

*Non-Confidential*

11 November 2013

**Mr Iain Osborne**  
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*By e-mail and post*

**Re: Stansted Market Power Assessment: consultation on relevant market developments**

Dear Iain,

I refer to document CAP1104 entitled ‘Stansted Market Power Assessment: consultation on relevant market developments’ (“the Document”).

There is no valid reason for the CAA to reconsider its January 2013 ‘minded to’ finding of STAL’s substantial market power (SMP). The Document suggests that the CAA’s reasoning is underpinned by the recent commercial agreements between STAL and Ryanair and easyJet, and that the CAA considers that these agreements have changed the market conditions. This is plainly wrong. Market power is a function of underlying conditions in the relevant market. The recent agreements have not altered these underlying conditions nor have the fundamental issues which demonstrate that STAL enjoys market power disappeared. The importance of London to airlines’ networks, the capacity constraints at London airports, and the fact that other London airports are not substitutable for STAL continue to constrain airlines’ ability to discipline STAL’s abuses of its market power, be it through price increases or otherwise. We further respond to the CAA’s specific questions below.

## Test A

- 1. What do the change in ownership of STAL and the resulting observed behaviour imply for STAL's market power?**
- 2. Do the long-term agreements negotiated between STAL and its airlines represent the exercise of buyer power by the airlines? If not, what do they demonstrate?**

Neither STAL's change in ownership nor the mid-term agreements allow the CAA to reverse its 'minded to' finding of STAL's SMP. The change in ownership has no impact on conditions in the market and does not strengthen airlines' negotiating position. In fact, the recent deals demonstrate that STAL, now under the ownership of MAG, continues to enjoy SMP. This is evidenced by the requirement for both Ryanair and easyJet to deliver a high level of traffic growth simply in order to secure prices that are closer to the market price than the previous extortionate and abusive price cap. These deals therefore do not represent the exercise of buyer power by the airlines but rather demonstrate the existence of seller power by STAL.

That MAG agreed to [CONFIDENTIAL] following threats from Ryanair to cut traffic does not demonstrate that Ryanair enjoys buyer power [CONFIDENTIAL]. Rather, this was a regulation strategic move by MAG in the early days of its ownership of STAL and at a crucial point of the CAA's evaluation of STAL's SMP where MAG was anxious to demonstrate (artificially) that a threat from an airline was sufficient to force it to reverse its exploitative behaviour.

At paragraph 3.29, the CAA erroneously alleges that Ryanair has "*the ability to allocate new capacity across [its] respective network*" and therefore "*may have the ability to impose substantial harm on STAL*". Theoretically this "ability" has always existed but, as the CAA is aware, in practice Ryanair's previous traffic cuts failed to discipline STAL following the doubling of airport charges in 2007. Furthermore, as explained in our submission of 9 October 2012, "*London is a pivotal destination in Ryanair's network, being desirable as a destination to other airports in our network – Ryanair's network could not function without a significant London presence*". A significant degree of Ryanair's new capacity has therefore been earmarked to operate at London, further emphasising STAL's SMP and the absence of Ryanair's buyer power.

## **Test B**

**3. Does STAL's willingness to enter into long-term agreements at discounted rates have any bearing on the effectiveness of competition law to prevent an abuse on SMP?**

**4. Would the airlines have a realistic ability to defend themselves under contractual provisions and/or competition law?**

No. The CAA should not be deceived by STAL's "willingness" to enter into mid-term agreements. These agreements were only concluded once the CAA published its initial proposals for regulating STAL. The CAA wrongly theorises that "*the bilateral contracts were signed as the best outcome for the airlines and for STAL, given the CAA's 'minded to' MPA for the passenger market and the initial proposals for regulating STAL in Q6.*" In fact, Ryanair's agreement with STAL is not "the best outcome", but damage limitation following the failure of regulation to deliver competitive prices at STN.

Competition law proved inadequate in protecting airlines from the doubling of STAL's airport charges in 2007 which resulted in a traffic collapse of 23% between 2007 and 2011. We have shown above that STAL continues to enjoy SMP and that the underlying market conditions that allowed STAL to double airport charges remain unchanged. SMP may be abused in many ways (not only through price increases) and airlines remain unable to rely on competition law to defend themselves from such abuses.

## **Test C**

**5. Do the existence and terms of the long term agreements affect the assessment of whether the benefits of regulation by means of a licence outweigh the adverse effects?**

No. The CAA should proceed with its initial proposals to regulate STAL. However, in order to ensure effective economic regulation after years of inadequate regulation, the CAA must adjust the opening price cap as per Ryanair's suggestions in our submission of 25 June 2013. The CAA must recognise that the current agreements were finalised against the background of imminent regulation, and with a view to tying airlines into STAL long-term, in order to raise prices once the agreements expire. Regulation remains necessary to ensure that constructive commercial discussions can continue and the effects of competition are replicated at STAL.

Yours sincerely,

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Juliusz Komorek

*Director of Legal & Regulatory Affairs*