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7 November 2008  
*by post and email*

Ms Carmel Edwards  
Programme Manager: Stansted G2 Inquiry  
Planning Inspectorate  
Temple Quay House  
2 The Square, Temple Quay  
Bristol BS1 6PN

Dear Ms Edwards

**Stansted G2 Public Inquiry: Inspector's Note for the Pre-Inquiry Meeting**

The Inspector invited comments on the proposed outline timetable and arrangements for the Stansted G2 Public Inquiry, as set out in his pre-inquiry meeting ('PIM') note of 28 October 2008. The attached submission is in response to that invitation.

Please do not hesitate to contact me if there are any questions arising.

Yours sincerely

Carol Barbone  
Campaign Director

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Town and Country Planning Act 1990 – Section 78; Planning (Listed Buildings and Conservation Areas) Act 1990; Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005.

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Proposed Second Runway at Stansted Airport  
(The Stansted 'G2' Project)

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Submission by Stop Stansted Expansion to the Lead Inspector appointed by the Secretary of State for the Stansted G2 Public Inquiry concerning the proposed outline timetable and arrangements for the Inquiry

7 November 2008

## **1. Introduction**

- 1.1 Stop Stansted Expansion ('SSE') has major concerns about the proposed outline timetable and procedural arrangements for the G2 Inquiry, particularly, the intention:
- (i) to commence the Public Inquiry on 15 April 2009;
  - (ii) to require Proofs of Evidence by 10 March 2009;
  - (iii) to require Draft Conditions by 7 April 2009;
  - (iv) to split the centre section of the Inquiry into two separate 'streams' and run parallel sessions; and
  - (v) to complete the Inquiry within a period of six months.
- 1.2 The outline timetable and arrangements proposed would render it impossible for SSE to play a full part in the Inquiry in our role of representing local community interests.
- 1.3 SSE has over 7,500 members and registered online supporters, mainly individual local residents who would be adversely affected by the proposed G2 development. We also have the support of some 140 organisations including local residents and environmental groups as well as local parish and town councils.

## **2. The unfairness of the proposed arrangements**

- 2.1 Whereas the Applicant and the main local authorities have substantial resources at their disposal to handle a mid-April start date for the G2 Inquiry followed by parallel sessions and an intensive timetable, SSE does not. We understand, for example that BAA will have a team of up to five barristers as well as numerous external consultants and advisors at its disposal.
- 2.2 SSE, however, as a community organisation dependent entirely on voluntary donations is subject to very significant financial and manpower constraints. Moreover: (a) having recently been a major party in the G1 Inquiry; and (b) currently examining the outcome of the G1 Inquiry, as announced just last month, with a view to lodging an appeal, our financial and manpower resources are already severely strained and may be even more strained between now and the proposed start date for the Inquiry.
- 2.3 The other main parties, excluding SSE and perhaps also to some extent the Stansted Airlines Consultative Committee ('SACC'), do not intend, as we do, to cover virtually all of the topics dealt with in the BAA planning application documents. Indeed the vast majority of other parties will be focused on only one or two topics of particular interest. And it is reasonable to assume that the SACC will be well-funded, representing as it

does, the interests of many large airline companies who use Stansted Airport and who have a great deal at stake on the outcome of this Inquiry.

2.4 SSE would therefore be uniquely disadvantaged if the 'fast track' and 'twin-track' arrangements for the G2 Public Inquiry, as proposed, were to be confirmed. As the principal community voice on Stansted Airport matters for those living in the region – and as a voice for wider environmental concerns about airport expansion from much further afield – we could not acquiesce to any Inquiry arrangements which would have the effect of marginalising the voice of the local and wider community and we would explore all legitimate avenues available to us to seek to prevent this from happening.

2.5 We are however greatly encouraged that the Department for Communities and Local Government ('DCLG') has recently confirmed that it attaches priority to ensuring that local voices can be heard at the G2 Inquiry. We quote from the relevant statement issued by the DCLG on 3 November 2008 in relation to the running of this Inquiry:

*'New rules were brought in to prevent planning inquiries from dragging on for years and forcing local voices out because of unnecessary delays. Legal costs should be no higher from holding concurrent inquiries, as the overall length of the process should be reduced.*

*The detailed timing and process of inquiries is a matter for the independent inspector, who will make recommendations to Ministers in due course having considered all the evidence from parties.*

...

*It is far too early to be definitive about when a final decision might be made. The Inspector's preliminary view is that it should be possible to complete the inquiry itself in 6 months, but further information is required from parties for a definitive view. The Inspector will announce, at the end of the Inquiry, the date by which he expects to submit his report to Ministers for final decision.*

...

*This is the first time the new MIPS [Major Infrastructure Projects] procedures are being used as it is the first case that has come up since they were introduced.*

*This Inspector has taken steps to ensure that no party is disadvantaged by the inquiry process.'*

2.6 We would welcome clarification of the steps referred to in the final paragraph of the above statement and would add that a well-meaning policy can, on occasion, have the

opposite of its intended effect. Indeed, this appears to be a case in point. With our limited resources we cannot afford inefficiency or procrastination and the G2 Inquiry will not 'drag on for years' – at least not as a result of any inefficiency or procrastination on SSE's part. We believe that we amply demonstrated our commitment to an efficient process at the G1 Inquiry in 2007.

- 2.7 Since this is apparently the first time that the new major infrastructure project ('MIP') procedures, under s76A of the Town and Country Planning Act 1990 (introduced under s44 of the Planning and Compulsory Purchase Act 2004), have been used in a planning inquiry there is a legitimate expectation that we should now be able to rely upon certain assurances given to the House of Commons by the then Parliamentary Under-Secretary of State in the ODPM – and de facto Planning Minister – Ms Yvette Cooper, on 19 April 2004, during the passage of the Planning and Compulsory Purchase Bill.
- 2.8 These assurances are cited in paras 4.3.3 to 4.3.5 of our Outline Statement of Case and need not be repeated here. It is however important to note that the assurances given by the Planning Minister specifically related to the way in which the new MIP procedures would work and were provided for the purpose of persuading the House of Commons that certain Lords' Amendments, which she was obliged to deal with, were unnecessary.
- 2.9 The Lords' Amendments mostly related to safeguards for objectors and SSE had been closely and directly involved in promoting some of these because we were concerned, even at that time, about the risk of unfairness in the new MIP procedures. We believe that this adds weight to our legitimate expectation that these assurances should now be honoured at this first – and perhaps only – test of the new MIP procedures.

### **3. The scale of the G2 Inquiry**

- 3.1 The matters to be considered at the G2 Inquiry are far wider than in the case of the G1 Inquiry and the scale of environmental harm that would ensue from the proposed G2 development is very much greater. An indication of the relative scale of G2 against G1 is that the Planning Application, Environmental Statement and other supporting documents submitted by BAA for the G2 project are approximately ten times the volume of those for the G1 project. We estimate that the G2 application will take four to five times longer to deal with than the G1 application (the latter led to an inquiry comprising 49 sitting days over a total period of 143 days from start to finish).
- 3.2 The scale of the G2 Inquiry should not be underestimated. This will be the UK's biggest ever airport planning application. If approved, Stansted Airport would become bigger than today's Heathrow on each of the three main yardsticks:

- 495,000 annual aircraft movements vs 480,000;
- 68 million passengers per annum ('mppa') vs 67mppa; and
- a total site area of 16 square kilometres vs 12 square kilometres.

- 3.3 The central issue at stake at the G2 Inquiry is whether Stansted should be allowed to grow to three times its present size in terms of passenger throughput, becoming bigger than any other airport in Europe today.
- 3.4 By way of comparison: the 1995 - 99 Heathrow T5 Inquiry, where the issue at stake was of a lesser magnitude than in the case of the Stansted G2 Inquiry, sat for 525 days and lasted almost four years; the 1994 - 95 Manchester Airport Inquiry, where again the issue at stake was of a lesser magnitude than in the case of the Stansted G2 Inquiry, took 10 months; and the 1990 - 91 London City Airport Inquiry sat for more than six months culminating in approval for up to 700,000 passengers a year. The Stansted G2 Inquiry will be dealing with an application which, if approved, would enable Stansted to become almost 100 times bigger than that. We consider it inconceivable that justice could be done to the central issue at stake at the G2 Inquiry – 'should Stansted be allowed to grow to 68mppa?' – in the same six months timescale that was needed for the Public Inquiry which examined whether London City Airport should be allowed to grow to 0.7mppa.
- 3.5 Two previous public inquiries and a Royal Commission have considered the question of additional runways at Stansted and in each case provided a full and fair opportunity for the evidence to be thoroughly tested and for the case for and against the proposal to be argued. In each case also – Blake in 1967, Roskill in 1971 and Eyre in 1984 – the end result was a decisive rejection of any expansion beyond Stansted's existing runway.
- 3.6 We are gravely concerned that if, on this occasion, SSE and other accredited parties representing the local community were to be denied a fair opportunity to present all of their evidence, to cross-examine BAA on all of its evidence and to follow the case being made by others, there would be a serious risk of imbalanced and unsound conclusions being reached at the end of the Inquiry.
- 3.7 We now turn to certain specific reasons for our objection to the proposed outline timetable and procedural arrangements for the G2 Inquiry.

#### 4. Prematurity of the G2 planning application

4.1 The first and most incontrovertible reason for the G2 planning application being deemed premature is as stated in our Outline Statement of Case of 14 October 2008: BAA has submitted a planning application for a second Stansted runway before having sought permission to make full use of the existing runway. This is contrary to the policy set down in the Air Transport White Paper ('ATWP').

*The first priority is to make best use of the existing runways, including the remaining capacity at Stansted and Luton.'*<sup>1</sup>

*'Our starting point is that we should make the best use of existing airports before supporting the provision of additional capacity.'*<sup>2</sup>

*'Our first priority is to make the best possible use of the existing runways at the major South East airports.'*<sup>3</sup>

4.2 The term 'best use' was deemed by Inspector Alan Boyland at the G1 Inquiry to mean the same as 'full use':

*'I can see nothing in the ATWP to indicate that any distinction between the terms 'best use' and 'full use' is intended in respect of policy relating to Stansted Airport. Accordingly I consider that they should be construed as synonymous for this purpose.'*

and Inspector Boyland also noted:

*'It is undisputed that the 35 mppa now sought by BAA would not amount to use of the runway to its full operational capacity.'*

4.3 We are aware that it is not unusual for an Applicant to 'cherry pick' from Government policy statements to suit their own purposes. In this case, however, the inherent inconsistency in BAA's position is quite staggering. On the one hand it brandishes the ATWP throughout the text of its Planning Application, Environmental Statement and supporting documents for the G2 project as if it were an unchallengeable mandate for the proposed second runway development. On the other hand BAA totally ignores the ATWP's clear insistence that the first priority should be to make full use of the existing runway facilities – something which BAA is a very long way from achieving at Stansted (as we explain below) and for which it has not even bothered to seek planning approval.

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<sup>1</sup> ATWP, Executive Summary, p13.

<sup>2</sup> Ibid, para 2.11, p24.

<sup>3</sup> Ibid, para 11.6, p110.

- 4.4 Following approval of the G1 planning application on 8 October 2008, Stansted now has permission to handle 35mppa – more than 50% above its current level of business. A forecast published this week by the Competition Commission<sup>4</sup> projects that Stansted's throughput will decline to 21.5mppa in 2009/10 before starting to recover and, at that point, the airport would have headroom for 63% expansion before reaching the 35mppa cap. Moreover, BAA has expressly acknowledged that 35mppa does not represent full use of the existing runway.<sup>5</sup> A capacity to handle 40mppa has been (conservatively) acknowledged by BAA and, even on this basis, Stansted would, in 2010, have headroom for 86% expansion on the existing runway.
- 4.5 BAA assumes a four year construction period for the proposed development with the completion of its proposed second runway scheduled for Spring 2015. However, there is compelling evidence (reinforced again this week in the Competition Commission report referred to in para 4.4 above) that there is unlikely to be either the need or the demand for a second Stansted runway for at least the next decade.
- 4.6 In May 2008, after submitting its G2 planning application, BAA revised its Stansted traffic forecasts substantially downwards. These forecasts came into the public domain only this week<sup>6</sup> and, since May 2008, the traffic outlook for Stansted has substantially deteriorated not only because of the general deterioration in the economic climate but also because the airport's major customers have announced a scaling back of their operations at Stansted well in excess of the general downward industry trend.
- 4.7 BAA's commercial position with regard to a second Stansted runway was clearly set out by its Chief Executive in March 2004, shortly after the publication of the ATWP, as follows:

*'The business case for Stansted Generation 2 rests upon three assumptions:*

- 1. That traffic at the airport will continue to grow, broadly as envisaged in the Government's own projections;*
- 2. That, as a result, Stansted will be able to raise its charges to the level permitted by the regulatory ceiling set for the present five-year period, 2003-2008. Existing discounts are being unwound and this process will be complete by March 2007.*

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<sup>4</sup> 'Stansted Q5 Price Control Review,' Competition Commission, Nov 2008, Table 7.

<sup>5</sup> Letter from CMS Cameron McKenna LLP on behalf of BAA Ltd and Stansted Airport Ltd to the G1 Programme Manager, 20 March 2007, page 2, para 2 and evidence of Mr Stanley Maiden, Group Research Director, BAA Ltd to the G1 Inquiry, Transcript, 22 June 2007, page 17.

<sup>6</sup> 'Stansted Q5 Price Control Review,' Competition Commission, Nov 2008, Table 7.

3. *And that, in the next five-year settlement, 2008-2013, the CAA and the Competition Commission will agree to remunerate satisfactorily the first phase of the Stansted G2 project, which could just be operational at the back end of that period..*

*I am personally confident that these assumptions are well-based and that the first phase of the runway project will proceed broadly on the time-scale the Government envisages. That is why we are pushing on vigorously with the Stansted project today.*

*However, if circumstances turn out very differently, we will have to adjust our plans. BAA will not ask its shareholders and lenders to support any project for which there is no sound business case.'*

- 4.8 To the best of our knowledge and belief the above position statement has not been retracted or revised and so it is important to test whether BAA's self-imposed criteria for a second Stansted runway have been met, bearing in mind that the key purpose of the position statement was to reassure BAA shareholders and lenders that its management would not ask them *'to support any project for which there is no sound business case.'*

- 4.9 The first BAA criterion:

*'That traffic at the airport will continue to grow, broadly as envisaged in the Government's own projections'*

clearly has not been met. At the time of making the statement, BAA was forecasting 30.4m passengers at Stansted by 2009/10<sup>7</sup> and the Department for Transport ('DfT') was forecasting that Stansted would handle 57mppa by 2015.<sup>8</sup> It can therefore be incontrovertibly stated that traffic at Stansted Airport has not *'continued to grow, broadly as envisaged in the Government's own projections.'* The latest forecasts are as follows:

**Table 1: Stansted Traffic Forecasts**

	2009/10 mppa	2013/14 mppa	Notes
BAA May 08	23.5	31.0	Downward revision expected
DfT Nov 07	26.2	34.1	"
SACC July 08	22.7	26.7	
ASA July 08	22.2	28.1	
CC 'most likely' Oct 08	21.5	27.0	Most recent

Source: Competition Commission - Stansted Q5 Price Control Review, Nov 2008, Table 7.

<sup>7</sup> 'Long term traffic forecasts 2003/04 – 2013/14', BAA, April 2004.

<sup>8</sup> 'Passenger Forecasts: Additional Analysis', DfT, Dec 2003, Annex B1.

4.10 The second BAA criterion:

*'That, as a result, Stansted will be able to raise its charges to the level permitted by the regulatory ceiling set for the present five-year period, 2003-2008. Existing discounts are being unwound and this process will be complete by March 2007.'*

We acknowledge that this criterion has more or less been met.

4.11 The third BAA criterion:

*'And that, in the next five-year [regulatory] settlement, 2008-2013, the CAA and the Competition Commission will agree to remunerate satisfactorily the first phase of the Stansted G2 project, which could just be operational at the back end of that period.'*

This criterion, which has clearly not been met, is fundamentally important to the question of prematurity. Indeed, it lay at the heart of SSE's 2004 Judicial Review ('JR') challenge to the ATWP. That aspect of our JR challenge was unsuccessful but the judgement handed down by Mr Justice Sullivan – setting out his reasoning on the matter of commercial viability – and the evidence presented to the High Court on behalf of the Secretary of State for Transport on the same matter have an important bearing upon the circumstances that now prevail. Paragraphs 4.12 to 4.18 below explain the importance of this issue.

4.12 The first point which needs to be made is that the current economic regulatory period, 'Q4', was extended from five to six years pending an attempt by the CAA to have Stansted de-designated for the purposes of economic regulation. That attempt was ultimately unsuccessful, SSE being amongst those who opposed de-designation. The upshot is that Q4 will now end on 31 March 2009 and Q5 will run from 1 April 2009 to 31 March 2014, a year later than thought at the time of the BAA position statement on G2.

4.13 The phrase which speaks about the need *'for the CAA and the Competition Commission to agree to remunerate satisfactorily the first phase of the Stansted G2 project'* in effect means that the joint regulators had to allow BAA a sufficiently high price cap at Stansted during Q5 to enable it to secure the requisite finance for the project and to earn a viable return, taking account of BAA's cost of capital and the project-specific risk for G2.

4.14 The Competition Commission's report to the CAA on the 'Stansted Q5 Price Control Review' was published on 4 November 2008 and concludes that it would be premature to allow BAA funding for the construction of a second runway at Stansted during Q5. Although the CAA is not legally obliged to accept the Commission's recommendations, it

has a statutory duty to have regard to them and history demonstrates that the CAA attaches considerable weight to this duty. The CAA will publish firm proposals for consultation in December 2008 and its final decision in March 2009.

4.15 We list below some key extracts from this week's Competition Commission report:<sup>9</sup>

- *'We believed that the challenge of determining Stansted's capital expenditure (capex) programme in Q5, which was very uncertain and was one of the CAA's principal concerns with a RAB-based approach, could be addressed in other ways. In particular, we noted that our passenger forecasts suggested that the timing of the vast majority of capex on the second runway and terminal at Stansted was likely to be delayed until Q6. [2014/15 to 2019/20]*
- *With regard to SG2, we were not convinced that BAA had either consulted effectively or spent efficiently. We concluded that the amount BAA had spent could be included in the RAB less approximately £37 million (in 2007/08 prices), which related to approximately 40 per cent of BAA's professional fees and 50 per cent of its project costs for SG2*
- *Determining passenger forecasts for Stansted over Q5 was not easy. In recent times, and in the course of our review, we saw significant movements in key underlying factors which affect passenger numbers, particularly oil prices, economic growth and consumer expenditure. We took this uncertainty and the volatility of key inputs into account but, even after we formed our forecasts, at the end of September 2008, there was further significant market turbulence. Due to the rapidly changing market circumstances, we recommend that the CAA reviews this area again before making its final determination.*
- *We estimated that short-haul passenger demand was likely to grow at most by 5 per cent a year. We then added long-haul traffic, based on BAA's model but delaying its forecasts for three years. Overall, we estimated that there would be 21.5 million passengers at Stansted in 2009/10, rising to 27.0 million in 2013/14, representing a compound average annual growth rate of 5.9 per cent.*
- *BAA proposed that, over Q5, it would spend ...approximately £1.1 billion developing a new runway and terminal at the airport (SG2), subject to gaining planning approval. ... We suggested and BAA agreed that, given the uncertainty surrounding this project, all construction costs should be excluded*

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<sup>9</sup> 'Stansted Q5 Price Control Review', Competition Commission, Nov 2008.

*at this stage but, should circumstances change in the course of the quinquennium (eg if planning approval is received), it would be open to BAA to seek an interim determination by the CAA. The CAA would then seek to re-set the price caps for the remainder of the quinquennium in the light of the information available at that time. Given this approach for dealing with the substantial uncertainty surrounding this development, BAA proposed that only £40 million (in 2007/08 prices) should be included in the capex forecasts for Q5, which represented its anticipated expenditure to the point of gaining planning approval based on its current assumptions on the timescale for the planning process.*

- *BAA anticipates that the planning inquiry into these [SG2] applications will start in April 2009 and will be completed by April 2010.*
- *Following our analysis of passenger forecasts ... we did not expect that passenger numbers at Stansted will reach levels which would require construction work to begin on SG2 in Q5, which lasts until the end of 2013/14.*
- *We estimated the cost of capital for Stansted on the basis of a separate business ... Having taken all the above factors into account, we recommend that the appropriate cost of capital at Stansted is 7.1 per cent.'*

4.16 The last point is of particular significance because BAA submitted that Stansted's cost of capital would be 8.55% as a standalone business. If Stansted is price-capped on the basis of a 7.1% rate of return and its cost of capital is 8.55%, it is reasonable to ask why BAA would seek to progress the G2 project at this stage.

4.17 The following extract from the CAA's December 2006 'Airports Price Control Review' reinforces this point:

*'21.16 BAA did not provide a view as to the future cost of capital at Stansted in its September 2006 regulatory submission, instead pointing out that its assumptions about the opening date and price resulted in a rate of return of just over 8% pre-tax real over Q5 and Q6. However, BAA subsequently wrote to the CAA indicating that in its current view the cost of capital at Stansted (on a pre-tax, real basis) was 8.79%.'*

4.18 To summarise on this point, the third criterion has clearly not been fulfilled. It is unlikely, but admittedly possible, that BAA may persuade the CAA to go completely against the

recommendations of the Competition Commission and allow BAA a viable commercial basis for proceeding with the construction of a second Stansted runway during Q5. We will not know the outcome for certain until the CAA announces its final decision in March 2009.

4.19 However BAA has made clear that it would not proceed with the G2 project unless its three criteria have been met and two of them have clearly not been met. On BAA's own analysis therefore the G2 application is, at best, either premature or speculative.

4.20 We accept that there is nothing in planning law to preclude BAA from seeking planning approval, even now, for a second runway at Stansted. However, the effort and expense involved in having to contest and process a premature (and/or speculative) planning application is such that a pragmatic view is needed on the question of prematurity, regardless of whether or not the proposed development is supported in principle by 2003 Government policy paper.

4.21 This local community has had to fight many battles over the years to counter the insatiable appetite of BAA, and formerly the British Airports Authority, for ever more expansion at Stansted which, if approved, would be at a cost of destroying local communities, our precious and irreplaceable local environment, tranquillity and enjoyment across a much wider area and, as we now know, damaging also the global environment.

4.22 On each occasion that this community has had to fight, anxieties have been raised, homes have been blighted and substantial funds have had to be raised. We consider it a wholly unreasonable imposition that BAA should be able to present this community with the threat of yet another Public Inquiry in respect of a development proposal for a second runway the need for which is at least an uncertain decade away.<sup>10</sup> It is even more of an imposition that BAA should do so claiming the authority of the ATWP whilst at the same time ignoring it.

## **5. The proposed start date**

5.1 If it were not to be accepted that BAA's G2 Planning Application is itself premature for the two reasons we set out in detail above, namely:

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<sup>10</sup> If 5% annual growth is applied to the 'most likely' forecast of 27.0mppa in 2013/14 (Table 1 above) 40mppa is not reached until 2022/23 (and 40mppa capacity is a very conservative assumption).

- BAA's failure to first make full use of the existing runway; and
- BAA's failure to meet its own criteria on the business case

there are compelling reasons for at least delaying the proposed start date for the G2 Inquiry. We set these out in 5.2 to 5.10 below.

5.2 There is considerable uncertainty as to whether BAA will proceed with the G2 Application as a result of the Competition Commission's view that it should be forced to sell two of its three London airports, which in effect means that Stansted must be sold. In anticipation of this conclusion – and perhaps in an attempt to dissuade the Commission from reaching it – BAA's Chief Executive stated the following in a keynote address to a major industry conference in June of this year.

*'It took five years, from 1998 to 2003, just to get from the original intention for White Paper, to the actual document itself. It has taken another five years to get us to where we are now – where we have lodged, at Stansted, an application for a second runway, and at Heathrow are waiting for the government's verdict on the consultation exercise.*

*If you start to unravel that process, say by forcing the sale of an airport where expansion is planned, then, at the very least, you are putting the process on ice. What planner is going to grant permission when he or she doesn't know who the new owner is going to be and whether they will live up to any commitments?'<sup>11</sup>*

5.3 One might equally ask: 'What airport owner, having been ordered to sell his airport, is going to continue to fight for planning approval which, if granted, would have the effect of creating a far more powerful competitor to his one remaining airport business in the geographical vicinity?'<sup>12</sup>

5.4 Moreover, in this particular case, Stansted's airline customers are fiercely opposed to the G2 project as evidenced by the Outline Statement of Case submitted to the Inquiry on behalf of the SACC. The Competition Commission noted:

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<sup>11</sup> Speech by Colin Matthews, Chief Executive, BAA to Transport Times Conference, 25 June 2008.

<sup>12</sup> There would be a valuation upside if planning consent were obtained for G2 but, equally, a valuation downside if planning consent were refused. It is largely a question of whether the buyer or seller takes the risk. In any event the Competition Commission may impose a divestment deadline which precludes BAA from retaining ownership of Stansted through to a final decision on G2 by the Secretaries of State.

*'The SACC did not support BAA's choice of airport development and submitted to us that it favoured a narrow-spaced runway option, with a 595 metre stagger, to the west of the current runway, and with a second terminal (T2) located to the south-east of the existing terminal (T1). The SACC believed that this option would save over £1bn compared with BAA's favoured option.'*<sup>13</sup>

5.5 There must be a likelihood – indeed a very high probability – that the new owner of Stansted would, at the very least, wish to reconsider the appropriateness of the G2 project, to open a fresh dialogue with his main airline customers and to re-examine the cost, timing and viability of the project.

5.6 And the new owner will be even more likely to do that in circumstances where:

- the aviation market is declining and is expected to decline further, at least in the short term, and where Stansted already has planning approval to handle 50% more passengers than it presently handles and runway capacity to handle far more still;
- as matters stand, the G2 application will ultimately be decided by Ministers who may or may not be favourably inclined towards the proposal – depending on the political climate at the decision-making moment; and
- a new Planning Act will very soon be in force and it is generally believed that this will not only speed up the process of dealing with applications for major infrastructure projects but also take the final decision out of the political arena.

5.7 BAA's Chief Executive highlighted another reason for the new owner of Stansted to be unenthusiastic about continuing to pursue the G2 project:

*'The first priority for any new owner would be to maximise the returns from the existing facilities – not to make the commitment in terms of money, time and sheer effort necessary to push a new runway through the planning process'*<sup>14</sup>

5.8 The Chief Executive's reference above to the 'money, time and sheer effort necessary to push a new runway through the planning process' is a salient reminder to those who oppose the G2 project that we also will require to expend a great deal of money, time and effort in doing so. A great deal of taxpayers' money is also involved one way or another. And much, if not most, of this money, time and effort is needed at the

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<sup>13</sup> 'Stansted Q5 Price Control Review', Competition Commission, Nov 2008, para 8.29.

<sup>14</sup> Speech by Colin Matthews, Chief Executive, BAA to Transport Times Conference, 25 June 2008.

preparatory stage, i.e. before the Inquiry actually commences. This is a matter of particular concern to SSE: we can ill afford to be engaged on a fool's errand.

- 5.9 Returning to the Competition Commission's view that BAA must sell Stansted, this issue has not yet crystallised because it is a preliminary view, albeit one which is supported by a great deal of evidence gathered in the course of more than two years of inquiry, first by the Office of Fair Trading and subsequently, post-referral, by the Commission itself. The Commission will publish its final remedies proposals for consultation in December 2008 and its final report in February or March 2009, i.e. on the eve of the proposed start date for the G2 Inquiry. In the meantime we accept that BAA has not abandoned the hope of persuading the Commission to change its mind, at least not publicly so.
- 5.10 Also on the eve of the proposed start date for the G2 Inquiry, in March 2009 the CAA will publish its final decision on the Stansted Q5 price control review. As explained in paras 4.9 to 4.18 above this will have a significant bearing – indeed, a decisive bearing according to BAA – on whether or not the G2 project proceeds as planned.
- 5.11 We submit that, in view of the highly exceptional circumstances in which we find ourselves, there are compelling reasons for deferring the start date of the G2 Inquiry until after the outcome is known in relation to the above two key decisions, namely, whether BAA must sell Stansted and the Q5 pricing regime in respect of Stansted.
- 5.12 Such a deferral would also allow time for three further major areas of uncertainty, so far as the G2 Inquiry is concerned, to be resolved:
- the Government's decision on whether there should be a third runway and/or mixed mode operations at Heathrow (expected December 2008);
  - the publication of updated air traffic forecasts for the United Kingdom by the DfT; (expected December 2008);
  - the Network Rail proposals for the West Anglia Main Line ('WAML') see para 6.13 below.

Clarification of the above three points in time to digest the implications and reflect in Proofs of Evidence would avoid a great deal of inefficient and unnecessary speculative work.

- 5.13 A deferral would also have the benefit of improving the efficiency of the Inquiry once it gets underway and reducing the risk of unfairness, as we shall go on to explain below. The delay could be put to productive use in terms of exchanging information between the main parties and securing wider agreement on common ground.

## **6. Submission of Proofs of Evidence**

- 6.1 Based on a planned starting date of 15 April 2009, the Inspector is proposing that all Proofs of Evidence should be submitted by 10 March 2008. However, there are major gaps in the information provided by BAA in its Environmental Statement for the G2 project such that our ability to fully understand the assessments provided is impaired and, unless remedied, this will impair progress in producing Proofs of Evidence which focus on the key issues rather than on outstanding questions. We should, incidentally, point out that for the G1 Public Inquiry we were the first of the major parties to submit our Proofs of Evidence and the only one to do so by the prescribed deadline.
- 6.2 On 4 July 2008 SSE submitted a list of 166 points to BAA seeking various clarifications and additional information. BAA has provided a reply of sorts to most of these points in correspondence dated 29 August, 30 September and 14 October. However, fewer than a quarter of BAA's replies deal properly with the questions that we asked.
- 6.3 Whilst noting that there is an expectation under ODPM guidance for the applicant and local planning authority to work together to identify areas of common ground in anticipation of an Inquiry held under the MIP rules, there is no requirement for interested parties to do the same. Nevertheless, SSE agreed to participate in the Topic Working Groups ('TWG's) for the G2 Inquiry in the expectation that these would provide an efficient and effective means for the sharing of information between the major parties, including between SSE and BAA, and thereby saving considerable Inquiry time by narrowing down the areas of disagreement and misunderstanding.
- 6.4 Our experience to date, however, is that, whilst progress is being made in some areas, this is painfully slow. SSE is devoting considerable resources to the TWG process and this is not, so far, proving to be an efficient use of our time. Moreover, the TWGs may be hindering rather than helping our ability to make progress with Proofs of Evidence. Because of the slow pace of progress, and because also we have certain concerns about the accountability of BAA representatives at the TWGs<sup>15</sup>, we intend to review our continued participation in the TWGs at the end of November.

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<sup>15</sup> These concerns relate to (i) the nature of BAA representation at TWG meetings and (ii) a lack of clarity as to who accepts responsibility – BAA Ltd or Stansted Airport Ltd – for commitments and information provided at the TWG meetings after Stansted has been sold, noting that the majority of the G2 applications are in the name of both companies.

6.5 Whilst we have across-the-board concerns about our ability to meet a deadline of 10 March 2008 for the submission of Proofs of Evidence, our concerns are particularly acute in relation to: (i) Forecasting, which is a pivotal topic from which much else flows; (ii) Economics, which will be a central topic for the Inquiry because the Applicant will claim that the economic benefits of the G2 project are sufficient to justify the environmental damage that would ensue; and (iii) Surface Access, which is a major issue and where there is a great deal of modelling and other preparatory analysis still to be done by BAA's own admission.

#### *Forecasting*

6.6 The outputs from the BAA air traffic forecasts provide the key input assumptions for assessing the environmental impacts of its proposed development in almost every other topic area, i.e. air and ground noise, air quality, surface access, third party risk, health impacts, employment and economics and even land use. The air traffic forecasts are therefore critically important and so also are the underlying assumptions used to arrive at them. That is why so many of the matters upon which we sought clarification and additional information from BAA on 4 July 2008 related to its forecasting methodology, assumptions and sensitivity testing. That is also why we consider it vital that we should work from the latest air traffic forecasts and not the now unreliable forecasts included in the G2 planning application.

#### *Economics*

6.7 For the G1 Inquiry, BAA submitted an assessment of the economic effects in April 2006 as part of its Environmental Statement. This was a 26-page document and we had a period of 12 months to examine it, commission expert external advice and carry out our own modelling before having to submit our economics Proof of Evidence to the G1 Inquiry.

6.8 For the G2 Inquiry, BAA did not provide any assessment of the economic effects when submitting its planning application. In fact we received BAA's Economic Impact Report ('EIR') only this week. It is a 180-page document and we have not yet been able to study it in any detail but we can already see that it largely ignores SSE's submissions during the consultation stage. We will need from BAA considerable clarification and additional background information on the key assumptions made and the basis for the economic assessment in a number of areas. We will also wish BAA to run sensitivity tests and will require ourselves to run sensitivity tests using the same DfT model that BAA has relied upon for assessing user benefits and it is likely that we will need to

discuss with the DfT certain aspects of its modelling suite. We also have the problem of BAA's outdated forecasts to deal with as referred to in para 6.6 above.

- 6.9 When we have had an opportunity to study the document in greater detail, it may be that we would wish to commission external advice on certain aspects relating to our Proof of Evidence. It is however already clear that it will be impossible to deal properly with the BAA economics evidence and provide our Proof of Evidence within the space of just four months.
- 6.10 We recognise that the timing of the EIR is as a result of the new and untested MIP procedures. We also recognise that it may be the last time that the new MIP procedures are used given that the Planning Bill is approaching its final Parliamentary stages. Nevertheless we would like to place on record our view that the procedures relating to the provision of an EIR are unfair and unsatisfactory, at least on this occasion, since they allow insufficient time for the Applicant's EIR to be properly considered.
- 6.11 BAA is, at least, partly to blame for this unsatisfactory state of affairs because it clearly assumed that the G2 project would require an EIR and could have provided this, even in draft form, when submitting its planning application in March 2008. Instead, BAA waited until the statutory deadline before submitting the EIR for the G2 project. This is in stark contrast to the Applicant's willingness to assume, when lodging its planning application, that approval for 35mppa had already been granted, an assumption which was seven months premature, but ultimately proved to be correct, at least as matters now stand.

*Surface Access.*

- 6.12 At the first Surface Access Topic Working Group meeting on 16 October 2008 there was general agreement that surface access matters should be considered later in the Inquiry as there were many outstanding issues, not least of which are reports expected later this year from the Highways Agency on possible upgrading of the M11 and from DfT on options for the WAML. Each is likely to have significant implications.
- 6.13 The position in relation to the WAML is both critical and uncertain. In March 2008, the Secretary of State for Transport invited Network Rail to submit proposals for enhancing capacity on the WAML. However, no deadline was set and no proposals have yet been submitted. Meanwhile this DfT initiative has superseded BAA's G2 rail proposals and so there is presently no proper basis for assessing the adequacy of the G2 rail proposals.

### *The option of rolling submission of Proofs of Evidence*

6.14 We note that in other inquiries under the (old) MIP rules, for example, at the Bathside Bay Inquiry, a rolling procedure was adopted for the submission of Proofs of Evidence. We can see benefits in this approach but also a potential difficulty with the sequencing insofar as the air traffic forecasts should logically be dealt with near the beginning of the Inquiry and Forecasting is one of the topics where an early deadline for submission of Proofs of Evidence is most problematic.

### *Summary of SSE's position on Proofs of Evidence*

6.15 We reiterate that our concern about the deadline of 10 March 2008 is a general one relating to all of our Proofs of Evidence but is particularly acute in relation to Forecasting, Economics and Surface Access for the reasons explained above.

## **7. Conditions**

7.1 We regard the proposal to require Draft Conditions by 7 April 2009 as unreasonable so far as SSE is concerned. Our clear position is that the environmental consequences of the proposed development would be of such magnitude that there are no conditions which could possibly render it acceptable. It would seriously prejudice our position if we were required to state, before the Inquiry even began, what conditions should be attached in the event of approval being granted.

7.2 We therefore wish to reserve our position on conditions. We would wish to have the option, towards the end of the Inquiry, to submit proposed conditions on a without prejudice basis. We have not formed a view at this stage as to whether or not we would intend to exercise that option.

## **8. Parallel sessions and outline timetable**

8.1 We are gravely concerned about the proposal to run concurrent sessions at the G2 Inquiry with different subjects being examined in different Inquiry rooms at the same time. Parallel sessions would have the same effect as that of conducting two inquiries at the same time. It is hard enough for a voluntary organisation such as SSE to deal with one Inquiry at a time and would be simply impossible for us to deal with two.

8.2 To stretch our resources beyond the limit would be to severely compromise our ability to participate fully in the G2 Inquiry and to deny the community we represent full and proper access to environmental justice. We would not be able to keep abreast of all of

the evidence in circumstances where there are innumerable and often complex inter-relationships between one G2 topic and another. A 'twin-track' approach would also make it impossible for SSE to cross-examine BAA on much of its evidence.

- 8.3 If it goes ahead, the G2 Inquiry will be dealing with the UK's largest ever airport planning application, considering a proposal to make Stansted bigger than today's Heathrow and in fact bigger than any other airport in Europe today. We regard the proposal to rush this through in the space of six months as simply breathtaking, particularly when there is no pressure on passenger or aircraft movement capacity.
- 8.4 The combination of a 'twin track' and 'fast track' approach to the G2 Inquiry would be particularly prejudicial to SSE because we wish, as in the case of the G1 Inquiry, to cover virtually all of the evidential ground. The resources which we can deploy, as a voluntary organisation, on behalf of the local community are far more limited than the resources at the disposal of the Applicant and the local authorities.
- 8.5 It has to be said that we suspect that political expediency may be at least part of the motivation behind the proposed 'twin track' approach to the G2 Inquiry and the related objective of completing the Inquiry in the space of six months – a timetable which is wholly unrealistic and which would be bound to lead to unfairness.
- 8.6 The G1 Inquiry severely stretched SSE's financial position and, coming so soon afterwards, our finances have had little opportunity to recover. As a consequence the extent of our ability to retain Counsel is uncertain at this stage. We hope to be able to do so selectively, in respect of those parts of the Inquiry where Counsel's support will be particularly needed but we will not always have the benefit of Counsel's presence during the G2 Inquiry and there is simply no prospect of our being able to have the level of Counsel support that would be necessary if concurrent sessions were to be held.
- 8.7 Our ability to finance Counsel's support even as envisaged above is also dependent upon whether we appeal the decision of the Secretaries of State announced on 8 October 2008, approving BAA's G1 application. We have until 19 November to decide whether we should lodge such an appeal and, in deciding upon this, we need to have regard to the competing demands upon our finances as well as the legal advice.
- 8.8 Whatever the outcome of our G1 appeal decision it is our firm conviction that the timetable and procedural arrangements for the G2 Inquiry, as proposed in the Inspector's Pre-Inquiry Meeting Note dated 28 October 2008, would, if confirmed: (i) be wholly unfair to SSE, other community representative groups and members of the

public at large; (ii) seriously prejudice our ability to engage properly in the G2 Inquiry; and (iii) be contrary to the right to public participation in the decision-making process and access to justice in environmental matters.

8.9 We urge the Inspector to reconsider the proposed timetable and procedural arrangements for the G2 Inquiry.

*Stop Stansted Expansion*  
*7 November 2008*