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26 March 2009
by post and email

The Rt Hon Hazel Blears MP
Secretary of State
Department for Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU

Dear Secretary of State

Stansted G2 Public Inquiry

Following publication last week of the Competition Commission's ('CC') final report on its market investigation into BAA airports and in accordance with the advice contained in your open letter of 2 March 2009, you are due to make an announcement on the start date for the Stansted G2 Public Inquiry by 16 April 2009.

As you are aware, Stop Stansted Expansion ('SSE') has consistently argued that the G2 planning application (actually a series of applications) is premature and therefore to start the G2 Public Inquiry in April 2009 or, as now may be the case, shortly thereafter, would also be premature. Our arguments in this regard have been well documented¹ and need not be repeated here.

However, significant additional considerations arise following the conclusion of the CC investigation and the publication of the most recent financial accounts for BAA Ltd and BAA (SP) Ltd on 25 February 2009.

The first of these additional considerations relates to the case which Stansted Airport Ltd ('STAL') would need to put forward at the Inquiry for permission to use Compulsory Purchase ('CP') powers to acquire properties as considered necessary to enable the G2 development to proceed. As the CC has recognised in its report:

*'... the Secretaries of State [for Communities and Local Government and for Transport] will want to be reassured that the person seeking the compulsory purchase powers is actually in a position to take the scheme through to fruition. This will include being able to show that all the necessary resources are likely to be available to deliver the scheme within a reasonable timescale.'*²

In law, the applicant not only needs to demonstrate that there is a compelling public interest, or compelling reasons in the public interest, in order to justify the use of CP powers but also that he has the financial wherewithal to implement the permission, if granted. In this regard we note the view expressed by the CC (on advice from Counsel) that:

Patron: Terry Waite CBE

Stop Stansted Expansion is a working group of the North West Essex and East Herts Preservation Association

*'Making CPO decisions in such circumstances would raise legal issues for the Secretaries of State. They would have to consider whether it was possible to take the relevant decisions on the basis of BAA's own financial resources together with reassurances that the purchasers would have sufficient resources to carry the project forward.'*³

As a standalone business, STAL clearly does not have the financial wherewithal to deliver the G2 project on the basis of its latest accounts filed with Companies House⁴ which state that the validity of the going concern assumption depends on the continued support of BAA Ltd⁵ and that BAA Ltd has granted security over the Company's assets.⁶ Even if a highly geared structure were acceptable from a regulatory standpoint, it seems highly unlikely that STAL would be able to secure the borrowing that would be necessary to finance G2 whilst it is so encumbered, especially against the background of the latest Department for Transport ('DfT') long term passenger forecasts for Stansted which are significantly lower than BAA's G2 assumptions.

STAL's immediate holding company, BAA (SP) Ltd (the holding company for BAA's three London airports), had borrowings of £11.4bn and gearing of 91% as at 31 December 2008⁷ and therefore also appears not to have the financial wherewithal to deliver the G2 project within any reasonable timescale. And BAA Ltd (the owner of the whole BAA business) is even more unlikely to be able to deliver the G2 project within any reasonable timescale, with borrowings of £18.1bn and *negative* equity of £1.7bn at 31 December 2008.⁸

It is, of course, quite possible that a change of ownership of STAL could result in a stronger financial position emerging but, on the basis of the evidence which we currently have before us, we believe that it would be wholly irrational to proceed with the G2 Public Inquiry for as long as STAL continues to be owned by BAA Ltd.

Other significant considerations arise in relation to the ability of the applicant to pay for the compensation and mitigation measures which the G2 application would entail if approved and to fund the requisite investments in surface access infrastructure associated with it. In addition, when divestment of STAL from BAA Ltd takes place, a number of complex separation issues will arise with regard to the G2 planning application. These include issues in relation to the many BAA schemes, commitments, legal obligations and other matters which are 'casually' referred to and relied upon in the planning application. We use the term 'casually' here not as a criticism of BAA but to reflect the fact that a separation of BAA Ltd and STAL was clearly not envisaged when the G2 planning applications were being prepared, and the joint applicants are often treated in the documentation as if they were a single entity.

We ask you to give all of the above careful consideration when making your decision in relation to a start date for the G2 Inquiry. It would also appear to us appropriate for you to obtain an independent financial assessment of the applicant's ability to deliver the G2 project within any reasonable timescale as well as legal advice on the separation issues.

SSE's view, as you know, is that to proceed with the G2 Inquiry in the current circumstances would be wasteful in terms of public money and in terms of time, effort and expense of the main parties. When we wrote to you on 5 February, we argued that the start date for the G2 Inquiry should at least be postponed until September. However, in the light of the CC's final report, the publication of the latest BAA accounts, the latest DfT air traffic forecasts and, more generally, developments in the wider economy, we believe that there is now no justification whatsoever in proceeding any further with the G2 Inquiry.

I am copying this letter to the Secretary of State for Transport, the Chief Executive of BAA Ltd, the Inquiry Inspector and by email to the other main parties to the Inquiry so that in each case they are aware of the further considerations we are putting to you and have an opportunity to respond before you announce your decision regarding the G2 Public Inquiry.

Yours sincerely



Carol Barbone
Campaign Director

¹ (i) SSE Outline Statement of Case, 14 Oct 2008; (ii) SSE Submission to PINS, 7 Nov 2008; (iii) SSE Main Statement of Case, 22 Dec 2008; (iv) SSE Submission to PINS, 15 Jan 2009; (v) SSE letter to you, 5 Feb 2009; and (vi) SSE letter to you of 1 March 2009.

² BAA airports market investigation; final report', CC, 18 March 2009, App 10.6, para 4.

³ Ibid.

⁴ STAL's 2008 financial accounts have not yet been published or filed and so our reference here is to the accounts for the year ended 31 December 2007. However, in the absence of advice from BAA to the contrary, we would not expect to see any major changes to STAL's financial situation.

⁵ STAL 2007 Financial Statements, Note 1: Accounting Policies, Basis of accounting.

⁶ Ibid, Note 9.

⁷ BAA Ltd, Results for year to 31 December 2008, BAA (SP) Ltd Consolidated Balance Sheet as at 31 December 2008), p.23.

⁸ Ibid, BAA Ltd Consolidated Balance Sheet as at 31 December 2008, p19.