of competitive constraints (market shares being too static and of limited value in assessing airport market power). Given the severely limited competitive constraints faced at Gatwick, GAL clearly enjoys SMP regardless of how the market is defined, and BA fully supports the finding that the MPT is met for Gatwick.
- 1.5 In respect of the severely limited competitive constraints, we would again like to emphasise that Heathrow is not a viable alternative for BA's Gatwick operation, and that Heathrow is not an effective competition constraint to GAL's SMP. We welcome the CAA's recognition of the severity of the capacity constraints at Heathrow, and the fact they will tighten. However, we would emphasise that there are also other factors which contribute to GAL's clearly dominant position, including strategic considerations and costs to switching as described in Section 3 below.

**Test B**

- 1.6 Our comments on Test B are set out in the Airline Consultative Committee's ("**ACC**") response to the CAA's market power assessment and are not repeated in this BA paper. In summary, BA and the ACC support the CAA's findings in respect of Test B. Competition law does not provide protection against the risk that Gatwick would abuse its market power, *inter alia* because of the retrospective nature of the remedy, the difficulty in challenging abuses

(including given the difficulty in obtaining data to prove the abuse, the difficulty, cost and risks associated with private actions, and the lack of precedents), all of which would result in an excessively slow, uncertain, inefficient and ultimately ineffective means of addressing problems, to the detriment of passengers.

### Test C

- 1.7 Our comments on Test C are set out in both the ACC's response to the CAA's market power assessment and in the Annex of our June 2013 response to the CAA initial proposals. We request that our comments in both of these responses are considered as part of our response to this consultation on market power as those submissions are not repeated in this BA paper. In summary, BA submits that a licence-based approach is likely to provide greater benefits to passengers than the adverse effects of regulation. GAL has clearly stated its intention to increase prices even above the CAA's current assessment of a fair price, and there is now great flexibility to tailor the regulatory approach to avoid unnecessary burdens and to simulate the incentives of a competitive market.
- 1.8 Finally, we would like to emphasise that Test C requires the CAA to assess a non licence based alternative against any approach with a licence. Initially, GAL's commitments were proposed to work without any form of licence, but now the CAA agree that they would need to be incorporated into a licence. If, therefore, GAL's commitments have any relevance to Test C then the comparison that would have to be done would be one comparing GAL's non-licence based commitments with a licence based alternative. For the reasons mentioned in our previous response and accepted by the CAA, commitments without a licence are without merit.

## **2. TEST A: COMMENTS ON THE CAA'S APPROACH TO MARKET DEFINITION**

- 2.1 Despite fully agreeing with the CAA's conclusion that the MPT is met, we submit that the distinction between (i) so-called FSCs and (ii) so-called LCCs and charter airlines is artificial and an unclear and arbitrary basis on which to frame the market power assessment. In fact, the distinction between these airline concepts and what each one might need when it comes to airport services is increasingly blurred. Given the dynamic and changing nature of airline business models, customer propositions and requirements from airports, we feel that a segmentation on this basis is out-dated.

### *Overlap and convergence between airlines and business models at Gatwick*

- 2.2 So-called FSCs and LCCs/charters have increasingly converging business models and airport requirements and compete fiercely in respect of the provision of services to passengers and (to a lesser extent) cargo owners at Gatwick<sup>1</sup>.
- 2.3 In particular, so-called "LCCs" are increasingly targeting premium passengers and seeking corporate contracts, moving away from the traditional LCC model of offering customers the "same basic service without differentiation"<sup>2</sup> to a product offering which provides for passengers of all categories whether time-sensitive or not (which might be described as akin to the traditional so-called FSC model). One driver for this is the economic downturn in recent years and the attraction to so-called LCCs of business passengers who are traditionally less sensitive to cost than leisure or VFR passengers, but who are now more cost sensitive and therefore open to other options.

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<sup>1</sup> Although there is competition across the two proposed market segments in respect of bellyhold cargo, as noted by the CAA cargo is a "very small operation" from Gatwick (see footnote 85 of the CAA's "Consultation on Gatwick market power assessment" of May 2013 (the "Consultation"))

<sup>2</sup> As noted by the CAA at paragraph 5.20 of the Consultation

- 2.4 By way of example, in respect of easyJet, the airline with the largest operations at Gatwick:
- (a) easyJet's Investor Day presentation of 31 January 2012 clearly shows that easyJet is targeting business passengers, for example seeking to partner with corporates and travel management companies, and varying its offering to include flexible tickets.<sup>3</sup>
  - (b) likewise, the statements in easyJet's 2013 half year results with respect to "Passengers travelling on Business"<sup>4</sup> reflect the fact that easyJet is increasingly positioning itself to attract business passengers, with easyJet offering fast track security for its Flexi-Fare passengers at selected airports (including Gatwick); offering allocated seating (introduced in November 2012); "connecting primary airports" rather than secondary airports<sup>5</sup>; launching business-friendly routes, such as Gatwick-Moscow<sup>6</sup>, Gatwick-Luxembourg<sup>7</sup>, and Gatwick-Aberdeen<sup>8</sup> (easyJet's focus on business routes is further evidenced at appendix 1 hereto); and securing deals with Global Distribution System suppliers, major Travel Management Companies, and many large scale public sector and private organisations directly.
  - (c) Indeed, from CAA survey data, 17% of easyJet passengers at Gatwick in 2012 were travelling for business, and easyJet states in its Press Information Kit that "business travellers account for nearly 20% of our passengers annually" (across its whole network)<sup>9</sup>.
  - (d) In addition, we understand easyJet is due to roll out bundled fares (i.e. inclusive of both checked bag and seat) through third party channels on 23 August 2013.
  - (e) The CAA has itself recognised easyJet's move away from the traditional LCC model, stating at paragraph 2.165 of its Initial Views of February 2012 that "easyJet, in particular, has adopted a strategy of serving convenient airports, and of targeting an increase in the numbers of business passengers that it carries." Moreover, the CAA noted the following in its decision of October 2012 to grant a Scarce Capacity Allocation Certificate to easyJet on London-Moscow<sup>10</sup>:
    - (i) "101. easyJet argued that its proposal would also be well-placed to meet the demands of time-sensitive passengers. easyJet stated that across its network as a whole 21% of passengers carried are travelling on business and cited routes including London-Amsterdam on which in excess of 40% of passengers are travelling on business. easyJet argued that its on-time performance record and add-ons, such as speedy boarding, speedy check-in and the introduction of allocated seating, would all be attractive to time-sensitive passengers."
    - (ii) "104. [ ... ] The CAA takes the view that the evidence presented by the parties indicates that a large share of demand, both time-sensitive and non time-sensitive, would be well served by either proposal."

<sup>3</sup> See: <http://corporate.easyjet.com/~media/Files/E/Easyjet-Plc-V2/pdf/investors/results-centre/2012/investor-day-presentation-2012.pdf>. See slide 70 onwards in respect of business travel.

<sup>4</sup> See: <http://corporate.easyjet.com/~media/Files/E/Easyjet-Plc-V2/pdf/investors/results-centre/2013/2013-half-year-results.pdf>

<sup>5</sup> Indeed easyJet has stated in the past that "We fly to and from primary airports, operating more of Europe's biggest routes than any other airline " ([http://corporate.easyjet.com/media/latest-news/news-year-2013/10-07-2013-en.aspx?sc\\_lang=en](http://corporate.easyjet.com/media/latest-news/news-year-2013/10-07-2013-en.aspx?sc_lang=en))

<sup>6</sup> See: [http://corporate.easyjet.com/media/latest-news/news-year-2013/18-03-2013a-en.aspx?sc\\_lang=en](http://corporate.easyjet.com/media/latest-news/news-year-2013/18-03-2013a-en.aspx?sc_lang=en)

<sup>7</sup> See: [http://corporate.easyjet.com/media/latest-news/news-year-2012/29-10-2012a-en.aspx?sc\\_lang=en](http://corporate.easyjet.com/media/latest-news/news-year-2012/29-10-2012a-en.aspx?sc_lang=en)

<sup>8</sup> See: [http://corporate.easyjet.com/media/latest-news/news-year-2011/03-06-2011a.aspx?sc\\_lang=en](http://corporate.easyjet.com/media/latest-news/news-year-2011/03-06-2011a.aspx?sc_lang=en)

<sup>9</sup> See page 10: <http://corporate.easyjet.com/~media/Files/E/Easyjet-Plc-V2/pdf/content/press-info-kit.pdf>

<sup>10</sup> <http://www.caa.co.uk/docs/213/20121024MoscowFinal1.pdf>

- (iii) "106. The CAA considers that there is another subset of passengers that would benefit as a result of the easyJet proposal, in particular: those based closer to Gatwick (or those having no preference as between Gatwick and Heathrow), price sensitive business passengers (including potential passengers who do not currently travel on the route) and non-time-sensitive passengers (again, including potential passengers who do not currently travel on the route and existing passengers who do not travel on the route as frequently as they would like)."
- (f) With respect to airport infrastructure requirements, in addition to fast track security as described above, easyJet also offers passengers access to a third party lounge at Gatwick for an additional fee, which provides services which can be described as premium in nature and comparable to other premium lounges<sup>11</sup>. Indeed, BA uses such third party lounges at Gatwick for its premium customers when other BA lounges are full.
- 2.5 Likewise, so-called "FSCs" (which might instead be referred to as "legacy carriers") increasingly provide customer offerings which might be described as more akin to the traditional "LCC" model. Indeed, as noted in a recent IAG strategy document<sup>12</sup>, BA now has a "core cost base at LCC levels at Gatwick", and has recently launched a new low price product - i.e. hand baggage only point-to-point fares from Gatwick in February 2013. This gives an unbundled product option which allows BA to compete more effectively with the LCCs. Furthermore, this product is non-interlineable (cannot be used for transfers) similar to the products of certain LCCs.
- 2.6 By way of example, the chart set out at appendix 4 clearly demonstrates the similarity between the product/service offered by BA and easyJet at Gatwick. Importantly, this demonstrates that from an airport user's perspective and thus in terms of the airport facilities required there is very little difference in the requirements of so-called FSCs and LCCs. The main difference is a commercial one in terms of how the customer pays (bundled vs unbundled fares), but this does not impact on the use of airport facilities or airport experience.
- 2.7 Another clear example of the overlap between business models is Vueling, an airline which might be described as having traditionally run a low cost model (e.g. offering hand-baggage only fares), but which increasingly provides a product offering which may be described as more akin to the traditional so-called FSC model e.g. through the "Vueling Business Pass", which provides access to airport lounges, fast-track boarding, business class seats, free catering and a rewards scheme, as well as through offering allocated seating. Vueling does not currently interline at Gatwick [CONFIDENTIAL] and, as the CAA notes, Vueling interlines with BA at Barcelona.
- 2.8 It is also difficult to argue that so-called LCCs or charter airlines require "minimal use of airport facilities" (as noted by the CAA at para 5.20 of the Consultation) as compared to FSCs or otherwise. For example, although so-called LCCs may prefer not to use airbridges (as front and back loading via steps enables faster aircraft turns), the use of two sets of steps itself requires further ramp kit and thus storage and maintenance, and in the event of a passenger of limited mobility unable to negotiate steps, then this requires a jetty or a hi-lift. Further, although LCC's do not allow transfer options, arguably purely self-connecting passengers require greater facilities in using the main infrastructure twice (which is more asset and manpower intensive than using transfer facilities).

<sup>11</sup> For example, the No.1 Travel Lounge offers free wifi, food and beverages, showers, a "travel spa", was awarded a 2012 Priority Pass award for "Best Business Facilities", and is also used by Star Alliance customers.

<sup>12</sup> See: <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTYxMzc4fENoaWxkSUQ9LTF8VHlwZT0z&t=1>

- 2.9 Moreover, FSCs, LCCs and charters compete for the same passengers at Gatwick. This includes both leisure and, as between FSCs and LCCs, business passengers, and in both cases this is in respect of both short haul or mid/long haul services. By way of example, at present in Summer 2013 BA competes directly with so-called LCCs or charters on 86% of short haul frequencies flown from Gatwick and on 40% of long haul frequencies; indeed, there are only 4 short haul routes and 6 long haul routes on the BA Gatwick network<sup>13</sup> which are not directly competed with so-called LCCs (see appendix 2 for a list of currently competed (direct) routes). Further, BA assesses whether it is price competitive by reference to all airlines at Gatwick. Likewise, by way of example, Vueling notes that it competes for passengers on a basis which transcends the business model categories proposed by the CAA (e.g. offering similar products to airlines such as BA, easyJet, Norwegian, and Aer Lingus).
- 2.10 Any potential distinction between airport services offered at Gatwick to airlines based on the fleet types of FSCs as opposed to LCCs/charters is also blurred.<sup>14</sup> So-called LCCs are increasingly using larger aircraft or those with a greater range (e.g. the proportion of Airbus 320s in easyJet's fleet increased from 15% to 30% between Winter 2010 and Summer 2013, and Norwegian Air Shuttle, another LCC, has started to operate a Boeing 787 Dreamliner at Gatwick); and charters commonly use wide-body aircraft and compete with so-called FSCs on long haul routes (e.g. Thomson is currently operating Boeing 787s on long haul routes (which have a greater range than any of the aircraft that BA has at Gatwick), having recently taken delivery of the first Dreamliner in the UK<sup>15</sup>).
- 2.11 As regards transfer facilities, as noted by BA in its meeting with the CAA on 28 February 2013, [CONFIDENTIAL]. Indeed, in contrast to Heathrow, Gatwick is not run as a hub by BA, [CONFIDENTIAL] BA has a much more moderate amount of feeder traffic at Gatwick.<sup>16</sup>
- 2.12 In the same way, although we understand certain so-called LCCs and charters may not currently interline or require airside transfer facilities, we note that many of their passengers self-connect (as noted by GAL itself (see appendix 3), circa 300,000 passengers self-connect each year at Gatwick). In contrast to the CAA's statement that self-connection does not require any additional infrastructure (footnote 217 of the Consultation), Gatwick has just started to trial a connections service called "Gatwick Connect" for self-connecting passengers with two separate flight tickets. This is in order to improve the service offer for airlines which wish to exploit connectivity without interline agreements; so-called LCCs and charters are the main beneficiaries of this new service (see details in appendix 3). Moreover, a clear factor in the CAA's decision to grant a Scarce Capacity Allocation Certificate to easyJet on London-Moscow<sup>17</sup> was that "easyJet's proposal would also allow passengers to self-interline between services at Moscow", noting that "while easyJet recognised that connecting passengers are not central to its operation and that it does not offer 'on-line' connections, it noted that a small but growing proportion of its passengers choose to 'self-connect' between its services".
- 2.13 As regards cargo, we note that BA competes not only with so-called FSCs in the provision of bellyhold cargo at Gatwick (which the CAA has noted is "very limited"), but also with a

<sup>13</sup> The 4 short haul routes are Algiers, Genoa, Tirana, Jersey; the 6 long haul routes are: Antigua, Bermuda, Kingston, Las Vegas, Tampa, St Lucia

<sup>14</sup> Albeit we appreciate the CAA does not seek to segment on either basis.

<sup>15</sup> See <http://www.tuitravelplc.com/content/thomson-airways-boeing-787-dreamliner-preview> and <http://www.boeing.co.uk/News-Media-Room/News-Releases/2013/May/Thomson-787-1st-delivery>.

<sup>16</sup> [CONFIDENTIAL]

<sup>17</sup> <http://www.caa.co.uk/docs/213/20121024MoscowFinal1.pdf>

number of charter airlines (e.g. Thomson, Thomas Cook, Monarch). Bellyhold cargo is also not just limited to FSCs and charters<sup>18</sup>, nor to wide-body aircraft<sup>19</sup>.

*Overall, no clear delineation can be made between airlines in the proposed market segments*

- 2.14 Overall, no bright line distinction can be made between so-called FSCs as opposed to so-called LCCs/charters within the market segments proposed by the CAA at Gatwick. Indeed, although the CAA does refer to specific airlines under its respective analyses of competitive constraints for the proposed FSC and LCC/charter market segments respectively, there appears to be no specific analysis as to why the relevant airlines fall into the respective segments. Aer Lingus and Flybe appear to be included in the FSC/feeder segment (presumably on the basis they provide feeder traffic), though their business models are those of a LCC (both airlines offer hand baggage only fares with no complimentary on-board catering). Likewise, as noted above, it is unclear what proposed category an airline such as Vueling would fall into.

*Ultimately, there is great commonality in all airlines' requirements with respect to airport services, which transcends the airline business model categories proposed by the CAA*

- 2.15 In addition to and in line with the overlaps between airline business models, as acknowledged by the CAA there is also great commonality in the requirements of both so-called FSCs and LCCs/charters from Gatwick in the "bundle" of services which the CAA identified<sup>20</sup> as constituting a "single product"<sup>21</sup>. This is also true in respect of both short haul and long haul services, in respect of which the categories across the proposed airline business models are equally blurred. Ultimately all airlines, whatever their business model and customer offering, require a great many of the same services relating to passengers, baggage, and aircraft. Although the airlines may require these services to differing degrees (though we disagree that there can be a clear delineation between FSCs and LCCs/charters on this basis), the fact remains that the vast majority of services are required by all airlines.
- 2.16 As airline business models blur, so the airport requirements of all the airlines converge (even in respect of those services which the CAA notes are additional to FSCs). For example, as noted above, LCC airlines and charters do use and require premium lounge access and fast track security. Further, charters (and to a lesser extent so-called LCCs) require bellyhold cargo processing facilities, and Gatwick is looking at ways to better connect passengers between flights (which will primarily benefit so-called LCCs and charters which do not currently offer connecting flights). In addition, airlines' business models can change quickly such that these services could be required or dropped going forwards by any airline, there is no barrier to an airline requiring additional facilities.
- 2.17 As such, although we recognise that on a case-by-case basis certain airlines may require certain services to a lesser extent than other airlines, we do not believe this fact alone is a sufficient basis on which to find two separate markets at Gatwick as proposed by the CAA. Indeed, it is unclear why the CAA has decided to segment the market in this way on the basis of questionable grounds.

<sup>18</sup> Norwegian Air Shuttle offers bellyhold cargo services at Gatwick, and easyJet has previously trialled the offer of bellyhold cargo services, but we understand this was dropped in light of the cargo security scare at East Midlands in late 2010.

<sup>19</sup> Example of cargo bellyhold services on narrow-body aircraft at Gatwick would include the services provided by BA, Virgin and Aer Lingus.

<sup>20</sup> i.e. use of runways and taxiways, ATC, aircraft parking, ramp handling, fuel and oil handling, aircraft maintenance facilities, infrastructure for airside and landside groundhandling services, check-in, baggage handling and security screening services, airline staff processing facilities, passenger transit facilities (see e.g. paras 5.245 and 5.246)

<sup>21</sup> see para 5.12

- 2.18 Rather than segment between FSC and LCCs/charter airlines, the market reality is that these services are part of a single range of services offered at Gatwick, relating to passengers, baggage, aircraft and (to a lesser degree) cargo, which airlines require to varying degrees.

*Segmenting the market on the basis of FSCs vs LCCs/charter is also a clear departure from the CC's prior approach to market definition without compelling reason*

- 2.19 Segmenting the airline market definition on the basis of airline business models in this way would also be a departure from the clear conclusion of the CC in its final report on the BAA investigation<sup>22</sup>, which was reached despite the CC's recognition of the fact that airport requirements may differ between airlines. In particular:

- (a) at para 2.23 of the BAA report the CC states: "it is usual to define a single product market unless segmentation between groups of users is suggested by clear differences in realised average prices (that are not related to costs). We have not seen sufficient evidence of this at BAA's airports to justify segmenting the market between user groups."
- (b) At para 2.52 of the BAA report the CC states: "We do not find it appropriate to subdivide the market for aeronautical services by type of user or by airport characteristics".

- 2.20 It is submitted that the CAA has not provided any satisfactory explanation as to what has changed such that a finding contrary to that of the CC is justified. Indeed, as we have explained in this response, the evidence points towards increasingly blurred boundaries between so-called LCC, charter and FSC airlines in terms of both their business models and their use of airport facilities.

*Regardless of how the market is defined, GAL clearly enjoys SMP*

- 2.21 As noted above, despite our reservations about the way the relevant market has been defined, we strongly agree with the conclusion that the MPT is met at Gatwick. Although this may be the result of a variety of factors depending on the particular airline in question, all airlines are limited in their ability to switch away from Gatwick and consequently have little or no bargaining power. Our comments with respect to the severely limited competitive constraints for Gatwick are set out in Section 3 below.

- 2.22 Indeed, many of the constraints faced by airlines at Gatwick are common across all airlines based there. Such common constraints to switching include: the strategic importance of London; the limited capacity across the London airports with limited opportunities for expansion in London in the short to mid-term; and commercial strategic constraints to switching away from Gatwick.

- 2.23 Ultimately, GAL largely sets the terms that an airline will receive and the scope for negotiation is limited regardless of the airline's business model. Base airlines have no credible threat of switching. Indeed, GAL's market power was recently highlighted by Flybe's exit from Gatwick, with Flybe citing the punitive airport charges, which have risen year-on-year, as a key reason for the exit. The relevant slots have been purchased by easyJet such that GAL itself has not been constrained by the exit.

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<sup>22</sup> "BAA airports market investigation - A report on the supply of airport services by BAA in the UK" (19 March 2009) (the "BAA report")

### 3. TEST A: COMMENTS ON THE SEVERELY LIMITED COMPETITIVE CONSTRAINTS AT GATWICK

3.1 Notwithstanding the submissions on market definition above, BA agrees with the CAA's focus on the severely limited competitive constraints to Gatwick, together with airlines' severely limited ability to credibly threaten to switch away or otherwise counteract GAL's clear SMP, and the conclusion that the MPT is met.

*Severe capacity constraints at Heathrow highly unlikely to alleviate in the foreseeable future*

3.2 We strongly agree that there are severe capacity constraints at Heathrow, which prevent BA (and indeed other airlines) from being able credibly to threaten to "switch" operations or services away from Gatwick to Heathrow (though see our comments below on "switching"). This chronic lack of capacity at Heathrow is undeniable, longstanding and has been clearly and consistently recognised by both the CAA and the CC.

3.3 We also agree that Heathrow's capacity constraints are highly unlikely to alleviate in the foreseeable future, being likely to continue until 2027 at the very least and indeed worsen in the coming years, with no realistic possibility of the position improving in the meantime.

*In light of severe capacity constraints at Heathrow, Gatwick and in the South East generally, even marginal switching cannot constrain GAL's market power*

3.4 We note that the CAA's analysis has focused on how much capacity at Gatwick is marginal in the sense that it would be likely to switch away given a rise in price (under the SSNIP test), and this has included *inter alia* an assessment of the means of an airline to switch away (e.g. through switching marginal aircraft to another airport, reducing frequency, grounding aircraft, or allocating future growth elsewhere), and the potential constraint on GAL as a result.

3.5 We strongly emphasise, as noted in our meeting with the CAA on 28 February 2013, that given the severe lack of capacity across London and the South East, and in particular at Heathrow and Gatwick<sup>23</sup>, any marginal switching capability from Gatwick will not in any event constrain GAL. Slots at Gatwick are a valuable asset which BA and other airlines rely upon and cannot give up lightly. Any exiting from Gatwick, through marginal switching or otherwise, will not constrain GAL because such vacated capacity will be immediately backfilled by another carrier, as recently evidenced by Flybe's exit from Gatwick and the purchase of its slots by easyJet.

3.6 In terms of BA's own ability to switch services away from Gatwick, BA is very limited. Heathrow is itself capacity constrained and other airports are not a commercially viable option. [CONFIDENTIAL]. In addition, contrary to any arguments made by GAL on this point, the IAG group's purchase of bmi did not result in a number of vacant slots at Heathrow which BA could freely use to "switch" capacity across from Gatwick. bmi was purchased as an existing business with its own aircraft, crew and routes and not as a simple portfolio of vacant slots. As such, the acquisition of bmi did not give BA the option of switching its Gatwick operations away from Gatwick to Heathrow.

3.7 In addition, although BA may more easily "swap" certain routes between the airports, this has no constraining effect on GAL as BA continues to use the same number of aircraft and slots wherever the destination.

3.8 Indeed, to the extent that BA is ever able to add additional growth, should it decide (and should it be able) to add that growth at Heathrow instead of Gatwick, this in itself would not be an effective constraint on GAL. [CONFIDENTIAL]. We also agree with the CAA's

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<sup>23</sup> As recognised by the CC in its BAA Report



comments that the allocation of growth volume to another airport is not an effective constraint *inter alia* when an airport has limited spare capacity and excess demand exists. This because in the event that an airline also reduces its presence at the airport, that airport can easily backfill slots (as is clearly the case for GAL).<sup>24</sup>

- 3.9 In respect of the CAA's reference to the fact that in "October 2009, BA closed a number of services from Gatwick and switched some further services back to Heathrow", these actions must be put into context. There was no general strategy or indeed ability to switch all of BA's closed Gatwick services to Heathrow. The decision to decrease services at Gatwick and ground aircraft was owing to the need to cut costs in light of the downturn in the economy and high oil prices at the time. This was a market exit and not a switch to Heathrow. The decision to move a very limited number of US services to fly from Heathrow was due to the removal of the restrictions under the Bermuda II bilateral agreement between the US and the UK, a regulatory barrier which had prevent certain flying at Heathrow. We believe the Delta and US Airways "switching" examples noted by the CAA were also triggered by the lifting of this specific regulatory constraint. Therefore, if BA for any reason needed to cut capacity at Gatwick it does not follow that BA could seek to relocate that capacity to Heathrow or that GAL would be constrained in any way. Indeed, as the CAA recognised at paragraph 2.43, challenging macroeconomic conditions have not prevented GAL from attracting new airlines. This is due not least to the general capacity constraints in the South East which means any exit from Gatwick is easily backfilled without any material constraint on GAL's position.

*In any event, there would be prohibitive switching costs even if BA were able to consider "switching" capacity away from Gatwick to another airport*

- 3.10 In addition to the severe capacity constraints and cost of slot acquisition at Heathrow (and the lack of capacity at Gatwick more broadly across London and the South East), there would be wider costs to BA, a based airline at Gatwick, even if it were able to consider switching its operations or certain services away from Gatwick.
- 3.11 In particular, to switch even a single aircraft to a new base where there is no BA presence, there is a minimum level of infrastructure required, which would include: check-in (BA's facilities are bespoke to BA), lounges, engineering, a new crew base, staff training facilities, staff car parking. Switching away from, and therefore reducing presence at, Gatwick would also have a significant impact on BA's economies of scale at Gatwick, where BA has a distinct operation run by a standalone team with established contracts with third party suppliers, as well as on BA's revenues, given in particular BA's investment in the catchment area (a single new service at a new base could not hope to achieve anywhere near the same revenue as the same service at Gatwick, as BA would not have a customer base in the area as BA has built up at Gatwick). As such, we disagree with the CAA's statement that "switching costs associated with physically relocating marginal aircraft ... appear to be relatively low" and in particular where this would involve a base carrier switching to an airport where it has no presence.<sup>25</sup>
- 3.12 BA has also focused its strategy at Gatwick [CONFIDENTIAL]. Even if BA could find capacity to switch away BA' services at Gatwick, these services would not necessarily fit commercially at any other airport nor would switching away from Gatwick be profitable to BA e.g. with the loss of economies of scale and revenues as noted above.
- 3.13 More broadly, BA has had a presence at Gatwick for over 50 years and has strongly invested in not only marketing and facilities (e.g. marketing, lounge developments, improvements to

<sup>24</sup> As per the discussion at sections 6.15 et seq of the Consultation.

<sup>25</sup> As noted at section 7.262 of the Consultation.

check-in), but also in its staff, who live in the area, and the local community (including work experience for local schools, Diamond Business Awards and local charity support).

- 3.14 As regards switching barriers particular to Heathrow, in addition to the severe capacity constraints, a further barrier would be increased costs given that [CONFIDENTIAL], and airport costs, are currently higher at Heathrow.
- 3.15 As regards switching barriers particular to other London airports, in particular Stansted and Luton, a move would be unviable and/or commercially unattractive to BA for a variety of reasons [CONFIDENTIAL].
- 3.16 Finally, on a separate note we disagree with the CAA's statement that "GAL's airport charges are a lower proportion of FSCs' operating costs relative to LCCs, suggesting that they might be less sensitive to an increase in airport charges."<sup>26</sup> As noted above in respect of the blurring of airline business models, BA's costs on certain services at Gatwick are comparable to those of a so-called LCC, and the impact of an airport charge on an airline's margins rather than solely on costs is also clearly relevant. In addition, so-called FSCs, as LCCs and charters, are sensitive to all costs in what is a highly competitive market.

*Airlines have no buyer power and on balance the market should be limited to Gatwick alone*

- 3.17 We fully agree with the CAA's conclusion that there is no evidence to suggest that any airlines can exercise any degree of buyer power vis-à-vis GAL.
- 3.18 In addition, linking the above discussion back to market definition, we question the statement at paragraph 5.222 of the Consultation that "the evidence is less clear on the likely geographic market for FSCs and Feeder airlines" and that the "geographic market could be considered to consist of either just Gatwick, or it may include Heathrow." First, as noted above, we disagree with the segmentation between FSC and LCC/charter airlines. Secondly, given the severely limited ability for BA and other airlines to switch operations away from or otherwise constrain GAL's behaviour, it is submitted that on balance the overall (single) market should be limited to Gatwick alone (based on the fact that under EU and UK competition law relevant markets should only include readily available substitutes).<sup>27</sup> Again, however, we recognise the CAA's acknowledgement of the fact that market definition is simply a framework for the assessment of market power, and the key consideration is the strength of any competitive constraints (which we consider are severely limited).
- 3.19 Further, we note that the evidence from a number of so-called FSCs (e.g. BA, Virgin, Emirates, Cathay, LH, Aer Lingus, Flybe, Delta, Air Malta) clearly militates heavily in favour of a Gatwick-only market<sup>28</sup> (which would continue to be the case if so-called LCCs/charter airlines were included in the analysis).

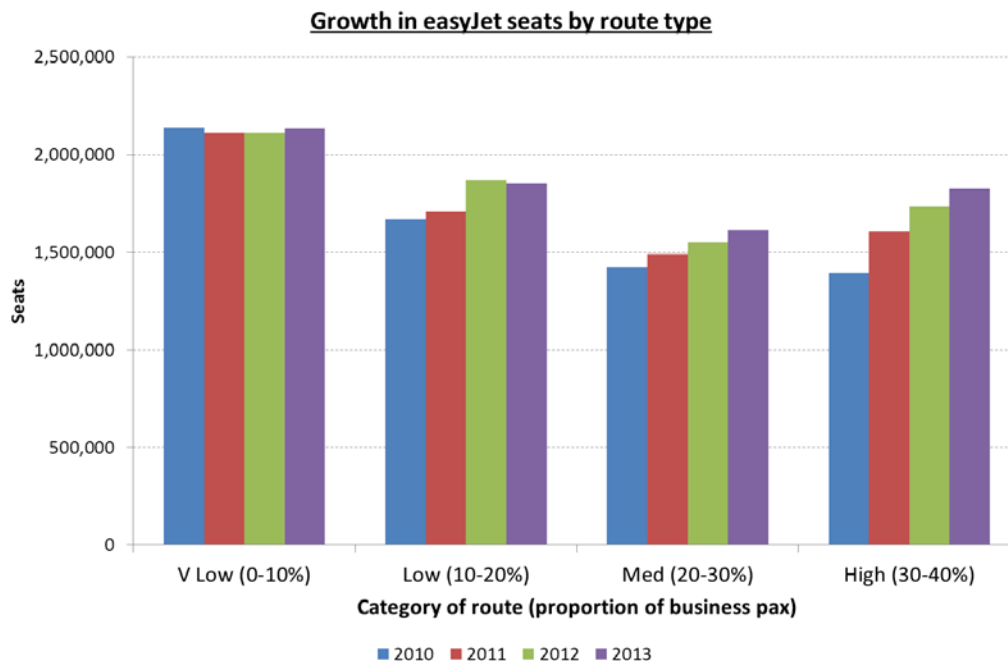
## **APPENDIX 1 - easyJet at Gatwick**

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<sup>26</sup> See e.g. paragraphs para 28 and 6.81 of the Consultation

<sup>27</sup> We also welcome the CAA's point that the passenger price elasticity of demand (PED) analysis supports the view that Gatwick is not constrained by Heathrow and should be considered a market in its own right (see e.g. para 5.195)

<sup>28</sup> See e.g. para 5.91 onwards



*Source: OAG (capacity) / CAA survey (business passenger proportions). Covers Gatwick airport only.*

**Routes in each category for 2013 (based on proportion of business passengers):**

0-10%		10-20%	20-30%	30-40%
Lanzarote	Mykonos	Biarritz	Bordeaux	Amsterdam
Agadir	Kos	Dubrovnik	Budapest	Barcelona
Malaga	Larnaca	Rome	Cologne	Belfast
Alicante	Almeira	Gibraltar	Copenhagen	Bologna
Athens	Las Palmas	Milan (Linate)	Geneva	Basle
Antalya	Luxor	Lisbon	Krakow	Dusseldorf
Bodrum	Mahon	Lyon	Madrid	Edinburgh
Corfu	Malta	Murcia	Munich	Glasgow
Chania	Paphos	Montpellier	Nice	Hamburg
Catania	Palma	Milan (Malpensa)	Oporto	Inverness
Dalaman	Rhodes	Naples	Vienna	Marseille
Faro	Thessaloniki	Prague	Valencia	
Funchal	Sofia	Pisa		
Grenoble	Split	Marrakech		
Heraklion	Sharm-El-Sheik	Berlin		
Hurgada	Salzburg	Toulouse		
Ibiza	Tenerife	Venice		
Innsbruck	Zakynthos	Zurich		

**APPENDIX 2 - CURRENT BA GATWICK ROUTES WHERE THERE IS COMPETITION ON A DIRECT BASIS FROM LCCS OR CHARTERS (JULY 2013)**

Notes: (i) this covers direct traffic only (BA also faces indirect competition e.g. from Emirates over Dubai to Mauritius, Male, Colombo); (ii) short haul and long haul is defined by aircraft type and flight duration.

<b>Shorthaul</b>	<b>Longhaul</b>
Lanzarote	Orlando
Malaga	Cancun
Alicante	Barbados
Amsterdam	Male (Maldives)
Barcelona	Mauritius
Bordeaux	
Bari	
Catania	
Dubrovnik	
Edinburgh	
Faro	
Rome	
Glasgow	
Ibiza	
Larnaca	
Naples	
Nice	
Paphos	
Pisa	
Marrakech	
Thessaloniki	
Salzburg	
Tenerife	
Turin	
Venice	
Verona	

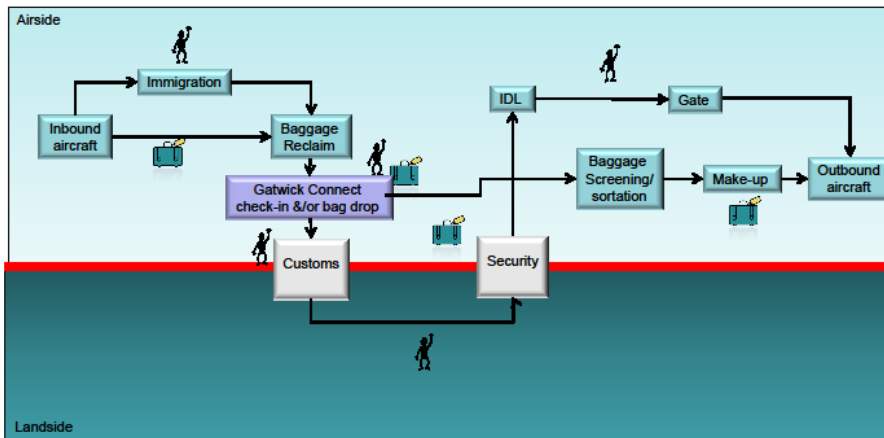
## APPENDIX 3 - GAL INFORMATION ON GATWICK CONNECT

### Gatwick Connect

- Gatwick has a significant 'self-transfer' population (>300,000 pax pa) who effectively land and then depart again in two separate processes
- Gatwick Connect aims to;
  - improve end-to-end-service for existing market by relocating the bag drop/check-in to the reclaim hall
  - Improve the service offer for airlines who wish to exploit connectivity without interline agreements
- Gatwick Connect will;
  - Provide a GAL hosted, common use Connect desk in all 4 reclaim halls from 05:30-19:00 operating a bag drop service for onward connections
  - Manually transport re-tagged bags from the reclaim hall to transfer infed points in the baggage halls
  - Gather data to better understand the 'self-transfer' market and how it might be developed
- Gatwick Connect is based upon the ViaMilano product (Malpensa)
- The pilot scheme is planned for June-Sept (inclusive)

YOUR LONDON AIRPORT  
*Gatwick*

Gatwick Connect process





### Gatwick Connect – in and out of scope (proposed)

Airline	Handle	DCS by Mid May	Bag Drop	Standard Check In	Eta	Visa	Over weight Bags	Multiple Bags	Fire Arms	Pre Notified	Over 14 hr	Upgrades	Seat Changes	Payments
<b>easyJet</b>	MNZ	Eres VT100	✓	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗
virgin atlantic	SWP	Shares Babel	✗	✓	✓	✓	✗	✗	✗	✗	✗	✗	✗	✗
Emirates	SVR	EK Macs	✗	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗
norwegian.com	SVR	Aradus Alta	✓	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗
Thomson	SWP	LDCS	✓	✓	✓	✓	✗	✗	✗	✗	✗	✗	✗	✗
Thomson	SWP	LDCS	✗	✓	✓	✓	✗	✗	✗	✗	✗	✗	✗	✗
Monarch	SWP	LDCS	✓	✓	✓	✓	✗	✗	✗	✗	✗	✗	✗	✗
flybe	MNZ	Shares Babel	✓	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗

## APPENDIX 4 - BA V EASYJET – CUSTOMER EXPERIENCE COMPARISON

Whilst there may be differences in how customers pay for their flights and ancillary services (bundled vs unbundled), the airport experience for customers flying on full service carriers and low cost carriers can be very similar.

The following matrix details the customer experience when flying on a comparable flight to Europe from Gatwick on British Airways and easyJet.

	 <b>BRITISH AIRWAYS</b>	 <b>easyJet</b>
<b>Booking channels</b>	<ul style="list-style-type: none"> <li>• Website (ba.com)</li> <li>• Call centre</li> <li>• Mobile / apps</li> <li>• Online Travel Agents (OTAs)</li> <li>• Travel Agents / Travel Management Companies</li> </ul>	<ul style="list-style-type: none"> <li>• Website (easyJet.com)</li> <li>• Call centre</li> <li>• Mobile / apps</li> <li>• Online Travel agents (OTAs)</li> <li>• Some Travel Agents eg Business travel agents (1A,1G,1S)</li> </ul>
<b>Fare Products</b>	<ul style="list-style-type: none"> <li>• Point to Point (Hand Baggage Only)</li> <li>• Point to Point (with checked bag included)</li> <li>• Flexible (with checked bag)</li> <li>• Business class (with checked bag)</li> <li>• Interline / connecting (with checked bag)</li> </ul>	<ul style="list-style-type: none"> <li>• Point to Point (Hand Baggage Only)</li> <li>• Point to Point (with bag charged separately)</li> <li>• Flexible (with checked bag)</li> </ul>
<b>Corporate Deals</b>	<ul style="list-style-type: none"> <li>• Discounted fares for corporate / SMEs</li> </ul>	<ul style="list-style-type: none"> <li>• Discounted fares for corporate / SMEs</li> </ul>
<b>Check in options</b>	<ul style="list-style-type: none"> <li>• Mobile check in</li> <li>• Online check in</li> <li>• Self service kiosks</li> <li>• Check in desks selected airports</li> <li>• Thru check in for connecting customers</li> </ul>	<ul style="list-style-type: none"> <li>• Mobile check in</li> <li>• Online check in</li> </ul>
<b>Baggage options</b>	<ul style="list-style-type: none"> <li>• Choice of basic (semi flex) fare - with or without bag</li> <li>• Able to prepay online for excess baggage</li> </ul>	<ul style="list-style-type: none"> <li>• Basic fares exclude bag but can be bought online as part of the booking process</li> <li>• Able to prepay online for excess</li> </ul>

	<ul style="list-style-type: none"> <li>• 1 + 1 hand baggage allowance</li> <li>• Bag drop at airport</li> <li>• Dedicated desks for premium customers</li> </ul>	<ul style="list-style-type: none"> <li>• 1 hand baggage allowance</li> <li>• Bag drop at airport</li> <li>• Dedicated desk for easyJet plus customers</li> </ul>
<b>Seat selection</b>	<ul style="list-style-type: none"> <li>• Premium<sup>29</sup> customers can choose seats at time of booking</li> <li>• All customers can pay for preferred seats</li> <li>• Customer able to choose seat at minus 24hours (online check in)</li> </ul>	<ul style="list-style-type: none"> <li>• EasyJet Plus<sup>30</sup> customers can choose seats at time of booking</li> <li>• All customers can pay for preferred seats</li> <li>• Customers allocated seat from 30 days and up to 2hours (online check in)</li> </ul>
<b>Fast track Security</b>	<ul style="list-style-type: none"> <li>• Available for business class (and top tier<sup>31</sup>) customers</li> </ul>	<ul style="list-style-type: none"> <li>• Available for FLEXI<sup>32</sup> ticket holders</li> </ul>
<b>Lounge access</b>	<ul style="list-style-type: none"> <li>• Available for business class (and top tier) customers</li> </ul>	<ul style="list-style-type: none"> <li>• Available for customers to buy access to No 1 lounge at Gatwick</li> </ul>
<b>Boarding</b>	<ul style="list-style-type: none"> <li>• Priority boarding for premium / top tier customers</li> </ul>	<ul style="list-style-type: none"> <li>• Speedy Boarding for easyJet Plus / FLEXI ticket holders</li> </ul>
<b>Onboard</b>	<ul style="list-style-type: none"> <li>• Complimentary food and snacks appropriate to length of flight / time of day</li> </ul>	<ul style="list-style-type: none"> <li>• Food and drink available to buy on board</li> </ul>
<b>Arrival / Connections</b>	<ul style="list-style-type: none"> <li>• Connecting passengers are able to use flight connections to transfer to onward flight</li> <li>• Through checked bags will be transferred to next flight</li> </ul>	<ul style="list-style-type: none"> <li>• Self transfer passengers are able to use GAL Connect<sup>33</sup> product to transfer to onward flight</li> <li>• Bags need to be collected from belt and checked in at Connect desk</li> </ul>

<sup>29</sup> Premium customers = BA First, Club World, Club Europe customers

<sup>30</sup> easyJet Plus = paid for membership providing speedy boarding, dedicated check in desk and choice of seats

<sup>31</sup> Top Tier = Gold / Silver BA Exec card holders and oneworld equivalents (Emerald / Sapphire)

<sup>32</sup> Flexi tickets = unlimited flexibility to change the date of flights up to two hours before the scheduled departure time. Passengers booking an easyJet flexi fare will also benefit from automatic speedy boarding, no booking fees and a checked in hold bag included at no extra cost

<sup>33</sup> GAL Connect – self transfer proposition for customers with connecting journeys, travelling on separate tickets