

*Strictly Private & Confidential*

24 May 2013

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*By email and post*

**Re: Ryanair's reply to the CAA's 'minded-to' decision on STAL's market power**

Dear Iain,

Ryanair welcomes the CAA's minded-to decision of January 2013, in which the CAA confirmed that Stansted Airport has market power and should therefore be regulated.

As per your invitation of 8 February, we outline our comments herewith. We arrange these comments in two sections; the first section comments on the CAA's findings generally, while the second section comments on specific details and clarifies inaccuracies in the CAA's 'minded-to' decision.

### **Section 1 – General comments**

1. The CAA correctly recognises that STAL operates in “*a geographic market that includes at least Stansted, Luton, Southend and possibly Gatwick airports*” (paragraph 4.164) as opposed to its initial view in February 2012 that “*Stansted should be considered as part of a Europe-wide market*”.
2. The CAA is correct in identifying “*the central strategic importance of London in [airlines'] networks, which considerably reduces their ability to relocate aircraft to non-London airports in the UK and to continental Europe*” (paragraph 5.183). The CAA is also correct to observe that significant capacity constraints, especially early-morning capacity constraints, at other London airports prevent based airlines from switching capacity away from STN (paragraph 5.185).

3. Ryanair notes the CAA's finding that "*STAL holds a degree of market power, which may currently be substantial, and is likely to become substantial in the course of Q6*" (paragraph 7.27). In fact, STAL currently holds substantial market power and the degree of this power will increase further as other London airports become more congested.
4. The CAA is correct to conclude "*that there is a risk of potential exploitative behaviour over the short to medium term resulting from STAL's market power*" (paragraph 8.71) and that STAL must therefore remain regulated in order to mitigate the effects of its market power.
5. The CAA is right to note that for STAL "*the likely forms of licence regulation in general would provide benefits by offering the scope to limit the risk and extent of excessive prices, by encouraging efficiency, improving service quality and providing other benefits in terms of operational resilience*" (paragraph 9.107).
6. However, we question the CAA's finding that STAL "*is likely to have less market power than that in relation to Gatwick and Heathrow*" (paragraph 9.22). Airport charges have more than doubled in the past six years at Stansted, not Gatwick or Heathrow. There is therefore no basis to conclude that STAL has "*less market power*" than these two airports. The opposite conclusion is far more rational, based on the evidence.

## **Section 2 – Details and inaccuracies**

1. We are pleased to note that the CAA has allowed Ryanair to effectively rebut (in paragraph 2.13) STAL's misleading allegations in paragraph 2.12 that it is operationally efficient, that it has been offering significant discounts to airlines, that it has failed to attract new airlines due to the "*perceived challenging environment at the airport*" rather than the doubling of its charges in 2007, and that LCCs can switch capacity easily between STAL and other European markets.
2. The fact that STAL sees no need to market itself to passengers (paragraph 4.10) despite acknowledging the value of non-aeronautical revenues (paragraph 4.12) further demonstrates the high degree of market power enjoyed by STAL.
3. Ryanair disagrees with the CAA's contention that the "*ability to yield manage across a range of markets is likely to provide some degree of constraint on airport pricing*" (paragraph 4.124). As stated by Ryanair in its previous submissions, its decisions to cut capacity at STN and operate routes in other markets, has had no effect on STAL's pricing.
4. Ryanair welcomes the CAA's decision to re-evaluate its previous position with regards to W-pattern routes (paragraph 4.128). The CAA's position in the 'minded-to' decision reflects the real difficulty in operating W-pattern route networks.
5. Although the CAA found that "*the evidence on the substitutability of Gatwick for Stansted is inconclusive*" (paragraph 4.159), it must note that the capacity constraints at Gatwick

prevent Ryanair from relocating aircraft from Stansted to Gatwick, regardless of substitutability.

6. There is no justification for the CAA's statement that "*following the divestment of Stansted and the adoption of different management practices by the new owner of the airport, more airlines may start to view Heathrow and Stansted as substitutes*" (paragraph 4.162). LHR caters for different operational models than STAL and its infrastructure is designed to focus on long-haul and connecting flights, unlike STAL. Furthermore, although STAL is already one of Ryanair's most expensive airports, it is inconceivable that the even higher-cost and operationally inefficient LHR will ever be a substitute for STAL. In addition, LHR and STAL are on different sides of the north and south London divide, as identified by the CAA in paragraph 4.159.
7. The CAA incorrectly suggests that "*switching marginal based aircraft away from Stansted is likely to be an effective way to constrain the airport operators*" (paragraph 5.20). The CAA recognises the strategic importance of London in airlines' networks and it is therefore erroneous to suggest that any based aircraft at London airports is "marginal". Additionally, capacity constraints at other London airports prevent any switching between London airports and negate any theories on switching aircraft from STAL. Furthermore, as outlined by Ryanair in previous submissions, neither the withdrawal nor the grounding of aircraft has constrained STAL, further evidencing its high degree of market power. Finally, STAL's own forecasts clearly show that marginal reductions do not offset the increased revenues brought by higher charges [CONFIDENTIAL].
8. As the CAA is aware, STAL's claim in paragraph 5.94 that Ryanair "*focused [its] growth in other countries in Europe and started to decrease [its] volume in Stansted*" is misleading. The fact that Ryanair has grown in other countries while removing capacity from STAL was a consequence of the doubling of charges at STAL in 2007.
9. At footnote 332, the CAA notes that "*Ryanair would not be able to relocate to Southend as the declared runway length is too short for its current aircraft to operate out of the airport.*" We wish to draw the CAA's attention to the fact that Ryanair's recent order for 175 aircraft is for the same model of aircraft currently used by Ryanair (Boeing 737-800 series) and therefore will not be in a position to operate at Southend in the future.
10. STAL's expectation of "*relatively robust employment cost growth over the next few years*" (paragraph 6.33) is evidence of STAL's market power and regulatory gaming. Ryanair has already alerted the CAA to the misleading information STAL has already employed in this regard in order to impose higher costs on airlines, and this is simply another attempt to do so.
11. We wish to emphasise that contrary to STAL's baseless allegations in paragraph 6.83 that Ryanair's "*approach to its negotiations has not helped to make an agreement possible*", we have entered into negotiations with STAL in good faith, as evidenced by the correspondence disclosed to the CAA. Indeed, due to STAL's high degree of market

power, as identified by the CAA, it has no need or desire to reciprocate and has therefore failed to engage and agree a deal with Ryanair.

Ryanair wishes to thank the CAA for taking into account our evidence rather than being swayed by STAL's self-serving and misleading claims.

Please do not hesitate to contact me should you require any further information.

Yours sincerely,

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Juliusz Komorek  
*Director of Legal & Regulatory Affairs*

Attachment: [CONFIDENTIAL]