

**Response of Gatwick Airport Limited to the Preliminary Decision by the CAA  
(the “Preliminary Decision”) as to Gatwick Airport Limited’s compliance with  
the Transparency Condition**

Paragraph numbers in this response will follow those of the Preliminary Decision. Where a specific paragraph is not mentioned it is because GAL has no comment on that paragraph.

As a general point we note that Ryanair has sought to make the issue of compliance with the Transparency Condition relevant to its complaint against Gatwick Airport Limited under Regulation 21 of the Airports (Groundhandling) Regulations (see para 82)). Gatwick will be separately responding to that complaint. For this reason it is submitted that the CAA should not reach a final decision on the transparency complaint until it has held the hearing in relation to the groundhandling complaint.

**BACKGROUND**

Paragraphs 1 to 9 (inclusive) of the Preliminary Decision sets out the background to the complaint made by Ryanair in relation to the compliance with Gatwick Airport Limited of the transparency condition (the “Transparency Condition”) imposed by the CAA on GAL in November 1991; GAL has no comment on these paragraphs.

**ANALYSIS**

GAL has no comment on paragraphs 10 to 13 (inclusive) of the Preliminary Decision.

*To whom information should be provided*

14 & 15      Across the year the number of airlines with whom Gatwick must deal fluctuates roughly between 104 and 58; GAL will have discussions with those airlines on a wide variety of matters, and it is, as the CAA notes, easier to have productive conversations with a single airline representative body than to engage in numerous bilateral discussions. Having said that, GAL has always made it clear that it is willing to engage in bilateral discussions with those airlines interested in them.

The Transparency Condition requires GAL to provide information to users or, in the alternative, their representatives. GAL has adopted a practical and common sense approach to this obligation by following the standard airport practice of providing information through the AOC to those airlines happy to be represented by the AOC or other airlines attending AOC consultations, and speaking directly to those airlines who wish to present their own case separately from, or in addition, to the AOC. We would note that before the current complaint no user has ever complained about this method of transmitting information nor has the CAA, which has been aware of the practice.

The Transparency Condition does not stipulate that GAL has to ensure that information is distributed separately to all airlines, and clearly no meaningful consultation can take place with airlines who are not interested in engaging either directly, through established consultation meetings, or participating in the AOC.

It is contended that the reference in the Transparency Condition to users' representatives may properly be interpreted as a reference to the representative body of all the airlines at Gatwick, namely the AOC. GAL would contend that its recognition of and regular liaison with, the AOC, coupled with the fact that membership of the AOC is open to all airlines operating at Gatwick, and that GAL in addition engages in discussions directly with airlines, constitutes GAL's compliance with the Condition.

GAL's previous practice has been accepted by airlines, and while Ryanair was not represented by the AOC its ground handling agent (Servisair) was, and given that Ryanair had removed itself from consultation process (both directly and via the AOC) it was expected that Ryanair and Servisair would discuss matters raised at the AOC with Ryanair. In any event GAL would have been happy to engage directly with Ryanair had Ryanair shown any interest in such engagement.

In its Preliminary Decision the CAA makes reference to information being provided to a small number of airlines – while this may be correct in certain instances where information was provided to the FPRCG, the relationship and working liaison between the FPRCG and the AOC was set out by GAL in its Q5 submission (please see attached report headed BAA/Q5/19 – BAA Progress Report on Constructive Engagement) without being objected to by the CAA. No objection has been raised by the CAA prior to the Preliminary Decision as to this method of consultation, and in fact the AOC executive officer, Simon Elliott, was invited to and attended the majority of meetings with the agreement that he would fully update the AOC membership with matters discussed at the FPRCG. In addition, documentation supplied to the FPRCG would have gone to the entire FPRCG committee, not only to those members present at a particular meeting. The CAA is also regularly updated as to the structure of GAL's constructive engagement with airlines and again no objection has been received.

*The level of detail to be provided*

16 -18 GAL broadly agrees with the CAA's conclusions in paragraphs 17 and 18 (that compliance cannot be assessed by reference to the presence or absence of requests for information). Nevertheless the extent to which airlines request further information, and the nature of the information requested, is, GAL believes, a useful barometer of GAL's compliance.

Airline requests for information as to how that particular airline might be affected cannot be regarded as an indication that GAL has not complied, since it cannot be right that the Transparency Condition is intended to require GAL to consider the position of each airline and provide information in relation to each.

### **The Transparency Condition and the CAA's views on GAL's compliance**

**Condition 1 – By 31 December 2008 and by 31 December in each subsequent year GAL shall inform the CAA of the system used by it to allocate costs to non-airport charges activities. GAL shall make any amendments to its cost allocation system if so requested by the CAA by 31 March prior to each charging year commencing on 1 April.**

20 – 22 GAL concurs with the CAA's view.

**Condition 2 – By 31 December 2008 and by 31 December in each subsequent year GAL shall provide to the CAA statements of actual costs and revenues in respect of each of the facilities specified in paragraph 7 for the year ending the previous 31 March.**

23 – 27 GAL concurs with the CAA's view.

**Condition 3 – Each year GAL shall provide to the CAA and to users or organisations representing users of the specified facilities prior to implementing any price changes a statement of the pricing principles for each item charged.**

28 – 35 For the reasons stated at paragraphs 14 and 15, GAL believes that it has complied with the Condition.

**Condition 4 - Each year including the current year GAL shall provide the CAA and users or their representatives the assumptions and relevant cost information adequate to verify that the charges derive from the application of the pricing principles.**

36 When this condition was introduced it was not envisaged that there would be separate charges for different methods of check in, and GAL had understood that the requirement was simply to demonstrate that overall charges were related to the pricing principles – ie cost related.

The Pricing Statement is sent every year to the CAA, and as the CAA notes for the most recent year the Specified Activities Pricing Information booklet was sent. The Pricing Statement clearly sets out the costs from which the charges are derived and with the exception of staff parking all other charges are based on cost.

At no point has the CAA indicated that these documents are not adequate to verify that charges derive from application of the pricing principles. GAL does not therefore understand the CAA's comment that in looking through its paper and electronic records it has not been able find any record of receiving adequate information in relation to this condition.

In so far as the CAA is critical of the adequacy of cost information then we submit that GAL has ensured that sufficient information is given to airlines to allow them to analyse costs allocations and thus the application of pricing principles. Ryanair has commented on the nature of the information provided in correspondence during the course of this complaint - of course the nature of litigation, or a regulatory complaint, is such that far more detailed information will be requested and produced than that required to comply with the Condition. The availability of this information is therefore not an indication that the Condition has not been complied with.

In so far as the CAA is critical of GAL not providing sufficient information as to the forecast use assumptions behind the proposed price for each method of check in, GAL would say that no airline has previously raised this as an issue other than in the established consultation process.

On two occasions (2006 and 2008) GAL set up and chaired a sub working group of the AOC to look at different pricing mechanisms, to which all airlines were invited.

Furthermore the 2008 review on check in desk charging looked at the mechanisms in place, and alternatives used in other airports in the UK, including Manchester, Glasgow and Edinburgh (these airports were chosen in conjunction with the airlines). This working group had concluded that the charging mechanism was fit for purpose (please see 06/11/08 FPRCG slides and minutes). A similar conclusion was reached by the working group in 2006.

GAL repeats the point made in relation to the relationship and working liaison between the FPRCG and the AOC, and the CAA's awareness of this.

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GAL welcomes the CAA's confirmation that the documentation attached to the Preliminary Decision at Annexes E and F are sufficient to fulfil the requirements of Condition 4, subject to appropriate distribution). Appendix F is the slide produced each year and sent out to the FPRCG.

38 The CAA states that with the exception of two documents specifically referred to, it has no evidence of correspondence from GAL to any individual airline verifying that the charges derive from application of the pricing principles. The CAA itself states at paragraphs 17 and 18 of the Preliminary Decision that the question of compliance in relation to level of detail cannot be assessed by the presence or absence of requests by individual airlines for information; this principle is also of application here.

GAL's letter of 29 December 2009, at paragraph 4(2), makes it clear that there is a detailed review beginning in August of each year, the results of which are collated into the pricing statement containing the pricing principles which is the subject of a consultation; there is also a Managing Director's Instruction which sets out pricing information and gives contact details for relevant personnel at GAL from whom further information can be sought.

Airlines may not have requested information since they would have received it from relevant working groups via their membership of the AOC, or were otherwise satisfied with the information provided.

39 GAL repeats its submissions made in relation to paragraphs 14 and 15 above.

**Condition 5 – Where the costs stated by GAL to be in connection with a particular charge vary from those provided in the Profit Centre Reports (PCRs) supplied to the CAA, GAL shall provide to the CAA and to users or their representatives a reconciliation with detailed reasons for such differences.**

40 – 44 GAL contends that the Condition does not require the reconciliation to be provided to all individual users directly, only that it is provided to users or their representatives, and reiterates the points made above in this regard.

**Condition 6 – Where charges for the specified facilities are not established in relation to cost GAL shall provide to the CAA and to users or their representatives a statement of the principles on the basis of which the charges have been set with full background information as to the calculation of such charges including statements of any comparables used.**

45 This condition is clearly aimed at the overall basis and is considering whether it is cost related or based on market price (thus the reference to comparables). It is not concerned with the individual apportionment of the charges amongst users. We have however made it clear since 2007 that although charges are cost related, in the apportionment of those charges there was an element of incentivisation for more efficient methods.

GAL has made it clear to the airlines that the recovery of charges is on a cost recovery basis, and that GAL will drill down to a reasonable level of detail in setting these costs.

Although the overall approach to check-in and baggage charges is cost related the individual prices for the different methods of check-in will not inter se be purely cost related in an environment where there is an attempt to modify behaviour, in relation to the use of the check-in desks and associated baggage facilities, since the incentivisation to change behaviour may require that one element of the charges subsidises another element. It is clear, therefore, that the prices are set so that, taken together, they recover actual costs, and that in subdividing the charges one of the relevant principles was to drive a change in behaviour towards a more efficient use of the assets.

Both these principles, the cost recovery, and the desire to modify behaviour, have been clearly explained to the airlines via the pricing principles statement, consultation with the AOC and discussions with individual airlines.

- 46 GAL repeats its submissions set out above against paragraph 36 in relation to the provision of information to the CAA and the fact that it has raised no objection in relation to this, save in the context of the current matter.
- 47 GAL repeats its submissions set out at paragraphs 36 and 45 in relation to the statement of principles and the provision of information, and the fact that the CAA has raised no objection in relation to this, save in the context of the current matter.
- 48 Given GAL's submissions above, GAL does not agree with the CAA's preliminary view and believes that it has complied with paragraph 6 of the Transparency Condition.

**Condition 7 – Where in respect of any year forecast revenue for any of the specified facilities differs from that forecast for the purposes of the price control review for the period of 1 April 2008 to 31 March 2013 (as specified by the CAA), GAL shall provide to the CAA and to users or their representatives detailed reasons for the differences.**

- 49 – 52 GAL repeats its submissions in relation the provision of information to airlines and their representatives made in relation to paragraphs 14 and 15 above.

There are two final general points which BAA wishes to make. First, in relation to the proper interpretation of the various conditions, BAA has made submissions to the CAA on an annual basis without any

complaint being made by the CAA as to the content, form or scope of those submissions. Against that background, where the proper interpretation of any particular condition is unclear, the proper course for the CAA would be to amend the relevant condition to clarify its meaning for the future, not to find retrospectively that BAA was in breach of that condition.

Second, in relation to the issue of distribution, while GAL acknowledges that the provisions of the Transparency Condition may be interpreted in the manner suggested by the CAA in relation to the wide dissemination of information, GAL does not accept that this is the only, or even a necessary interpretation. GAL believes that its approach has been a practical and common sense one, which accords with common airport practice and in respect of which no complaint has been received prior to this current one, either by an airline or by the CAA. Again, as in relation to the first point, where the scope of distribution required by a particular condition is unclear, the proper course is for the CAA to amend that condition to clarify its meaning for the future, not to find retrospectively that BAA was in breach of that condition.

Gatwick Airport Limited

13 December 2010