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Mr Iain Osborne
Group Director - Regulatory Policy Group
Civil Aviation Authority
CAA House, 45-59 Kingsway
London WC2B 6TE

Sent by post & email to airportregulation@caa.co.uk

Dear Iain,

Re: FedEx's submission to CAA's additional consultation on market power assessment for Stansted Airport.

Thank you for your letter of 17th October 2013. FedEx Express (FedEx) welcomes the opportunity to participate in CAA's additional consultation.

FedEx is the world's largest express transportation company, providing fast and reliable delivery to more than 200 countries and territories using a global air and ground network. FedEx's UK International gateway at Stansted Airport opened in June 1985 and is the principal sorting and distribution centre for the UK. FedEx operates 32 weekly flights from Stansted.

This short submission provides FedEx's views on the impact of the recent development on the cargo market and why Stansted Airport Limited (STAL) continues to pass the market power test (MPT), as CAA has concluded in its January 2013 "minded to" market power assessment (MPA). Given the nature of its activities, FedEx does not have any strong views in relation to the separate STAL passenger market.

CAA should continue to analyse the STAL cargo market separately.

FedEx supports CAA's expressed views that services provided to passenger airlines and services provided to cargo airlines should be analysed separately.

It is clear that these two types of services constitute separate product markets. This is not only because the needs of each group of customers are clearly very different, but also because of the absence of supply side substitution. Different facilities are required to service each as the facilities required for the processing of cargo are not appropriate for handling passengers and vice-versa.

STAL continues to enjoy SMP in the STAL cargo market; the recent developments have no impact, if not strengthen, CAA's expressed views in relation to the cargo market.

FedEx supports CAA's expressed views that STAL currently has substantial market power (SMP). FedEx and other cargo operators have no commercially viable alternative airports to operate from given (i) their demanding schedules (especially when it comes to timely access to Greater London),

(ii) heavy reliance on surface connectivity, (iii) appropriate cargo handling infrastructure and availability of slots and (iv) reasonable policies on noise and night flights.

Last but not least, many cargo operators have invested heavily at Stansted. The cost of relocation therefore is prohibitive and, as a result, any threat to move operations to another airport in response to price increases is simply not credible. This is particularly the case for FedEx. As Stansted is FedEx's major gateway for the UK (and Irish markets) and represents an integral part of FedEx's UK business model allowing FedEx to extend its delivery time in Greater London, FedEx has invested heavily at Stansted. FedEx's investments involve a 30 year lease on a 22,000 m^2 facility, allowing parking for 4 designated aeroplanes and employment of hundreds of employees directly (and many more indirectly).

FedEx can confirm CAA's position in the current consultation that, to FedEx's knowledge, there are no "significant analogous recent developments such as the new bilateral agreements between MAG and the cargo users". FedEx is of the view that these new bilateral agreements do not have any appreciable direct or indirect impact on the previous findings of CAA in relation to the services provided to cargo airlines.

At most, these new bilateral agreements may indicate a degree of marketing power which passenger airlines could enjoy. It is not surprising that the two by far largest users of the airport managed to negotiate better terms given that they have achieved critical mass and, being passenger operators, bring additional revenues to STAL from passenger focused services (retail, restaurants, parking etc.). No cargo operator has such negotiation tools at its disposal and, therefore, STAL's SMP vis-à-vis cargo operators remains the same.

It could be argued that the significant amount of additional passenger flights resulting from the new agreements with Easyjet and Ryanair (a) will reduce even further the importance of cargo operators as customers and (b) may incentivise STAL to increase prices/reduce quality so as to "encourage" cargo operators to transfer their operations to East Midlands airport. Thus, the recent developments in the passenger markets have either no implications on the STAL cargo market or, possibly, strengthen even further STAL's SMP.

Regulation is a more effective safeguard.

FedEx agrees with CAA's view that an economic licence is clearly a better remedy than the application of competition law alone. FedEx is of the view that the risk of exploitative abuse against cargo operators remains high and there is nothing to suggest that CAA's findings that ex ante regulation is a more effective safeguard than competition are affected by recent or any other developments in the cargo market. It is worth noting that the impact of exploitation on the cargo market will have an appreciable impact on consumers. This is because of the importance of Stansted for cargo operators in the UK and the resulting distortion of competition between cargo operators. Heavy users of Stansted will face higher input costs.

Competition law remedies are not sufficient to mitigate the effects of STAL's SMP in the cargo market. It will be very difficult for operators to challenge pricing ex post and competition authorities are not best placed to determine whether a price is excessive or not. FedEx and presumably other operators and STAL as well highly appreciate the certainty of regulation by CAA. CAA is better placed and more experienced to constrain STAL's SMP. Time consuming and very costly legal challenges before competition authorities and courts (potentially repeated every time fees are to be negotiated with each operator) is not a satisfactory way forward and only the last resort in the absence of any meaningful regulation.

Benefits of regulating the STAL cargo market most likely outweigh its cost; FedEx is awaiting CAA's breakdown of regulation costs and details on the application of the proposed price monitoring and other regulations to the cargo market.

It is very difficult for FedEx to express a detailed view on whether the benefits of regulating the cargo market only outweigh the associated costs. This is mainly because (i) CAA has not provided a detailed breakdown of the direct costs of the proposed price monitoring based regulation, so as for FedEx to determine which costs are already sunk and which are cargo market specific, and, to a lesser extent, (ii) CAA has not provided sufficient cargo-specific details on the operation of the proposed price monitoring regime and other regulatory measures to the cargo market alone. FedEx welcomes an open dialogue with CAA on those and any other issues related to STAL's market power assessment.

From the limited available information on how the price monitoring regime will be implemented in relation to the cargo market (and the associated costs), it appears that the cost of implementation is very modest. Therefore, FedEx's preliminary view is that the significant benefits of curbing STAL's SMP most likely outweigh its costs. FedEx would be most grateful if CAA elaborates in due course on the application of Test C vis-à-vis the cargo market only. This will allow FedEx to express its views on the perceived benefits and costs.

What remains certain is that (i) STAL clearly enjoys SMP in the cargo market as cargo operators do not have any meaningful alternatives, (ii) there is a risk of price increases and (iii) an effective price controlling safeguard mechanism is needed so to constrain STAL's SMP.

Yours sincerely,

William Martin
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