NOTICE OF DETERMINATION UNDER SECTION 8 OF THE CIVIL AVIATION ACT 2012 – STANSTED AIRPORT

The Civil Aviation Authority has made the following determination under section 7 of the Civil Aviation Act 2012 (the CA Act).

The market power test set out in section 6 of the CA Act is not met in relation to the following airport area located at Stansted airport used for the provision of airport operation services to cargo airlines that provide air cargo services:

- the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport; and
- the cargo processing areas.

Test A of section 6 of the CA Act has not been met by the relevant operator of that airport area, namely Stansted Airport Limited. Tests B of section 6 of the CA Act cannot therefore be met by Stansted Airport Limited and in the circumstances the CAA has not gone on to assess Test C of section 6 of the CA Act.

The reasons for this determination are set out in the document “Market power determination for cargo services in relation to Stansted airport – statement of reasons, CAP 1153.”

Any word or expression defined for the purposes of any provision of Part 1 of the CA Act shall have the same meaning when used in this notice.

Market power determination for cargo services in relation to Stansted Airport – statement of reasons

CAP 1153

Market power determination for cargo services in relation to Stansted Airport – statement of reasons

CAP 1153

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The latest version of this document is available in electronic format at www.caa.co.uk/publications

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Executive summary – statement of reasons

Purpose

1. This document sets out the reasons for the CAA's market power determination (MPD) that the market power test (MPT) is not met by Stansted Airport Limited (STAL) in relation to the airport area comprising the cargo processing facilities and the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of cargo aircraft at Stansted airport (Stansted).

2. This statement of reasons does not consider the MPT for services to passenger airlines at Stansted. The CAA considered services to passenger airlines at Stansted as part of a separate exercise.1

3. The MPT comprises three elements:

   - Test A, whether the relevant operator has, or is likely to acquire, substantial market power (SMP) in a market for one or more types of airport operation services (AOS) provided within all or part of the airport area, either alone or taken with such other persons as the CAA considers appropriate.[2]
   - Test B, whether competition law does not provide sufficient protection against the risk that the relevant operator may engage in conduct that amounts to an abuse of that SMP.[3]
   - Test C, whether, for current and future users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects.[4]

Decision

4. The CAA concludes that the relevant product market for this MPT is at least as wide as AOS to air cargo airlines. For the purposes of this

1 The CAA's determination for airport operation services to passenger airlines was released on 10 January 2014 (CAP 1135) and is available at: http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5911

2 Section 6(3) read together with sections 6(6) and 6(7) of the CA Act.

3 Section 6(3) read together with sections 6(8) and 6(9) of the CA Act.

4 Section 6(5) of the CA Act.

determination air cargo services includes air transport of cargo by both cargo-only aircraft and in the bellyhold of passenger aircraft.

5. The CAA concludes that the relevant geographic market is at least as wide as AOS to air cargo airlines provided in the south east of England. The CAA defines the south east of England for the purposes of this determination as the London area (including Stansted, Luton, Heathrow and Gatwick airports), plus Manston airport.

6. The OFT guidelines[5] allow for the CAA to define a plausible or most likely market where the competitive assessment is shown to be largely unaltered by which market definition is adopted:

> *In practice, defining a market requires balancing various types of evidence and the exercise of judgement. However, it is not an end in itself. Where there is strong evidence that the relevant market is one of a few plausible market definitions, and the competitive assessment is shown to be largely unaltered by which one of these market definitions is adopted, it may not be necessary to define the market uniquely.*

7. The CAA therefore concludes, based on the evidence obtained, that the relevant market is at least as wide as AOS to air cargo airlines provided in an area comprising at least the south east of England. The CAA refers to the supply of AOS to air cargo airlines in the south east of England as the *relevant cargo market* for the purposes of this determination.

8. The CAA has decided that, in the light of the evidence the CAA has obtained, it is not satisfied that STAL has or is likely to acquire SMP in the relevant cargo market. As such, the CAA concludes that STAL does not meet Test A of the MPT.

9. As the CAA is not satisfied that STAL has or is likely to acquire SMP in the relevant cargo market, there can therefore be no risk of STAL engaging in conduct that would amount to an abuse of that SMP. In circumstances where Test A is not met, Test B cannot be met.

10. As the CAA concludes that Tests A and B are not met for STAL, the CAA has not gone on to assess Test C.

11. The CAA accordingly finds that the MPT in section 6 of the Civil Aviation Act 2012 (the CA Act) is not met in relation to the airport area comprising the cargo processing facilities and the land, buildings and other structures

[5] OFT Competition Law Guideline on Market Definition, December 2004 (OFT 403) paragraph 2.14, available at: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft403.pdf

used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at Stansted.

12. In reaching this conclusion, the CAA has taken into account its duty to '*further the interests of users of air transport services'*, in this case the owners of cargo. It has also acted in a manner it considers will promote '*competition in the provision of airport operation services'* and '*economy and efficiency on the part of the airport operator*'. This MPD meets this objective by removing economic regulation, allowing STAL to pursue an autonomous commercial strategy in competition with other airports.

13. The CAA has had regard to its general duties under the CA Act and the relevant notices and guidance issued by the European Commission (EC) and the Office of Fair Trading (OFT) regarding the application and enforcement of the Chapter I and II prohibitions of the Competition Act 1998 and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), herein referred to as the competition law notices and guidance.

14. The CAA has also had regard to the regulatory principles in the CA Act[6] and, in particular, that regulatory activities are targeted only at cases where action is needed and are carried out in a way that is transparent, accountable, proportionate and consistent.

15. This regulatory outcome, to the effect that STAL should not be subject to a licence for cargo related AOS, is consistent with those regulatory principles.

Reasons

16. The CAA has analysed the relevant cargo market, and taken due account of the competition law notices and guidance. It has also considered the responses to:

- The CAA's Stansted – Market Power Assessment, The CAA's Initial Views – February 2012 (the Initial Views).[7]
- The Stansted Market Power Assessment Minded To Consultation January 2013 (the minded to Consultation).[8]

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6 Section 1(3)(g) of the CA Act 2012.

7 Stansted – Market Power Assessment: Non-confidential Version - The CAA's Initial Views – February 2012 http://www.caa.co.uk/docs/5/StanstedMarketPowerAssessment.pdf

8 Stansted Market Power Assessment Minded To Consultation January 2013 http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14395

- CAP 1104 Stansted Market Power Assessment: consultation on relevant market developments October 2013 (the additional Consultation).[9]
- The stakeholder letter of 20 December 2013.[10]

17. The minded to Consultation suggested that Test A might be met.[11] However, the CAA noted the limited information it had on cargo related AOS and requested that stakeholders submit further information.[12] The CAA also noted that the imminent change of ownership of STAL[13] may affect STAL's behaviour, which might modify the CAA's assessment.[14]

18. The CAA welcomed representations, within a period of three months, on its views. The period for representations was extended until 28 May 2013, to enable Manchester Airports Group (MAG), as the new owners, to comment on the market power assessment (MPA) in conjunction with the Initial Proposals on the form of regulation.[15]

19. Since the minded to Consultation was published, the CAA has looked at a wider range of representations and evidence, including making requests under section 50 of the CA Act[16] to a wide range of participants in the cargo market going beyond the main cargo airlines. The CAA sought to assess the position and views of downstream cargo operators (e.g. freight-forwarders[17] and integrators[18]), who have more choices over how

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9 CAP 1104 Stansted Market Power Assessment: consultation on relevant market developments October 2013 http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5807

10 http://www.caa.co.uk/docs/78/20131220%20Stakeholder%20Letter%20-%20Separate%20MPD%20for%20STAL%20Cargo%20Market%20FINAL.pdf

11 Minded to Consultation, paragraphs 17 and 7.28.

12 Minded to Consultation, paragraphs 18, 32, 7.28 and 7.30.

13 MAG acquired STAL in February 2013, after the minded to Consultation was published in January 2013.

14 Minded to Consultation, paragraphs 7.26 and 7.29.

15 The CAA published its consultation on the initial Q6 proposals for the economic regulation of Heathrow, Gatwick and Stansted (the Initial Proposals), on 30 April 2013, on the assumption that if STAL met the MPT it would need to be regulated by means of a licence. This is available at: http://www.caa.co.uk/docs/33/CAP%201031%20Economic%20regulation%20at%20Heathrow%20Gatwick%20and%20Stansted.pdf

16 Section 50 of the CA Act gives the CAA power to obtain information in relation to the carrying out of its functions under Chapter 1 of the CA Act.

17 Freight forwarders / Consolidators are intermediaries who act on behalf of exporters, importers and cargo owners. Generally, they will not operate their own aircraft. Rather, they will purchase capacity from a cargo-only or passenger airline; however, they can also purchase capacity from integrators

to transport cargo. This is because, for cargo related AOS, the CAA considers that the interests of freight-forwarders and integrators (acting as freight-forwarders) are reasonably closely aligned with the interests of cargo owners. Cargo owners are more likely to contract directly with these downstream operators, than with individual cargo airlines. The CAA therefore looked, not just at the situation of current Stansted cargo airlines, but considered all those who receive, directly or indirectly, cargo related AOS. This is in line with the CAA's duty under the CA Act to protect the interests of users of air transport services (in this case, those with rights in cargo).

20. The CAA also undertook an additional Consultation relating to both passenger and cargo related services at Stansted to supplement the minded to Consultation. The additional Consultation focused on developments related to new contractual arrangements for STAL's services to passenger airlines. The CAA indicated that, as a result of those developments, STAL may not meet the MPT in the relevant passenger market. At that stage, there were no similar developments related to cargo related AOS. However in relation to cargo the consultation considered that if Test C was assessed separately for cargo, it was possible that the costs of regulating cargo on its own would mean the benefits of regulating cargo related AOS at Stansted would not outweigh the adverse effects and that Test C would not be met.

21. The CAA issued a letter on 20 December 2013 notifying stakeholders that the MPDs for passenger and cargo related AOS at Stansted would be treated separately.

22. The CAA has taken account of responses to these publications in reaching its final decision:

- Three responses to the January 2013 minded to Consultation related to cargo.[19]

or, in some cases, charter a whole aircraft on an ACMI (Aircraft, Crew, Maintenance and Insurance) basis.

18 Integrators provide a door-to-door service with the provision of ground transportation for the collection and delivery of packages. The four largest worldwide integrators are FedEx, UPS, DHL and TNT, two of which (FedEx and UPS) have a significant presence at Stansted. Integrators have their own fleets and aim to take the cargo through their own delivery networks as much as possible but they also use bellyhold capacity on scheduled airlines to ship a substantial proportion of their air cargo.

19 Non-confidential versions of these responses are available on the CAA's website.

- Five responses to the October 2013 additional Consultation related to cargo.[20]
- Two responses to the stakeholder letter of 20 December 2013.[21]

23. Details of the responses to these consultations are set out in chapters 4 to 6 below. In particular, the evaluation of the evidence on market definition and power is set out in chapter 4.

24. Having carried out both extensive consultation, and separate information gathering exercises during the consultation process, the CAA has concluded that it is not satisfied, based on the evidence obtained, that STAL has or is likely to acquire a position of SMP in the relevant cargo market.

25. The CAA's considerations in making this decision include:

- The CAA's provisional minded to Consultation position was postulated on a limited evidence base. The CAA has sought to remedy this by undertaking additional rounds of evidence collection. Having considered all of the evidence including the additional evidence, the CAA was not satisfied that STAL has or is likely to acquire SMP in the relevant cargo market. In particular the additional evidence has indicated the likelihood of a significantly wider relevant cargo market than that previously considered in the minded to Consultation. The wider cargo market definition comprises at least AOS to air cargo airlines (i.e. including cargo carried in the bellyhold of passenger aircraft and in cargo-only aircraft) provided in an area comprising at least the south east of England.

[20] Non-confidential versions of these responses are available on the CAA's website.

[21] Letter to stakeholders – Completing two Market Power Determinations for Stansted airport, December 2013 http://www.caa.co.uk/docs/78/20131220%20Stakeholder%20Letter%20-%20Separate%20MPD%20for%20STAL%20Cargo%20Market%20FINAL.pdf

- The acquisition of STAL by MAG, in February 2013, following the termination of the common ownership of Heathrow airport (Heathrow), Gatwick airport (Gatwick) and Stansted, that was in place for a considerable period of time under BAA. Under common ownership, BAA may not have operated or marketed its airports as substitutes for one another. Instead, BAA may have marketed these airports as complementary to one another to prevent growth at one airport cannibalising growth at another. MAG, because it is not faced with the prospect of divestment and does not need to take account of the effects of its behaviour on the profitability at Heathrow or Gatwick, can take a different strategic and commercial approach from that which BAA took at Stansted.

- While there has been a relatively short period since MAG acquired STAL, the CAA has assessed MAG's commercial strategy and approach to managing STAL. In this regard, the CAA is aware that STAL has behaved differently in regard to passenger related AOS under MAG's ownership in comparison to its behaviour under BAA's ownership.[22] This demonstrates a new strategy that may also be relevant to the cargo related AOS. MAG has stated that it is committed to developing strong relationships with existing and new cargo airlines.

- STAL's market share in the relevant cargo market is around 12 per cent, which is inconsistent with a finding of dominance, as any attempt to increase prices would be expected to be constrained by substitution to other suppliers in the market.

- The CAA is aware that not *all* integrators and cargo airlines could seamlessly move to another airport which indicates that STAL may have a degree of market power. However, the CAA considers that the evidence obtained implies that those integrators and cargo airlines would be prepared to incur relocation costs in the medium term if STAL increased its airport changes above a competitive level. This would be part of a network optimisation decision in response to their different costs and synergies. The CAA did not identify significant costs or barriers for shippers and freight-forwarders seeking to switch cargo from Stansted to alternative means of delivery.

[22] Market power determination for passenger airlines in relation to Stansted Airport – statement of reasons, January 2014 http://www.caa.co.uk/docs/33/CAP%201135.pdf, paragraph 5.86.

- The CAA's duties are to '*further the interests of users of air transport services*', in this case the owners of cargo, rather than particular cargo airlines or other cargo industry stakeholders. Cargo owners, in contrast with passengers, generally have limited influence over or interest in the precise route or transport method that their cargo may take; they are interested in getting their shipment to the required destination in the required time at the lowest cost. They are generally quite indifferent to whether cargo uses Stansted or another airport, which would constrain STAL's behaviour.

- In 2012, Stansted handled 0.24 million tonnes, about 10 per cent of all UK cargo. Bellyhold volumes at Heathrow are much bigger – in 2012 Heathrow handled 1.56 million tonnes of cargo with 95 per cent of it carried as bellyhold cargo. Evidence, from shippers, freight-forwarders and integrators (acting as freight-forwarders) is that for large segments of cargo, bellyhold capacity at Heathrow and other airports can be a substitute for Stansted. Given the significantly larger cargo capacity at Heathrow (and other airports), it is likely that there is enough bellyhold capacity to allow sufficient substitution from Stansted.

- Even with the forecast increase in passengers as a result of the bilateral agreements made with passenger airlines, STAL is not expected to be full at least until 2020. Therefore, any business that STAL might lose due to a small but significant and non-transitory increase in price (SSNIP) would be unlikely to be backfilled by other airlines who use Stansted. As such STAL is more likely to engage in activity to seek to retain and attract cargo (and passenger) airlines to use Stansted.

- No compelling case arises from the evidence to date that STAL should be regulated by a licence and despite the numerous information requests issued by the CAA under s.50 of the CA Act, there has been limited engagement from the cargo community (cargo owners, integrators, freight-forwarders and cargo airlines) throughout this assessment process. This, in itself, suggests that downstream market participants do not expect that they or their customers will be disadvantaged by the prospect of deregulation of STAL.

26. Based on the evidence collected and the analysis undertaken, the CAA is not satisfied that STAL has or is likely to acquire SMP in the relevant cargo market under Test A. As such Test A is not met.

27. As the CAA cannot say that STAL has or is likely to acquire SMP under Test A, the CAA cannot conclude that there is a material risk of STAL engaging in conduct that would amount to an abuse of that SMP (Test B). Accordingly, Test B cannot be met. As Tests A and B are not met, the CAA has not addressed Test C.

28. The CAA therefore concludes that STAL does not meet the MPT for the relevant cargo market. It is therefore not the operator of a dominant area at a dominant airport in terms of the CA Act. The CAA accordingly does not need to issue STAL with a licence to lift the prohibition on charging for providing cargo related AOS at Stansted.

Future

29. The CAA recognises that circumstances may change in the future. Where such a change in circumstances, whether considered on its own or in aggregate with other changes as well as pre-existing circumstances, is regarded as material, this may necessitate a fresh look at the question of whether the three elements of the MPT are met in relation to STAL.

CHAPTER 1

Introduction

Legal framework

1.1 Section 3 of the Civil Aviation Act 2012 (CA Act) prohibits the operator of a dominant area at a dominant airport from requiring payment of relevant charges without a licence granted under section 15 of the CA Act. The CA Act provides that an airport area is dominant if the CAA has made a determination that the Market Power Test (MPT) is met in relation to that area. The three elements of the MPT are set out in section 6 of the CA Act are satisfied. Those elements are:

- Test A, which requires the CAA to establish whether the relevant operator has, or is likely to acquire, substantial market power (SMP) in a market for one or more types of airport operation services (AOS) provided within all or part of the airport area, either alone or taken with such other persons as the CAA considers appropriate.[23]
- Test B, which requires the CAA to establish that competition law does not provide sufficient protection against the risk that the relevant operator may engage in conduct that amounts to an abuse of that SMP.[24]
- Test C, which requires the CAA to establish that, for current and future users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects.[25]

1.2 In carrying out its assessment, the CAA is acting under its general duty to carry out its functions in a manner which it considers will further the interests of cargo owners (and passengers[26]) regarding the range, availability, continuity, cost and quality of AOS.

23 Section 6(3) read together with sections 6(6) and 6(7) of the CA Act.

24 Section 6(3) read together with sections 6(8) and 6(9) of the CA Act.

25 Section 6(5) of the CA Act.

26 For the purposes of this statement of reasons, the CAA's assessment will be confined to cargo owners' interests. The determination on the MPT in relation to the passenger side of the market

1.3 The CAA is also carrying out this function in a manner that it considers will promote competition in the provision of AOS (and, where appropriate, takes into account the regulatory needs and principles in the CA Act).[27]

1.4 This is the non-confidential version of this document and excisions from the text in the chapters and associated appendices are marked with [✂].

Difference between passenger and cargo related AOS

1.5 In the minded to Consultation, the CAA considered there was a distinct *product* for AOS provided to cargo-only airlines compared to services provided to passenger airlines at Stansted. The CAA based this on the difference in handling facilities for passengers and for cargo and on the fact that, unlike Heathrow and Gatwick, at Stansted the predominant means for transporting cargo is through cargo-only aircraft.[28]

1.6 The CAA considered that AOS related to the use of passenger infrastructure, such as holding passenger facilities, were not required for the operation of cargo-only flights. Cargo-only airlines require the provision at the airport of the relevant infrastructure and the necessary facilities for the provision of AOS specific to cargo processing.[29]

1.7 The CAA still considers that the relevant bundle of services provided at Stansted is the provision of AOS to airlines providing cargo related AOS[30] and that this is a different economic product to the provision of AOS to airlines providing passenger services.[31]

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was published on 10 January 2014 and is available at: http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5911

27 Section 1(1) of the CA Act, read together with sections 1(2), 1(3) and 1(4). Section 104 of the CA Act also amends section 73 the Regulatory Enforcement and Sanctions Act 2008 so as to require that, in exercising its functions under Chapter 1, Part 1 of the CA Act, the CAA is under a duty not to impose or maintain unnecessary burdens.

28 The minded to Consultation, paragraphs 4.45 to 4.47.

29 The provision of infrastructure and/or facilities for the purposes of groundhandling may not be provided at the airport. However, the airport operator will have some influence over the pricing of these services as it provides the airport infrastructure to cargo airlines and groundhandlers. The CAA does not consider that the airport operator will provide sorting equipment for cargo processing. However the airport operator may, in some instances, lease cargo sheds and hangars to cargo airlines or third party cargo groundhandlers.

30 For the purposes of this determination, air cargo services mean transport of cargo by both cargo-only flights and in the bellyhold of passenger aircraft.

31 The CAA did not consider it necessary to the discharge of its functions to define independent cargo

1.8 This is because the airport operator may be able to successfully differentiate between cargo-only airlines and passenger airlines.

1.9 The CAA therefore decided to make separate market power determinations (MPDs) for the passenger and cargo related AOS at Stansted. This was set out in the letter to stakeholders of 20 December 2013.

1.10 The CAA has, since the minded to Consultation, sought to evaluate whether the relevant cargo *market* for the assessment of STAL's market power in cargo related AOS is wider than services to cargo-only aircraft, and takes in both services for cargo-only aircraft and cargo carried in the bellyhold of passenger aircraft, or other modes of cargo transportation.

1.11 In doing so, this determination therefore differs from the minded to Consultation which did not seek to evaluate whether the product offered at Stansted was part of a wider relevant cargo market.

1.12 The CAA has reassessed the product market definition because it considers that the interests of freight-forwarders[32] and integrators[33] are reasonably closely aligned with the interests of cargo owners than cargo airlines. Cargo owners generally have limited influence over or interest in the precise route or transport method that their cargo may take; they are interested in getting their shipment to the required destination in the required time at the lowest cost. Integrators and freight-forwarders have choices over how to transport cargo, and have similar cost and time

markets in which HAL or GAL may operate as part of its market power determinations for those airports. One of the main reasons behind this decision was the dominance of bellyhold operations at these airports and the inherent linkage between passenger operations and the provision of bellyhold cargo operations. This contrasts with the picture at STAL where there are substantial cargo-only operations and limited use of bellyhold.

32 Freight forwarders / Consolidators are intermediaries who act on behalf of exporters, importers and cargo owners. Generally, they will not operate their own aircraft. Rather, they will purchase capacity from a cargo-only or passenger airline; however, they can also purchase capacity from integrators or, in some cases, charter a whole aircraft on an ACMI (Aircraft, Crew, Maintenance and Insurance) basis.

33 Integrators provide a door-to-door service with the provision of ground transportation for the collection and delivery of packages. The four largest worldwide integrators are FedEx, UPS, DHL and TNT, two of which (FedEx and UPS) have a significant presence at Stansted. Integrators have their own fleets and aim to take the cargo through their own delivery networks as much as possible but they also use bellyhold capacity on scheduled airlines to ship a substantial proportion of their air cargo.

priorities to those of cargo owners. They will make decisions on which combination of route and method (air, rail, truck), will achieve this.

1.13 Therefore, in this determination, the CAA has looked, not just at the position of the current Stansted cargo airlines, but also considered the position of downstream cargo operators (e.g. freight-forwarders and integrators), to assess the interests of cargo owners. This is in line with the CAA's duty under the CA Act to protect the interests of users of air transport services (i.e. those with rights in cargo).

Structure of this document

1.14 This document sets out the CAA's findings of fact and reasons as well as its final decision on each of the three Tests A, B and C.

1.15 The remaining chapters and appendices of this document are:

- Chapter 2: Background to this decision
- Chapter 3: Industry background
- Chapter 4: Test A: Market definition and power
- Chapter 5: Test B: Adequacy of competition law
- Chapter 6: Test C: Adverse effects/benefits of licence regulation
- Chapter 7: Conclusion
- Appendix A: List of representations and evidence received
- Appendix B: Glossary.

CHAPTER 2

Background to this decision

2.1 This chapter sets out the background to this decision, including the form of economic regulation that to date has been in place at Stansted, along with reviews that have explored, to varying degrees, issues and evidence relevant to the questions the CAA is addressing in relation to Stansted.

1987 – 2006 Economic regulation

2.2 Since 1987, the operator of Stansted has been subject to economic regulation by the CAA in accordance with the Airports Act 1986 (AA86). Under AA86, an airport operator with an annual turnover of at least £1 million required a 'permission to levy airport charges' at the airport.

2.3 When the Secretary of State issued the initial permission to levy airport charges, this included conditions that set maximum airport charges and required STAL's financial accounts to disclose additional information on costs and revenues.

2.4 It then fell to the CAA to re-set the price cap at subsequent five yearly intervals in accordance with AA86, which also obliged the CAA to make a prior reference to the Competition Commission (CC) recommending the imposition of the price cap.

2.5 In the first two price control periods, a separate price cap was not set for STAL. Rather, STAL was included in a price control covering all three BAA London airport operators. However, from 1997 STAL has been subject to its own price control separate from those imposed on Heathrow Airport Limited (HAL) and Gatwick Airport Limited (GAL).

2.6 The CAA currently sets an average maximum yield per passenger that the airport operator is able to recover from published charges. This means that the airport operator is able to set the level of individual charges it considers appropriate to recover up to this maximum in line with its commercial interests.

2.7 As the price cap is expressed in terms of charges per passenger, it does not explicitly cover cargo-only flights. However, the price cap is based on the single till approach so revenues from cargo-only flights are taken into account in setting the price cap for charges to passenger flights.

2.8 The charges for services to cargo airlines are set by reference to the passenger charges. STAL is required to ensure:

- That the published charges to land cargo aircraft are no more than those for an equivalent passenger aircraft.
- (That the discount for off-peak (winter) charges for large aircraft follows the same structure for smaller aircraft (based on a CC public interest finding).[34]

2.9 Further detail on how charges are currently set is outlined in the constraints section of chapter 4.

2006 – 2012 Reviews of STAL

2.10 Since 2006, STAL has been the subject of a number of reviews that have explored, to varying degrees, issues and evidence relevant to the questions the CAA is determining. These include:

- The CC investigation into whether a feature or a combination of features of the market or markets in which airport services are supplied by BAA prevents, restricts or distorts competition in connection with the supply of airport services in the United Kingdom.[35] On 19 March 2009, the CC published its final report and found that BAA's common ownership of Heathrow, Gatwick and Stansted distorted competition.[36]

34 Competition Commission, Stansted Airport Ltd Q5 price control review report, paragraphs 13.46 to 13.53, available at: http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2008/fulltext/539.pdf

35 The Competition Commission undertook this investigation following a reference by the OFT to the Competition Commission on 29 March 2007 under sections 131 and 133 of the Enterprise Act 2002.

36 Competition Commission Report 'BAA airports market investigation - A report on the supply of airport services by BAA in the UK' 19 March 2009, http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/545.pdf

- In July 2007, the CAA provided advice to the Secretary of State[37] that Stansted should be de-designated as it did not meet the criteria that the Department for Transport (DfT) had set to decide whether an airport should be designated under AA86. In January 2008, having considered the evidence on the constraints that airports outside of London could exercise on Stansted, DfT concluded that it was more likely than not that Stansted alone would acquire SMP in the future, although it noted that the decision was finely balanced.[38]
- On 29 April 2008, the CAA made a reference to the CC under sections 40(9) and 43(1) and paragraph 6 of Schedule 1 to AA86 with regards to the regulation of Stansted over the period of five years beginning on 1 April 2009 (Q5).[39] The CC's assessment included a review of the competitive constraints at Stansted and, in particular, how the degree of STAL's market power should inform the choice of the appropriate regulatory approach at Stansted. The CC concluded that the current structure of landing charges at Stansted, which failed to give off-peak discounts to aircraft in excess of 250 metric tonnes, had no objective basis and had been operating against the public interest.[40]

37 De-designation of Manchester and Stansted airports for price control regulation – The CAA's advice to the Secretary of State, July 2007, available at: http://www.caa.co.uk/docs/5/ergdocs/de-designation_advice.pdf

38 DfT Decision on the Regulatory Status of Stansted Airport, January 2008, page 15, paragraph 2, available at: http://webarchive.nationalarchives.gov.uk/20090304234156/http://www.dft.gov.uk/consultations/archive/2007/consulstatusstansted/decisionstanstedairport.pdf

39 Airport Regulation Price control review – CAA reference to the Competition Commission for Stansted Airport, April 2008, available at: http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=3131

40 Competition Commission, Stansted Airport Ltd - Q5 price control review, October 2008, available at: http://www.caa.co.uk/docs/5/ergdocs/ccstansted.pdf

- Following an unsuccessful appeal of its 2009 decision by BAA, the CC considered in 2011 whether there had been a material change of circumstances since the publication of its 2009 report that would call into question the appropriateness of the requirement for BAA to sell Stansted within the time period set out in the 2009 report.[41] The CC concluded that there was not a material change of circumstances or special reason that should lead it to change its remedy. In 2012, this decision was upheld by the Competition Appeal Tribunal and the Court of Appeals.[42]

2011 – 2012 CAA working papers

2.11 In 2011, the CAA commenced a project to understand the extent and nature of market power held by the operators of the airports that were designated under AA86 and that were subject to price regulation, i.e. Heathrow, Gatwick, and Stansted.

2.12 The CAA published a number of working papers[43], including:

- Empirical methods relating to geographical market definition and updates focusing on competitive constraints between neighbouring airports.
- Empirical methods for assessing behaviour, performance and profitability of airports.
- General market context.

2.13 The CAA used its powers under AA86 to carry out a market power assessment (MPA) in relation to Stansted in response to a request from the airport operator itself. That request coincided with the transitional arrangements under the CA Act and the CAA considered it was more appropriate for the assessment to be consistent with the new CA Act

41 Competition Commission, BAA Airports Consideration of possible material changes of circumstances, 19 July 2011, available at: http://webarchive.nationalarchives.gov.uk/+/http://www.competition-commission.org.uk/inquiries/ref2007/airports/material_changes_of_circumstances.htm

42 Competition Appeal Tribunal [BAA MARKET INVESTIGATION] Consideration of possible material changes of circumstances, 19 July 2011], available at: www.catribunal.org.uk/files/1185_BAA_Judgment_CAT_3_010212.pdf.

43 The working papers are available at http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=12275

rather than under AA86 in terms of its new primary duty to further users' interests, and the nature of the MPT.

2012 – 2013 Market Power Assessment consultations

Initial Views

2.14 In February 2012, the CAA published the Initial Views on market power for Stansted.[44] In regard to cargo related AOS, it stated that:

- Whilst Stansted had a strong position in cargo-only flights, the CAA considered that the geographic market for cargo-only operations was likely to be very broad, and to be UK-wide (if not wider). Stansted's shares of these markets did not give rise for particular concern.
- Given the size of Heathrow, when Stansted and Heathrow are considered together, BAA had a very substantial share of UK cargo and – through Stansted – a significant share of cargo-only operations.
- The CAA had not undertaken sufficient analysis to reach a firm conclusion in respect of cargo at Stansted, and had not received any evidence relating to cargo operations.
- The CAA invited contributions from stakeholders as it continued to consider the market for cargo-only operations.

2.15 In response to the Initial Views (including those for Gatwick and Heathrow), the CAA received seven written submissions related to Heathrow, Gatwick and Stansted airports. None of these responses commented on cargo related AOS at Stansted.

Minded to Consultation

2.16 In January 2013, the CAA published the minded to Consultation on its provisional views on whether STAL met the MPT.[45] The minded to Consultation was brought forward, ahead of that for Gatwick and Heathrow, at the request of STAL, due to the impending sale of STAL by BAA. In February 2013, this sale was completed, with MAG purchasing

44 Stansted – Market Power Assessment: Non-confidential Version - The CAA's Initial Views – February 2012, available at: http://www.caa.co.uk/docs/5/StanstedMarketPowerAssessment.pdf

45 Stansted Market Power Assessment Minded To Consultation January 2013, available at: http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14395

STAL. The minded to decision covered both passenger and cargo related AOS together.

2.17 In the minded to Consultation, the CAA considered that:

- Test A may be met because the CAA had used a narrow definition of the relevant cargo market and had received consistent and credible evidence from STAL's cargo airlines that access to London was essential to their operation and that they have no ability to switch to other airports.
- Test B may be met as competition law would not provide sufficient protection against the abuse of that market power and some form of regulation might provide a more effective safeguard than competition law alone. Test B was assessed together for the passenger and cargo markets because the CAA found that Test A may be met for both the passenger market and the cargo market.
- Test C may be met as the benefits for users of air transport services of regulating STAL by means of a licence could outweigh the adverse effects. Some form of licence regulation could apply, albeit proportionate to the specific situation of Stansted. Again, Test C was assessed together for the passenger and cargo markets because the CAA found that Test A may be met for both the passenger market and the cargo market.

2.18 However, the CAA noted that the available information on the cargo market was limited, and asked for further information.[46] The CAA also noted that the imminent change of ownership may affect STAL's behaviour, which might modify the CAA's view.[47] The CAA welcomed representations, within a period of three months, on its views.

2.19 The period for stakeholders to make representations to the CAA as part of the minded to Consultation was extended until 28 May 2013, to enable MAG (as the new owners) to comment on the MPA in conjunction with the Initial Proposals on the form of regulation.

2.20 The CAA received seven responses to the minded to Consultation, three of which were relevant to Stansted cargo related AOS.[48]

46 The minded to Consultation, paragraphs 18, 32, 7.28 and 7.30.

47 The minded to Consultation, paragraphs 7.26 and 7.29.

48 Non-confidential versions of these submissions were published on the CAA's website:

Initial proposals on economic regulation of Stansted

2.21 On 30 April 2013, the CAA published for consultation its initial Q6 proposals for the economic regulation of Heathrow, Gatwick and Stansted (the Initial Proposals),[49] on the assumption that if STAL met the MPT it would need to be regulated by means of a licence. The present regulatory arrangements cover the financial years 2009/10 to 2013/14 and are known as the fifth quinquennium (Q5). The regulatory arrangements that will apply from 2014/15 onwards are commonly known as the sixth quinquennium (Q6).

2.22 The CAA proposed a price monitoring and transparency regime based on a number of requirements on STAL.

- Reporting requirements to the CAA – which would enable the CAA to monitor STAL's pricing behaviour, with the possibility of the reintroduction of an explicit price cap should STAL's pricing behaviour cause concern. This information was quite detailed and included metrics to gauge the evolution of traffic, costs, profitability and service quality.
- Enhanced transparency requirements to provide airlines with useful and timely information – which help empower airlines to hold STAL to account and provide useful information if they are seeking to develop longer-term commercial relationships with STAL.
- Publication requirements (through the CAA annual report) – which may impact on STAL's reputational incentives and would be available to a wider group of stakeholders including passengers, cargo users and the general public.

2.23 To strengthen the incentives on STAL not to exploit any SMP which it was considered to hold over users in the setting of its airport charges, the CAA proposed a 'show cause' trigger. This would identify a threshold for airport charges above which the CAA would expect to carry out a full investigation. The CAA's proposal was that this 'show cause' trigger ought to based on whether STAL's average prices rise by no more than half the

http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14785

49 This document is available at:
http://www.caa.co.uk/docs/33/CAP%201031%20Economic%20regulation%20at%20Heathrow%20Gatwick%20and%20Stansted.pdf

rate of inflation per year measured by the change in the Retail Price Index.

2.24 The CAA proposed the following additional key features:

- A duration of no more than five years from April 2014 with a review of its operation before the conclusion of its third year.
- Annual report published by the CAA based on the information provided by STAL to the CAA during the course of the year as well as other information to which the CAA has access.

Additional Consultation

2.25 In October 2013, the CAA released an additional Consultation[50] to seek stakeholders' views on the implications of the change in ownership of STAL and the subsequent observed change in STAL's commercial behaviour on STAL's market power for both passenger and cargo related AOS. That consultation indicated that as a result of the developments, STAL may not meet the MPT in the relevant passenger market. In relation to cargo the consultation considered that if Test C was assessed separately for cargo, it was possible that the costs of regulating cargo on its own would mean the benefits of regulating the STAL's cargo related AOS would not outweigh the adverse effects and that Test C would not be met.

2.26 The CAA received seven responses to the additional Consultation, five of which were relevant to the Stansted cargo airline market.[51]

Stakeholder letter – December 2013

2.27 In a stakeholder letter published on 20 December 2013, the CAA advised that it had decided to complete two MPDs for Stansted – for passenger and cargo related AOS.[52] The CAA asked for any representations and/or new evidence on the assessment of the market for STAL's cargo related AOS to be submitted by 20 January 2014. In the meantime, the MPD for the passenger market, which was published on 10 January 2014, found

50 CAP 1104, Stansted Market Power Assessment: consultation on relevant market developments, available at: http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5807

51 Non-confidential versions of these submissions were published on the CAA's website.

52 This letter is available at: http://www.caa.co.uk/docs/78/20131220%20Stakeholder%20Letter%20-%20Separate%20MPD%20for%20STAL%20Cargo%20Market%20FINAL.pdf

that the MPT in section 6 of the CA Act was not met in relation to passenger services at Stansted.[53]

2.28 The CAA received two responses to this letter.

Responses to consultations

2.29 Further detail on stakeholders' representations regarding the consultations and the CAA's responses to the issues raised by stakeholders can be found in other chapters of this document.

2.30 A full list of the stakeholders who responded to the Initial Views, the minded to Consultation, the additional Consultation, and the stakeholder letter can be found at appendix A.

Stakeholder engagement and evidence collected

2.31 There has been extensive stakeholder engagement in reaching the determination on whether the MPT is met by STAL. This includes engagement with STAL, MAG, freight-forwarders, integrators and the main cargo airlines at Stansted. Further details on these stakeholders are outlined in chapter 3.

2.32 In the period between the release of the Initial Views and the minded to Consultation, the CAA:

- Undertook wide-ranging evidence gathering and assessment, including through stakeholder engagement, empirical analysis and expert opinion.
- Refined its thinking on a number of issues including market definition, competitive constraints and indicators of market power.

2.33 This engagement and evidence gathering included:

- One-to-one meetings with STAL and its cargo airlines to discuss relevant evidence.
- Stakeholder feedback and discussion on work in progress.

53 The CAA's determination for airport operation services to passenger airlines was released on 10 January 2014 (CAP 1135) and is available at: http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5911.

- The submission of evidence by stakeholders (including reports commissioned from economic consultancies).
- The CAA's stakeholder workshops held on 15 November 2011 and 17 October 2012.
- Questionnaires and documentary evidence requests issued by the CAA to both the airport operator and cargo airlines.
- Consultants' studies commissioned by the CAA.[54]

2.34 Following the minded to Consultation, the CAA:

- Held two CAA Board stakeholder meetings on 4 July 2013; one with STAL and one with representatives from the airlines that use Stansted.
- Conducted interviews and sent questionnaires to cargo airlines that use or may use Stansted.
- Submitted information requests to STAL, cargo airlines, freight-forwarders and integrators on the operation of the cargo related AOS and cargo operations at Stansted.
- In late 2013, contacted, on numerous occasions, over 30 cargo organisations to explain the CAA's remit and to gather further information on the cargo market. A number of cargo organisations chose not to respond to the CAA's requests and/or did not want to participate. The CAA received 7 responses; with 1 of these responses making no comment.

2.35 Details on the areas explored and information gathered are outlined in chapters 4 to 6 of this document.

2.36 Although the information gathering effort has been extensive, the CAA has not been able to gather comprehensive evidence to enable it to fully examine the dynamic trade-offs between time and cost that are considered in individual decisions made by cargo owners and their intermediaries about transporting cargo. This evidence is relevant to determining the geographical scope of the relevant cargo market and in

54 For example, the CAA engaged Leigh Fisher to undertake a benchmarking study, 'Comparing and capping airport charges at regulated airports. This report is available on the CAA's website: http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14395

particular, the exact substitutability of services at other airports in the south east of England[55] or more widely with services at Stansted.

2.37 In addition, the relatively short time since MAG's acquisition of STAL means that there has been a limited time for its commercial strategy to take full effect in terms of bilateral agreements with cargo-only airlines and growth in cargo revenue.

2.38 However, the evidence that the CAA has obtained has indicated that:

- Those with rights in cargo have limited influence over or interest in the precise route that their cargo may take.
- Freight-forwarders, integrators and cargo owners (rather than cargo airlines) appear not to be as concerned about which airport is used; they are more concerned with timeliness and the cost of delivery. That is, which route and method (air, rail, truck), will get the specified cargo to the required destination in the required time at the lowest cost.
- An airport and the services offered form a more limited part of the cargo pipeline[56] compared to that of air travel for passengers. In general, airport operators only provide access to infrastructure and licensing of groundhandlers; they are not involved in handling cargo in the same way that airport operators interact with passengers.
- The cost of landing fees in relation to the cost of transporting cargo overall is relatively small at about 2 per cent, so it is not a significant component of the overall costs of transporting cargo.[57]

2.39 Given this, it is not surprising that only by exception did these stakeholders engage in this assessment process or appear to be concerned about the outcome of this determination.

2.40 The CAA did not consider that making further inquiries of stakeholders on such areas as marginal switching costs was likely to yield substantial further evidence. This was particularly the case with respect to cargo

55 For the purposes of this determination, the south east of England is the London area (including Stansted, Luton, Heathrow and Gatwick airports), plus Manston airport.

56 The pipeline from the cargo owner's decision to send cargo and deciding which freight-forwarder or integrator to use, the freight-forwarder or integrator deciding which method of shipment is appropriate (sea, road, rail, air or some combination of these) to its delivery of the cargo to the specified destination in the cargo owner's required timeframe.

57 Source: IAG Cargo [✂].

owners and those placing cargo on their behalf. Had such stakeholders presented evidence of concerns around any particular aspect of the market's operation or STAL's behaviour to the CAA, this may have affected the CAA's judgement.

2.41 Where evidence was limited or not forthcoming, the CAA has drawn reasonable inferences about the operation of the market and the degree of concern amongst users (i.e. cargo owners), whose interests the CA Act seeks to protect against the current or potential exercise of market power on the part of STAL.

CHAPTER 3

Industry background

3.1 This chapter provides an overview of the cargo industry at Stansted and at other airports in the south east of England and the Midlands.

3.2 This rest of this chapter is structured as follows:

- The ownership of STAL.
- Facilities for cargo at Stansted.
- Definitions / clarification of terms.
- Trends in the air cargo industry.
- Revenue sources of STAL and airport charges.

The ownership of STAL

3.3 STAL is owned by MAG, following its sale by BAA in early 2013. MAG is privately managed on behalf of its shareholders, with the major shareholders being:

- Industry Funds Management (IFM) – 35.5 per cent.
- Manchester City Council – 35.5 per cent.
- Nine Greater Manchester Councils – 29 per cent.[58]

3.4 In addition to Stansted, MAG owns and operates Manchester, East Midlands and Bournemouth airports.[59]

58 The nine Manchester councils who have a shareholding are: the Borough Council of Bolton, the Borough Council of Bury, the Oldham Borough Council, the Rochdale Borough Council, the Council of the City of Salford, the Metropolitan Borough Council of Stockport, the Tameside Metropolitan Borough Council, the Trafford Borough Council and the Wigan Borough Council. Source: MAG, http://www.magworld.co.uk/magweb.nsf/Content/AboutUsAndOurAirports (accessed 14 June 2013).

59 MAG also has a commercial property company (MAG Developments), and a number of car parking, airport security, fire fighting, engineering, advertising and motor transport businesses. Source: MAG, About us, http://www.magworld.co.uk/magweb.nsf/Content/AboutUsAndOurAirports

Facilities for cargo at Stansted

3.5 This section describes the scale and disposition of Stansted's current facilities available for the handling of air cargo.

The runway

3.6 Stansted’s airfield contains the airport’s single runway (3,048 metres long by 46 metres wide), south side twin parallel taxiways, a north side parallel taxiway and various aircraft holding points. When the airfield layout was planned very large aircraft were anticipated, and the airfield has the capability to accommodate the Airbus A380 and the Boeing 747-800 aircraft.[60]

Cargo facilities

3.7 The cargo centre at Stansted is an approximately 88,200 square metres facility immediately to the southwest of the passenger terminal. This centre includes storage and handling buildings with full airside access to dedicated aircraft cargo stands. This facility is the largest dedicated air cargo facility in the south of England.[61] Depending on aircraft type, there are 10 to 16 dedicated cargo aircraft stands available, enabling the loading of cargo on adjacent stand areas.[62]

Definitions / clarification of terms

3.8 Air cargo generally provides the fastest method of transporting goods over long distances. The vast majority of the cargo industry relies on surface and sea transport modes. Air cargo provides a service that, for some important segments of cargo demand, is much superior to other transport modes. This is likely to be particularly true for high value sectors of the economy.

3.9 In this section, the key players of the air cargo industry and common ways to segment cargo demand are presented. Figure 3.1 (below) attempts to represent schematically some of the possible commercial relationships between the several types of stakeholders, even though the cargo industry is very complex.

(accessed 14 June 2013).

60 Source: STAL [✂].

61 Source: STAL [✂].

62 Source: STAL[✂].

The industry stakeholders

3.10 Airlines (holders of air operator certificates) are fundamental to the ongoing operation of the air cargo market. While there is a multitude of business models and types of operation used by cargo airlines, a common airline capacity distinction in air cargo is between bellyhold and cargo-only:

- **Bellyhold** – air cargo carried in the holds of passenger flights. This is the most common way to transport air cargo, typically on scheduled network passenger services airlines. Bellyhold capacity is sometimes seen as a by-product of passenger services.
- **Cargo-only** – air cargo carried on cargo-only flights. These flights can operate on a regular (scheduled) basis or on a charter basis.

3.11 It is common for scheduled network airlines to have cargo divisions that mostly sell bellyhold capacity but can also have dedicated fleets of cargo-only aircraft, crew and staff. International Airlines Group World Cargo (IAG Cargo, the merged company of British Airways World Cargo and Iberia Cargo) is an example of this type of airline.[63] However, there are some airlines – contract freight operators – that primarily provide ad-hoc cargo-only flight services and some regular services to other industry players (such as Titan Airways for Royal Mail).

3.12 Unlike simple cargo airlines that tend to provide an airport-to-airport service, integrators provide a door-to-door service with the provision of ground transportation for the collection and delivery of packages. The four largest worldwide integrators are FedEx, UPS, DHL and TNT; two of which (FedEx and UPS) have a significant presence at Stansted. Integrators have their own fleets (or have a leased fleet) and aim to take the freight through their own delivery networks as much as possible but they also use bellyhold capacity on scheduled airlines to ship a substantial proportion of their air cargo.

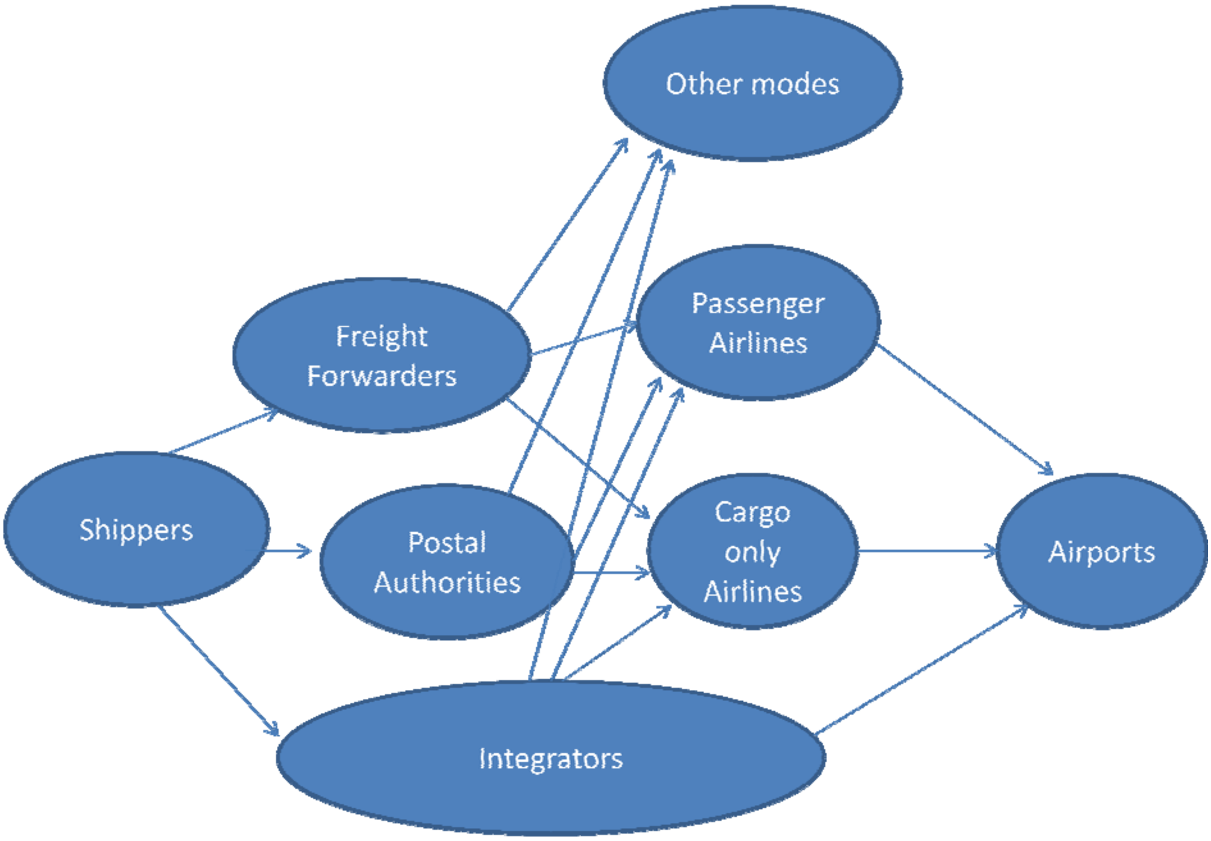
3.13 Another type of stakeholder in the air cargo industry are postal providers which use air services to deliver some of their mail/packages; the Royal Mail in the UK is one such example. Postal providers can operate or contract regular overnight air services on small aircraft for domestic and

63 On 17 January 2014, IAG Cargo announced that it would stop offering a dedicated cargo-only service this year. The announcement is available at https://www.iagcargo.com/iagcargo/portlet/en/html/noticiasMenu/main/listarNoticias

short-haul international destinations. For longer international distances they tend to purchase capacity on other airlines that also serve other customers. With the liberalisation of postal services, the dividing line between integrators and postal providers is becoming increasingly blurred. For example, both TNT (Netherlands) and DHL (Germany) are owned by national postal service providers.

3.14 Freight-forwarders / Consolidators are intermediaries who act on behalf of exporters, importers and cargo owners. Generally, they will not operate their own aircraft.[64] Rather, they will purchase capacity from a cargo-only or passenger airline; however, they can also purchase capacity from integrators or, in some cases, charter a whole aircraft on an ACMI (Aircraft, Crew, Maintenance and Insurance) basis.

Figure 3.1: Schematic representation of industry players and service purchasing possibilities



64 DfT, Air Freight: Economic and Environmental drivers and impact, March 2010.

Demand segments

3.15 The demand for cargo related AOS can be divided into different segments relating to the type of cargo transported, the delivery needs of the shippers and the preferences of cargo owners.

3.16 Some segments of demand require air transportation onboard cargo-only flights. Outsized and certain hazardous items cannot be carried as bellyhold cargo. Air transport of hazardous items is regulated under the Chicago Convention, Annex 18 of which deals with the "Safe Transport of Dangerous Goods by Air".[65] In the UK the legislation is contained in the Air Navigation (Dangerous Goods) Regulations. The Technical Instructions to the CA Act identifies those goods which are forbidden on passenger aircraft but permitted on cargo-only aircraft in normal circumstances; and those that are permitted on both passenger and cargo-only aircraft in normal circumstances.

3.17 Similarly, some segments of cargo demand, for instance express and mail may require operations at certain times of the day or night. Although all air cargo usually has a time critical element, express cargo is when the need to deliver a consignment by a certain time is particularly important.[66] Deferred cargo is all cargo that is not express.

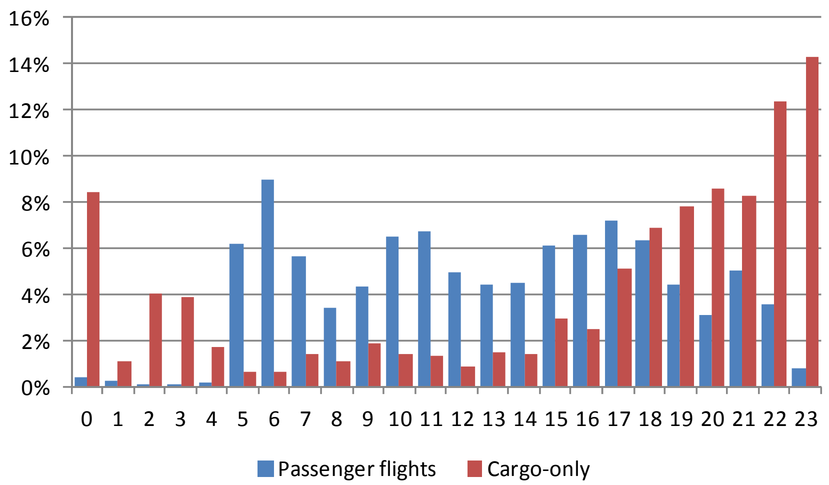
3.18 To illustrate this time aspect of air cargo operations, Figure 3.2 shows the hourly proportion of flights at Stansted for passenger flights and for cargo-only flights. Figure 3.3 shows the hourly proportion of cargo-only flights by airline.[67]

65 More information is available at http://www.icao.int/safety/DangerousGoods/Pages/default.aspx

66 On time delivery performance of 95%+ has become the standard. Express freight is often sold on the premise of a guaranteed delivery slot (before midday, 9 a.m., etc.).

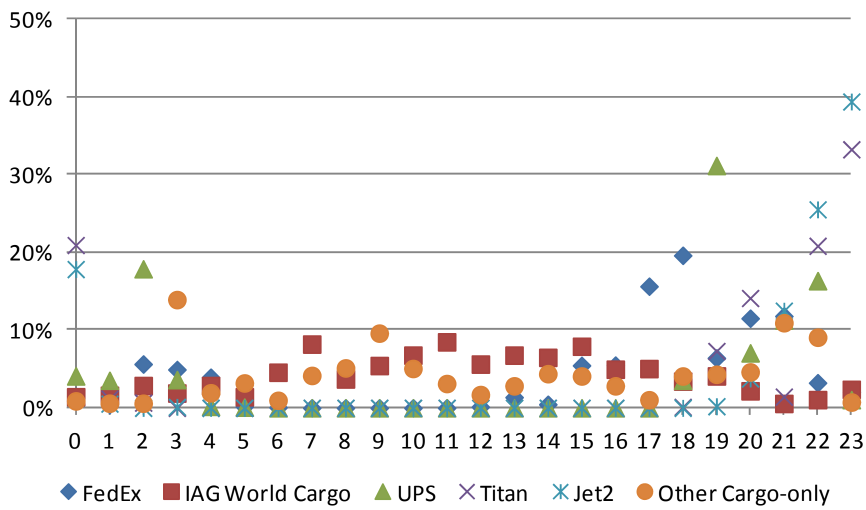
67 FedEx and UPS specialise in express deliveries; Titan and Jet2 operate a substantial amount of domestic flights for Royal Mail.

Figure 3.2: Proportion of flights at Stansted for cargo-only flights and for passenger flights by hour in 2012



Source: CAA airport statistics

Figure 3.3: Proportion of flights at Stansted for cargo-only flights by airline by hour in 2012



Source: CAA airport statistics

3.19 Another important distinction of cargo tonnage handled at an airport is between transhipped cargo and local cargo. Local cargo is cargo whose ultimate origin/destination is in the surface catchment of the airport, whereas transhipped cargo is cargo that flies in to be transferred onto another flight out.[68] It is possible to argue that transhipped cargo is more

68 Some of the cargo at Stansted is trucked to/from Heathrow for this purpose.

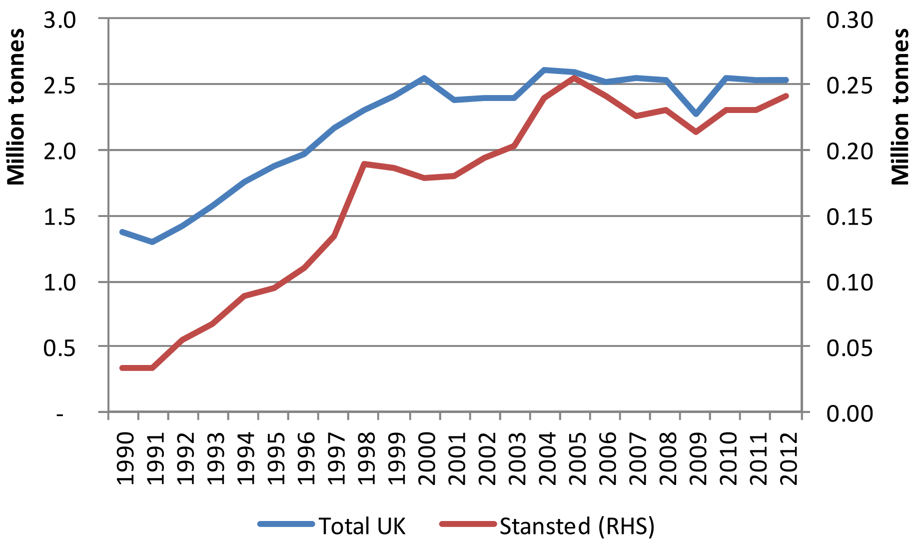
price-sensitive because, at least in theory, it could have been routed through an alternative air cargo hub in Europe or elsewhere.

Trends in the air cargo industry

Cargo tonnage

3.20 Figure 3.4 (below) shows that UK air cargo tonnage grew strongly during the 1990s but that it has remained relatively stable since 2000. Figure 3.4 also shows that Stansted's cargo tonnage grew strongly up to 2005 when it peaked at 250,000 tonnes (around 10 per cent of the total UK cargo tonnage in that year). Since then, cargo tonnage contracted until 2009 and recovered slightly until 2012 when it accounted for about 9 per cent of the total UK air cargo tonnage handled from UK airports.

Figure 3.4: Cargo tonnage handled at UK airports and at Stansted airport between 1990 and 2012

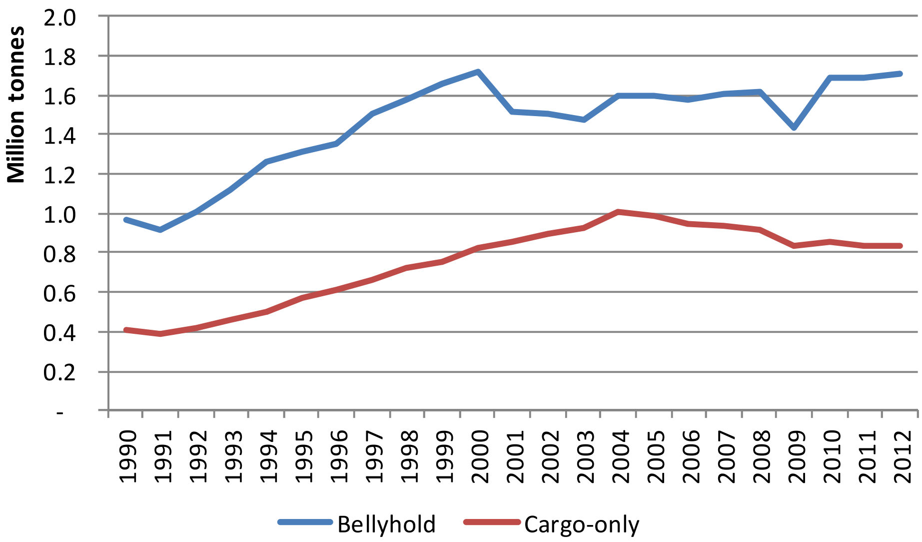


Source: CAA airport statistics

Note: Cargo tonnage at Stansted is shown with reference to the right hand side vertical axis.

3.21 Figure 3.5 (below) shows that cargo tonnage carried on cargo-only flights at UK airports peaked in 2004 at just over 1 million tonnes and has since declined to just 0.83 million tonnes in 2012. Bellyhold cargo has not grown much since 2000 and accounted for over two thirds of the air cargo handled at UK airports in 2012, with 1.71 million tonnes.

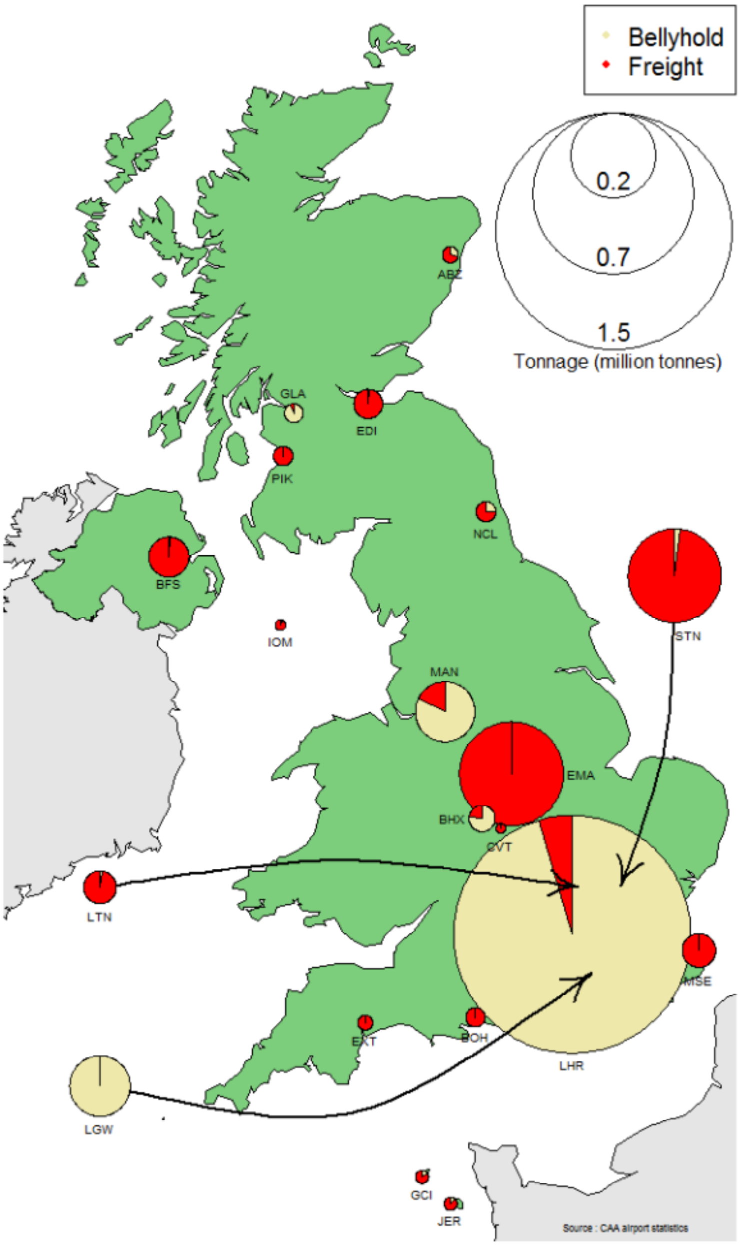
Figure 3.5: Cargo tonnage handled at UK airports by type of flight between 1990 and 2012



Source: CAA airport statistics

3.22 Figure 3.6 (below) shows the location and the cargo tonnage of the top 20 UK airports in terms of cargo tonnage uplifted in 2012. Heathrow was by far the biggest UK airport in terms of cargo tonnage – it handled in total 1.56 million tonnes – the vast majority of this being bellyhold (95 per cent). The second and third largest UK cargo airports were East Midlands, with 0.30 million tonnes (12 per cent of the UK total), and Stansted, with 0.24 million tonnes of air cargo handled.

Figure 3.6: Top 20 UK airports by cargo tonnage in 2012



Source: CAA airport statistics

3.23 The vast majority of the cargo at Stansted and East Midlands was transported on cargo-only flights (rather than on passenger flights) with an average of 18 tonnes per flight, making these two MAG owned airports the two UK largest airports in terms of cargo-only flights. Even though there is a large operation of passenger services by low cost carriers (LCCs) at Stansted that, at least in theory, are able to provide bellyhold cargo capacity for short-haul destinations, they have not done so to date, due to the characteristics of their business model. LCCs mostly operate narrow bodied aircraft (with limited cargo capacity on short and medium haul routes) and their business model traditionally requires short turn-around times, which could be compromised by the complexity of cargo operations. However, some LCCs started accepting cargo operations (such as Air Berlin and Southwest in the USA) and easyJet piloted some air cargo services out of Gatwick in 2010.[69]

3.24 Considering the other London airports, 0.10 million tonnes were handled at Gatwick (almost all on bellyhold) and 0.30 million at Luton (almost all on cargo-only flights). After East Midlands, the second and third regional airports were Manchester with 0.98 million tonnes of air cargo (87 per cent bellyhold) and Belfast with 0.45 million tonnes (all cargo-only). Manston (Kent International), situated just 70 miles from central London[70], carried 0.31 million tonnes on cargo-only flights.

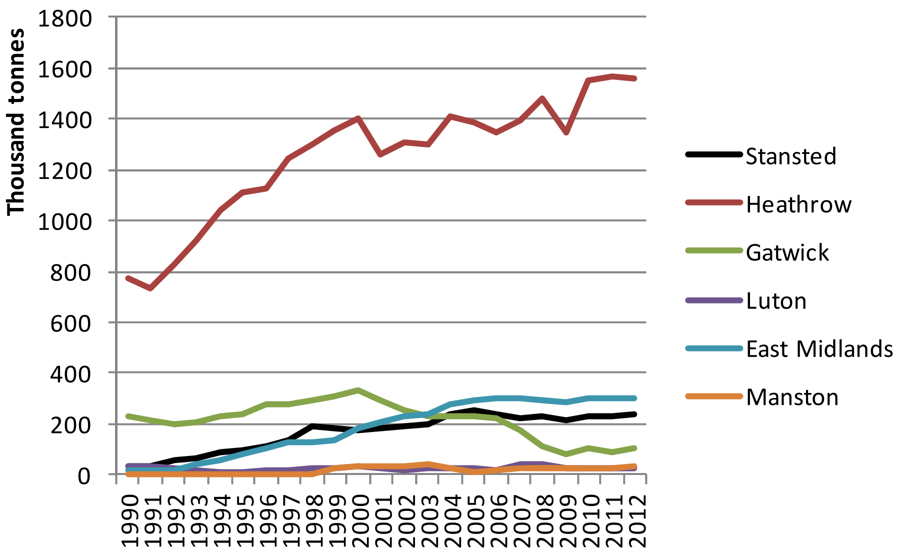
3.25 Figure 3.7 (below) shows the evolution of cargo tonnage between 1990 and 2012 at selected airports.[71] It shows that cargo tonnage at Heathrow, by far the largest UK airport by cargo tonnage, determines to a large extent the growth seen in the 1990s and the stabilisation seen in the 2000s. Cargo tonnage at Stansted and East Midlands followed a similar trend to that of Heathrow (albeit with smaller volumes) and now handle more cargo than Gatwick, which has seen cargo volumes decline since the turn of the century. Over the same period, Manston and Luton handled only a residual amount of cargo tonnage.

69 Morrell, P. (2011), Moving Boxes by Air – The economics of international air cargo, Ashgate, page 75.

70 http://www.manstonairport.com/for-business/aviation/freight.html

71 Airports selected represent the airports with largest cargo tonnage in the south of England (as shown in Figure 3.6). The provision of this information is not to pre-judge the geographical aspect of market definition but to give background information.

Figure 3.7: Cargo tonnage at selected UK airports between 1990 and 2012



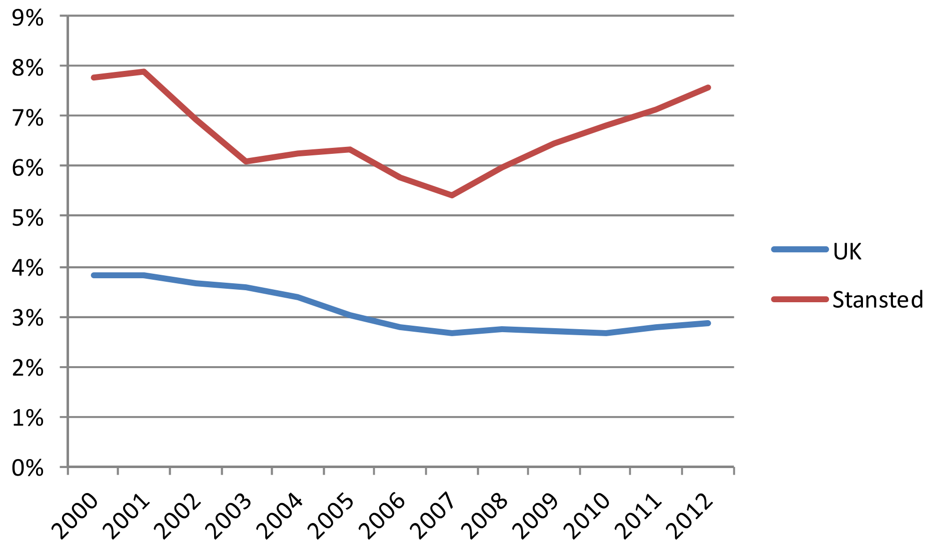
Source: CAA airport statistics

Cargo-only flights

3.26 Figure 3.8 shows that cargo-only flights represent a small and falling share of all flights at UK airports. In 2012, fewer than 3 per cent of all commercial flights at UK airports and 7.6 per cent of flights at Stansted were cargo-only flights.

3.27 Figure 3.8 also shows that, at Stansted, between 2000 and 2007, cargo flights declined in terms of the share of total flights, as passenger flight numbers grew strongly, but that trend has since been reversed.

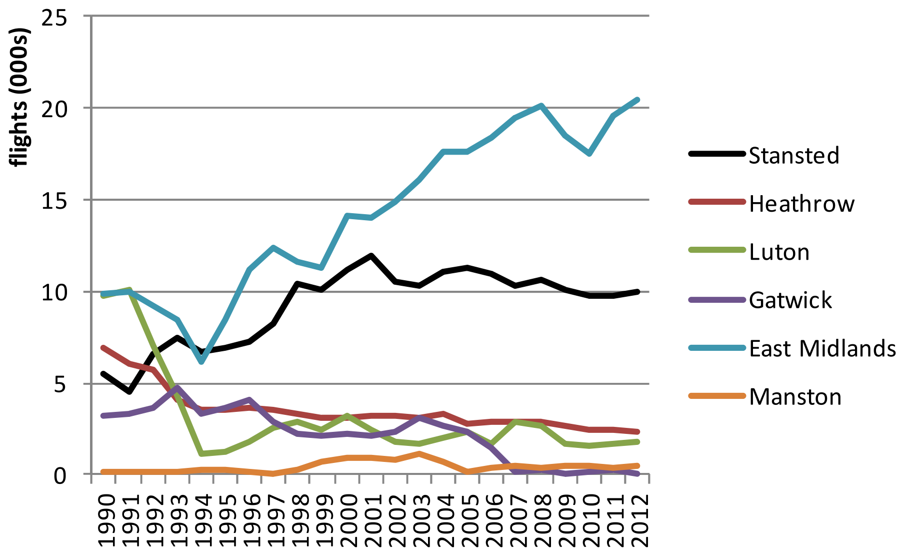
Figure 3.8: Cargo-only flights' share of total commercial flights at UK airports and at Stansted between 2000 and 2012



Source: CAA airport statistics

3.28 Figure 3.9 (below) shows the evolution of cargo-only flights between 1990 and 2012 at selected airports. It shows that, based on cargo tonnage, East Midlands is the largest UK airport in terms of cargo-only flights and that it has seen a growth trend emerging over the last two decades. By contrast, since 2000, the number of cargo-only flights at Stansted has stabilised at around 10,000 flights a year and the number of cargo-only flights has declined at other selected airports. The data also suggests that while Gatwick used to have a degree of cargo-only flights before 2007, this is now at very low levels.

Figure 3.9: Cargo-only flights at a selection of UK airports between 1990 and 2012



Source: CAA airport statistics

Cargo-only airlines

3.29 Stansted has a number of cargo-only carriers operating out of it. Figure 3.10 shows proportion of cargo tonnage carried by airline and Figure 3.11 shows the proportion of cargo-only flights by airline, at Stansted during 2012.

3.30 FedEx, the largest global integrator specialising in the delivery of time-sensitive shipments, carried the most cargo and operated the most cargo-only flights to/from Stansted in 2012. IAG Cargo not only sells bellyhold capacity on BA and Iberia's passenger flights but also operates cargo-only flights from Stansted, carried 27 per cent of Stansted's cargo tonnage.

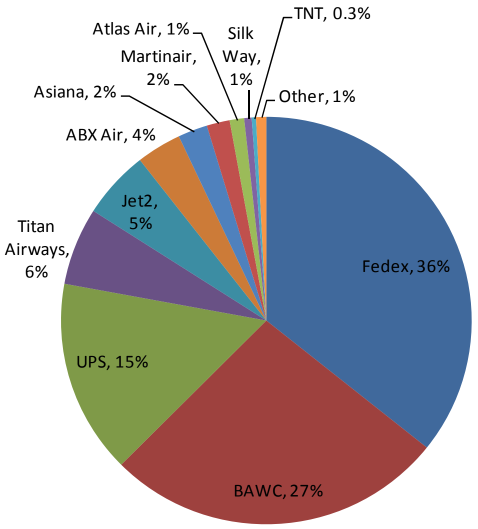
3.31 UPS, another global integrator headquartered in Atlanta and with its main European air cargo hub in Cologne – Germany[72], carried 15 per cent of cargo tonnage at Stansted.

3.32 Titan and Jet2 – airline contractors that operate for Royal Mail and provide ad-hoc flights for express parcel operators, logistics integrators

[72] Source: http://www.ups.com/content/gb/en/about/facts/europe.html and http://www.ups.com/content/gb/en/about/facts/worldwide.html

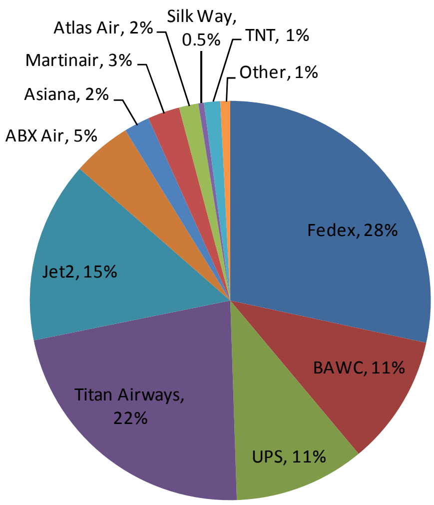
and brokers[73] – carried between them 11 per cent of Stansted's air cargo but, due to the on average smaller aircraft size that they operate (e.g. Boeing 737), this was 37 per cent of Stansted's cargo-only flights.

Figure 3.10: Stansted cargo tonnage by carrier (2012)



Source: CAA airport statistics

Figure 3.11: Stansted cargo flights by carrier (2012)



Source: CAA airport statistics

73 Source: http://www.dartgroup.co.uk/jet2charters/

3.33 Of the 2,387 cargo-only flights at Heathrow in 2012, 63 per cent were operated by DHL. Cathay Pacific, Korean Air, Singapore Airlines, Royal Jordanian and Emirates also operated some cargo-only flights.

3.34 At Luton there were 1,812 cargo-only flights during 2012. DHL operates 56 per cent of those flights which accounted for 81 per cent of the cargo tonnage handled. Other cargo-only operators at Luton in 2012 were MNG Airlines and Atlantic Airlines.

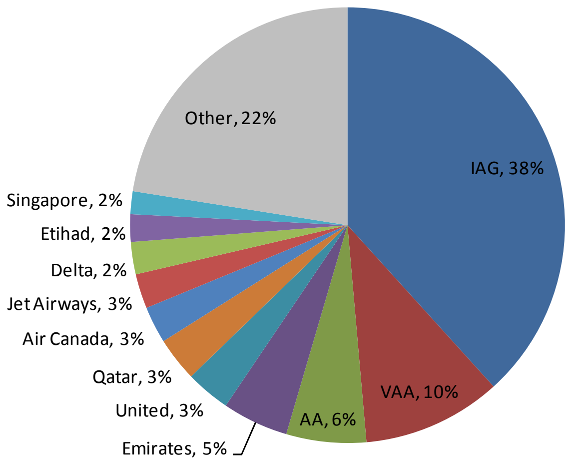
3.35 There were 20,474 cargo-only flights at East Midlands in 2012. DHL was responsible for 32 per cent of the cargo-only flights and 35 per cent of the cargo handled. Other airlines with significant operations included Atlantic Airlines, Jet2, Star Air, UPS, Aerologic, TNT, and ABX Air.

3.36 Manston had 432 cargo-only flights and its largest carrier was Cargolux.

Bellyhold airlines

3.37 As shown in Figure 3.6 (above), most bellyhold cargo handled in the south east of England is at Heathrow and Gatwick. Figure 3.12 shows that the airlines carrying the most bellyhold cargo tonnage from these two airports are primarily long-haul airlines. IAG Cargo carried 38 per cent, Virgin carried 10 per cent followed by American Airlines and Emirates. There was a long list of airlines carrying less than 5 per cent of cargo, which together accounted for 41 per cent of the bellyhold cargo tonnage at Heathrow and Gatwick.

Figure 3.12: Bellyhold cargo tonnage at Heathrow and Gatwick by airline, 2012



Source: CAA Airport Statistics

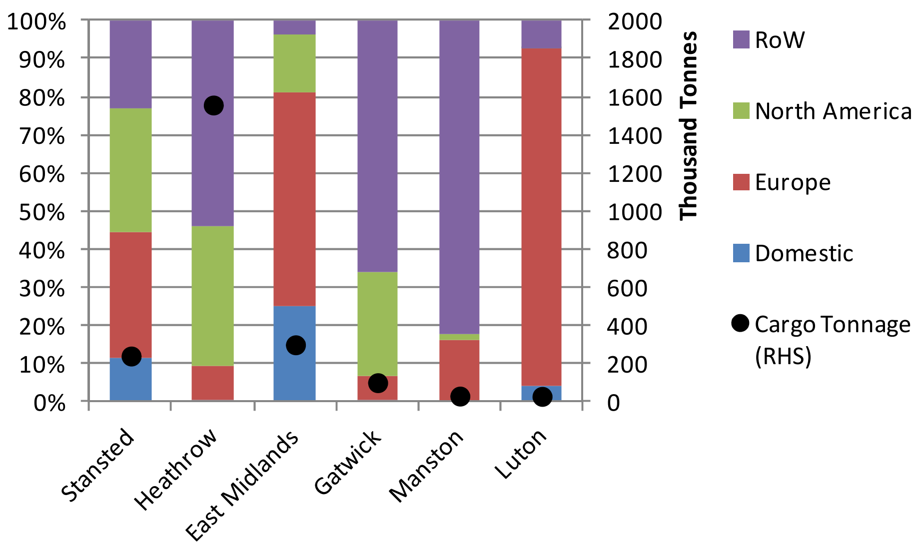
Destinations of air cargo tonnage

3.38 At Stansted, 12 per cent of its cargo tonnage goes to/from another UK destination, 33 per cent to/from geographical Europe, 32 per cent to/from North America and 23 per cent to/from the Rest of the World. See Figure 3.13. The largest routes were Memphis International airport in the US (FedEx global hub), Paris Charles de Gaulle airport (FedEx's Europe Middle East and Africa hub) and Cologne Bonn (UPS' European air cargo hub and FedEx's Central and Eastern Europe air cargo hub). Titan and Jet2 carried the most domestic cargo mostly due to the flights they operate for Royal Mail.

3.39 The overwhelming majority of cargo tonnage handled at Heathrow went to/from non-European destinations, with just 9 per cent of the tonnage going to European destinations.

3.40 Domestic cargo represented about a quarter of East Midlands' cargo tonnage, mainly because it is Royal Mail's main air transport hub. Over 50 per cent of cargo went to Europe, with Leipzig Halle (DHL's European air cargo hub) and Cologne Bonn airports being the largest destinations in terms of cargo tonnage.

Figure 3.13: Destinations* of air cargo, 2012



Source: CAA Airport Statistics

Note: *Destinations here refer to the last/next airport of the flight not the ultimate destination / origin of the cargo. The CAA also notes that some of the air cargo at Stansted with a destination of Europe was on multi-sector flights.

Air cargo inter-modality and surface transport modes

3.41 Freight-forwarders often give their customers a choice of delivery times and costs. Air cargo normally has a much higher cost but it can be the quickest method of transporting freight over long distances. Morrell (2011)[74] considers that

> *The longer the route the greater the time advantage for air. Conversely on shorter routes, air is less well placed since flying takes a much smaller percentage of the total time than for longer trips, and has less scope for influencing door-to-door delivery time. This is one reason why most intra-European freight goes by truck.*

3.42 In fact, most international cargo uses some non-aviation modes. Air cargo is focused on high value to weight ratio items and time-sensitive items. Nevertheless, there is a degree of substitution between cargo being transported by air and by other modes. In reality, there seems to have been a switch to other modes as oil prices increased and affected the relative prices between air cargo and other modes.

3.43 Very rarely is a cargo shipment transported only by air. Cargo shipments are often trucked to airports and, between its origin and the airport, cargo can use a variety of surface or sea transport modes. Some airlines provide truck services to feed cargo operations from their hubs with cargo and air services being priced as a bundle in competition with direct services from London.[75] For instance, Agility logistics (a freight-forwarder with significant operations in London) told the CAA that

> *about 70% of our traffic is bellyhold and about 10% freighter and about 20% is freighter and bellyhold, but trucked to Europe." [this last segment refers to] the likes of KLM to Amsterdam, Air France to Paris, Lufthansa to Frankfurt and then flown from there.*[76]

74 Morrell, P. (2011), Moving Boxes by Air – The economics of international air cargo, Ashgate, page 40.

75 Agility logistics [✂].

76 Agility logistics [✂].

Revenue sources of STAL and airport charges

3.44 STAL generates revenue from three main sources:

- airport charges, including charges on landing, charges on departing passengers and aircraft parking charges;
- commercial income, such as revenue from retail concessions (and associated retail revenue sharing arrangements), car parking and property; and
- other income, specifically income from non-regulated aeronautical charges (i.e. revenue from charges levied on airlines for other services, including the servicing of aircraft and the use of airport property and fuel).

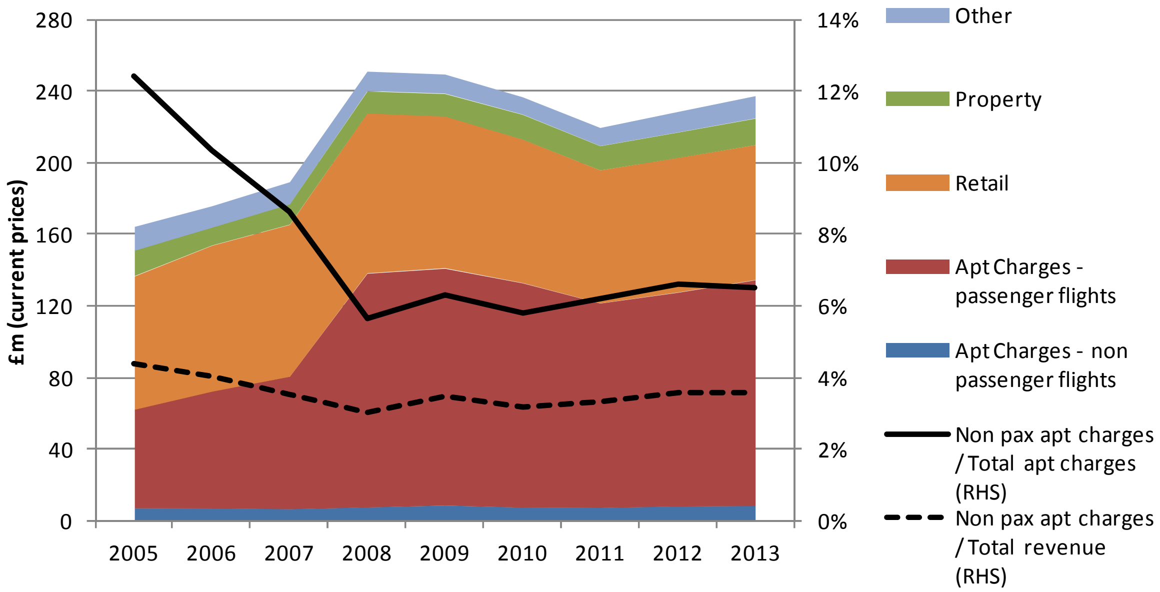
3.45 Figure 3.14 (below) shows the various revenues that STAL received over the last nine years.[77] This figure shows that the revenue generated from airport charges has experienced a strong upward movement, with a significant increase in 2007, which is consistent with a number of long term (discounted) pricing contracts with passenger airlines ending.[78] On the other hand, retail revenue showed a modest increase in the three years to 2008 but has, in general, experienced a decline since then. The revenue from other sources has remained relatively flat over the period.

77 This information has been taken from STAL's regulatory accounts, which are available online.

78 These contracts were struck after 11 September 2001, following the aviation downturn, at prices that were substantially lower than the prevailing price cap.

3.46 Figure 3.14 also shows that airport charges relating to non-passenger flights represented, in 2012, less than 4 per cent of STAL's total revenue and less than 7 per cent of the total revenue generated by airport charges.

Figure 3.14: STAL's revenue split (year to March 2005 to year to March 2013)



Source: STAL, Regulatory Accounts

3.47 Stansted is a designated airport that is subject to price controls until March 2014, the maximum airport charge that STAL is permitted to charge is based on:

- the CAA's assessment of an efficient level of costs;
- its view on the appropriate return of capital to be allowed; and
- how the resulting price cap would facilitate competition between airports.

3.48 Through the 'single till' approach to regulation, users benefit from the co-funding of the airport operator's costs from unregulated commercial income (for example, retail and car parking revenues) thereby providing scope for the airport charges to be reduced.

3.49 The actual airport tariffs that STAL has set have been published in its 'Conditions of Use', which are available on the airport operator's website.[79] By considering these charges and passenger numbers, weight of aircraft and noise levels etc, an estimate of an airport operator's revenue can be calculated. However, the charges outlined in a 'Conditions of Use' may not represent the charges that are actually paid by an airline, as an airport operator can enter into bilateral agreements with airlines that can result in lower charges being paid.

Airport charges

3.50 As outlined earlier, airport charges are typically comprised of three types of charges – charges on landing, departing passengers and aircraft parking – each of these is explored below. By their nature, cargo-only services do not incur departing passenger charges, which, according to the airport operator's audited revenue statement to the CAA for 2012/13, would account for 68 per cent of STAL's airport charge revenue if all of its traffic were paying in-line with the schedule of charges.

Charges on landing

3.51 The charge on landing (and departure) of an aircraft, as shown in Figure 3.15, is based on the weight of the aircraft, including its contents, and noise – with aircraft failing to meet set noise standards subject to a higher charge. At Stansted, a higher amount is also charged for aircraft landing at peak periods (1 April to 31 October) compared to off peak periods (1 November to 31 March).[80]

79 STAL, http://www.stanstedairport.com/media/4167/stal_conditions_of_use_%202013_14.pdf (accessed 19 August 2013)

80 In addition, an Air Navigation Services charge per landing of £136.17 applies to all flights.

Figure 3.15: Landing Charges, 2013/14

ICAO Aircraft Noise Category	Peak (Summer)				Off Peak (Winter)			
	Ch2	Ch3 High	Ch3 base	Ch4 & Ch3 Minus	Ch2	Ch3 High	Ch3 base	Ch4 & Ch3 minus
16-55 Metric tonnes	599.49	299.74	199.83	179.85	444.92	222.46	148.31	133.48
55-250 Metric tonnes	980.41	490.20	326.80	294.12	551.72	275.86	183.91	165.52
>250 Metric tonnes	1689.16	844.58	563.05	506.75	955.63	477.81	318.54	286.69

Source: STAL, Conditions of Use

Aircraft parking charges

3.52 Aircraft parking charges are the charges that the airport operator imposes for the parking of aircraft at the airport which, in general, are based on an aircraft's weight and the duration of stay.[81] Figure 3.16 highlights the level of charge that the airport operator has imposed for this service over the last seven years.

81 STAL, Conditions of Use, including Airport Charges from 1 April 2011, available at: http://www.stanstedairport.com/static/Stansted/Downloads/PDF/STN_Conditions_of_Use_2011-12.pdf (accessed 30 October 2012).

Figure 3.16: Airport parking charges, 2007/08 to 2013/14, current prices

	Not exceeding 15 metric tonnes	Over 15 tonnes	
	Per 24 hrs (£)	Per quarter hour (£)	Per metric tonne (£)
2007/08	98.00	2.79	0.18
2008/09	100.00	2.87	0.18
2009/10	102.00	2.94	0.18
2010/11	101.70	2.94	0.18
2011/12	108.14	3.13	0.19
2012/13	113.00	3.27	0.20
2013/14	119.89	3.37	0.21

Source: STAL, Conditions of Use, 2007/08 to 2013/14

Cargo charges

3.53 As stated above, STAL can also provide infrastructure services to cargo-only carriers. This includes the provision of runway and apron space, as well as providing access to cargo handlers, and access to warehousing facilities and infrastructure to allow the efficient onward transfer of cargo.

Summary

3.54 During 2012, cargo tonnage handled at Stansted accounted for about 9 per cent of total cargo tonnage handled and around 3 per cent of all commercial flights at UK airports.

3.55 In general, passenger airlines at Stansted did not provide bellyhold air cargo services.

3.56 Cargo flights accounted for less than 8 per cent of all flights at Stansted and airport charges levied on airlines for cargo-only flights accounted for less than 4 per cent of STAL's total revenue and less than 7 per cent of STAL's airport charge revenue.

CHAPTER 4

Test A: Market definition and power

4.1 As outlined in chapter 1 above, section 3 of the CA Act prohibits the operator of a dominant area at a dominant airport from requiring payment of charges in respect of AOS without a licence.

4.2 This chapter sets out the assessment of Test A of the MPT for the cargo market at Stansted.

4.3 The structure of the rest of this chapter is:

- The legal framework for the assessment of Test A.
- History of consultation on Test A.
- The CAA views on market definition.
- The CAA views on market power.
- Final decision on Test A for STAL's cargo services.

Section 1 – Legal framework for assessment of Test A

Market definition

4.4 Market definition plays a key role in market power assessments and is relevant for assessing:

- Whether STAL, as the operator of Stansted, either alone or taken with other persons, has or is likely to acquire SMP in the relevant cargo market for the purposes of Test A.
- Under Test B, whether there is a risk of abuse of that position.

4.5 Both these tests are applied by reference to the relevant cargo market for cargo-related AOS provided within the airport area.

4.6 In reaching its assessment, the CAA has had regard to:

- The applicable OFT and EC competition law, notices and guidance, to which it must have regard under section 6(10) of the CA Act.[82]
- Its own guidance for the assessment of market power of airports (the Guidelines).[83]

4.7 Market definition is a useful tool for identifying, in a systematic way, the competitive constraints which the relevant operator faces and whether those constraints prevent it from operating independently of effective competitive pressure.[84]

4.8 However, there are characteristics of the airport sector that may make it difficult to define the market precisely. As explained in the Guidelines, the market power assessment should seek to analyse the competitive constraints faced by STAL, regardless of whether they arise from within or outside the relevant market or markets.[85]

4.9 Market definition is not an end in itself. Rather, it is a key step in identifying the competitive constraints acting on a supplier of a given product or service, even if these are outside the market definition that is used. Market definition provides a framework for competition analysis. The exercise of market definition consists, in essence, of identifying the effective alternative sources of supply for the customers of the relevant operator in terms of the products or services supplied and their geographical location.[86] It then requires an assessment of the effectiveness of those alternatives as substitutes for the product or service in question.

4.10 The Guidelines state that, wherever feasible, the hypothetical monopolist test should be adopted as a starting point for defining the relevant

82 See OFT's Competition Law Guideline on Market Definition, December 2004 (OFT 403) and the EC's Notice on the definition of relevant market for the purposes of Community competition law (OJ 97 C 372, page 3) (EC Market Definition Notice).

83 The CAA's April 2011, Guidance on the assessment of airport market power (the Guidelines), available at: http://www.caa.co.uk/docs/5/Final%20Competition%20Assessment%20Guidelines%20-%20FINAL.pdf

84 EC Market Definition Notice, paragraph 2.

85 The Guidelines, paragraph 3.5. This is consistent with the approach adopted in the CC's report on the supply of airport services by BAA in the UK, 19 March 2009 (CC's 2009 BAA Report), paragraphs 2.48 to 2.49.

86 EC Market Definition Notice, paragraphs 7 to 9 and 13 and the Guidelines, paragraphs 3.6 to 3.9.

market.[87] This test involves starting with the narrowest possible bundle of products or services and the narrowest geographical area (normally those supplied by the operator in question) and assessing customers' switching reactions to a small but significant and non-transitory increase in price (SSNIP) above the competitive level. A significant price increase is generally considered as being 5 to 10 per cent. If this price increase is assessed as unprofitable, due to customers switching away to substitute products and areas (or other suppliers entering the presumed market), the test is repeated by widening the set of products and geographic area to include additional substitutes until the price increase would be profitable. What is then arrived at is the narrowest set of products and geographic area over which a hypothetical monopolist could profitably sustain prices 5 to 10 per cent above competitive levels.

4.11 Although the SSNIP test is a useful starting point, it is a framework for approaching market definition rather than a prescriptive methodology. In addition, it is intended to be carried out by reference to the competitive price level. This means that it is difficult to apply the test where the prevailing price levels observed may not reflect the competitive price. Actual prices could be higher than the competitive level due to anti-competitive behaviour or lower due to existing regulation. As the OFT observes, the test assumes that the hypothetical monopolist is not subject to economic regulation that might affect its pricing behaviour. The test also assumes that competitors' pricing strategies are competitive and that all players maximise profits. In addition, there may be other external considerations that might affect the uniformity and/or the profitability of the price increase.[88]

4.12 As a result, and as noted in the Guidelines, it is therefore rarely possible to apply the SSNIP test in a precise manner due to its limitations as well as data and evidential restrictions.[89]

4.13 In this particular case, the CAA has had to adopt a more qualitative approach to assessing the market definition and undertaking the market power analysis on the potential market for cargo related AOS and the

87 The Guidelines, paragraphs 3.10 to 3.12; OFT 403, paragraphs 2.5 to 2.13 and EC Market Definition Notice, paragraphs 15 to 19.

88 OFT 403, paragraphs 2.10 to 2.11 and 5.4 to 5.6. See also the Guidelines, paragraphs 3.15 to 3.16 and 3.24 to 3.25.

89 The Guidelines, paragraph 3.13. See also the CC's 2009 BAA Report, paragraph 2.1. http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/545.pdf

constraints faced by STAL. This is because as discussed in chapter 2, there have been limitations on how much evidence the CAA has been able to obtain in some respects.

4.14 In doing so the CAA has followed the logic of the SSNIP test, starting with the consideration of the narrowest possible product and geographic scope of the market and examined this as a candidate market. The CAA has then considered what assumptions would need to be fulfilled for this to be the relevant market for its assessment of market power.

4.15 Where the evidence indicates that the necessary assumptions for the market being limited to the narrowest possible product and/or geographic market definition would not hold, the CAA has then added additional products or extended the geography and repeated the process in order to define the narrowest plausible market.

4.16 To reach its conclusions, the CAA has assessed the substitutability of airports other than Stansted for the provision of cargo related AOS and the extent to which STAL's customers and end users of its services (freight-forwarders, shippers and cargo owners) would directly or indirectly switch to an alternative provider of cargo-related AOS in response to a price increase. This analysis is set out in the rest of this chapter.

Market power

4.17 There is no absolute measure of market power. Whether it is present and to what degree will vary according to the individual circumstances of the case. Even where there is effective competition, firms may still enjoy a degree of market power. It is only where the level of market power enjoyed is significant that competition authorities or regulators have cause to consider action.

4.18 Case law indicates that significant market power can be presumed where a firm has a market share of 50 per cent or greater.[90] However this is a rebuttable presumption and depends on the particular circumstances relating to each operator and in the relevant market. Evidence on the evolution of market structure and market share is commonly used in

90 Case C-62/86 AKZO V Commission [1991] ECR I-3359.

competition assessments. SMP is more likely to exist if an operator has a persistently high market share over time compared to its nearest rivals.[91]

4.19 Market share is not sufficient, in isolation, to determine the intensity of competition in the relevant market as it is too static as an indicator to shed light on the dynamics of the market. In particular:

- The difficulties in defining the market precisely might limit the reliance that could be placed on any given measure of market share as an indicator of market power.
- For airport markets there are some aspects that may reduce the reliability of market shares as an indicator of market power. In particular, the differentiated nature of airports, both in terms of their facilities and services, but also in terms of their location and the differing degrees of their interdependent demand, can reduce the reliability of market shares as an indicator of market power.[92]

4.20 In the case of the London[93] airports, there are additional reasons why market shares may not be a reliable measure of the level of market power of airport operators. These include:

- Within the relevant passenger market there are capacity constraints for passenger-related AOS which affect different airports differently. However, these considerations do not appear to be as relevant for cargo-related AOS because there is a degree of spare capacity: for example, there is spare capacity for cargo-only flights at Stansted and Manston and there is spare capacity in the bellyhold of passenger flights at other airports.
- Until relatively recently there was common ownership of the three largest airports (Heathrow, Gatwick and Stansted) under BAA. The CC found this to be detrimental to the development of competition between the London airports.[94] It is apparent that BAA, at that time, preferred a specialised approach to the different airports with each focusing on a differing client group i.e. LCC passenger and cargo-only operations in the case of Stansted.

91 The Guidelines, paragraph 4.2 and OFT 415, paragraphs 4.2 to 4.3.

92 The Guidelines, paragraphs 4.5 to 4.9.

93 The London airports include Stansted, Luton, Heathrow and Gatwick airports.

94 Competition Commission, BAA Airports Consideration of possible material changes of circumstances, 19 July 2011, available at:

4.21 Notwithstanding these difficulties, the CAA has calculated the market share for STAL by reference to the relevant market definition that it has adopted. In addition, the CAA has had regard to other market features, including barriers to entry, the extent of potential competition through new entry and/or expansion and buyer power.[95] In so doing, the CAA has tried to analyse the likely reactions to any attempt by STAL to increase prices above a competitive level and/or reduce quality or restrict output at Stansted below the levels that would be seen in a competitive market.

4.22 As part of its assessment of market power, the CAA identified the existence and the potential strength of the competitive constraints[96] that emanate both from within and from outside the relevant market. It assessed whether these potential constraints individually, but also collectively were sufficient to restrain any exercise of market power that may be present.

4.23 The CAA has supplemented this analysis with studies on other indicators which may have a bearing on the assessment of market power, including STAL's behaviour and performance, and its engagement with cargo-only airlines, freight-forwarders and integrators.[97]

Section 2 – History of consultation on Test A

The minded to Consultation

4.24 The minded to Market Power Assessment consultation in January 2013 (the minded to Consultation)[98], which covered both passenger and cargo services, provisionally considered that the market power test as set out in the CA Act was met in relation to Stansted.[99] The CAA was also minded to consider that the dedicated facilities for the handling of cargo formed a

http://webarchive.nationalarchives.gov.uk/+/http://www.competition-commission.org.uk/inquiries/ref2007/airports/material_changes_of_circumstances.htm

95 See the Guidelines, paragraph 4.4 and chapters 5 to 7 and OFT 415, chapter 5.

96 The OFT describes competitive constraints as 'market factors that prevent an undertaking from profitably sustaining prices above competitive levels': see OFT 415, paragraph 1.2 and DG COMP's Discussion Paper on the application of Article 82 to Exclusionary Abuses, paragraph 2.4.

97 See the Guidelines, paragraphs 7.4 to 7.10 and OFT 415, paragraphs 6.5 to 6.7.

98 Stansted minded to Market Power Assessment, January 2013, http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14395

99 The minded to Consultation, paragraph 1.

product that was distinct from the facilities for the processing of passengers.[100]

4.25 The CAA defined the relevant cargo market as core cargo aeronautical services provided to cargo-only airlines at Stansted.[101] The CAA provisionally considered in relation to this 'Stansted cargo market' that STAL had SMP.[102] The CAA was also minded to consider that this cargo-only product market extended no further than Stansted.[103]

4.26 The minded to Consultation noted that evidence of negotiations regarding price between the airport operator and its cargo-only airlines could be informative as to how important the airport operator considers their business to be to its profits.[104] Overall, evidence suggested that STAL was not facing significant pricing pressure with regard to cargo-only airlines and users. In general, some evidence obtained suggested that cargo-only airlines at Stansted considered that STAL had a significant position in the market, principally due to the cargo-only airlines' inability to move to another London airport, or indeed another airport in the UK to provide their existing services.[105]

4.27 The evidence also suggested that the current price cap regulation was likely to be restricting STAL's scope for exerting any SMP through higher pricing.[106] However, it was also thought that STAL was likely to have an incentive to maintain infrastructure of a sufficient quality in order to retain their business. Given the trend towards tightening night flight restrictions and London Air Traffic Distribution Rules (TDR)[107], and low likelihood of significant new airport capacity until at least 2019 (which was the proposed end of the next economic price regulation period), it was

100 The minded to Consultation, paragraphs 4.154 and 4.155.

101 The minded to Consultation, paragraph 6.

102 The minded to Consultation, paragraph 17.

103 The minded to Consultation, paragraph 4.166.

104 The minded to Consultation, paragraphs 5.174 to 5.175.

105 The minded to Consultation, paragraphs 5.174 to 5.175.

106 The minded to Consultation, paragraph 5.179.

107 The TDRs came into effect in 1991. Under the Airports Act, the Secretary of State for Transport has the power to make such rules, which distribute traffic between airports in a 'system'. Article 19 of Regulation (EC) 1008/2008 gives member states the power to put in place TDRs, provided they do not discriminate on grounds of nationality. The TDRs essentially prevent cargo and general aviation operations from Heathrow and Gatwick at peak times (extending to a considerable period of the day), subject to exemptions granted by the airport operator.

assessed as unlikely that STAL's position of SMP towards cargo-only airlines would lessen over the medium term.[108]

4.28 In addition, in relation to Test A, the CAA received consistent and credible evidence from many of STAL's cargo-only airlines that access to London was essential to their operation and that they had no ability to switch to other airports.[109] The CAA was therefore minded to conclude at that stage that STAL had SMP in the Stansted cargo market.[110] However, the CAA noted that it would consider carefully representations relating to this market, and in particular would welcome more information on the ability of downstream customers to switch from cargo-only airlines operating from Stansted to bellyhold airlines operating from other London airports which could indirectly constrain the behaviour of STAL.[111]

4.29 The CAA also noted that the imminent change of ownership of STAL[112], might affect STAL's behaviour, which might modify the CAA's view.[113] The CAA welcomed representations, within a period of three months, on its views. The period for representations was extended until 28 May 2013, to enable the MAG (as the new owners) to comment on the market power assessment in conjunction with the Initial Proposals on the form of regulation.[114]

Summary of responses to the minded to Consultation

4.30 The CAA received seven responses[115] to the minded to Consultation, three of which were relevant to the STAL cargo airline market:

- International Airline Group World Cargo (IAG Cargo).

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108 The minded to Consultation, paragraph 5.179.

109 The minded To Consultation, paragraphs 17 and 7.28.

110 The minded To Consultation, paragraphs 17 and 7.28.

111 The minded To Consultation, paragraphs 18, 32, 7.28 and 7.30.

112 MAG acquired STAL in February 2013, after the minded to Consultation was published in January 2013.

113 The minded to Consultation, paragraph 7.26 and 7.29.

114 The CAA published its consultation on the initial Q6 proposals for the economic regulation of Heathrow, Gatwick and Stansted (the Initial Proposals), on 30 April 2013, on the assumption that if STAL met the MPT it would need to be regulated by means of a licence. This is available at: http://www.caa.co.uk/docs/33/CAP%201031%20Economic%20regulation%20at%20Heathrow%20Gatwick%20and%20Stansted.pdf

115 Non-confidential versions of these documents are available on the CAA's website: http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14395

- Manchester Airports Group (MAG, who acquired STAL in February 2013).
- London Southend Airport Company Limited (Southend).

4.31 The Stansted Airport Consultative Committee (SACC) did not respond to this consultation.

4.32 Southend stated that the assessment should be based on a forward looking assessment of market power and economic regulation should be a matter of last resort.

4.33 MAG disagreed with the minded to assessment of Test A. MAG considered that the discussion on the cargo market in the minded to Consultation was brief and did not reflect the reality of the sector, was based on limited and unbalanced evidence, was an incomplete analysis, failed to consider key economic factors and failed to obtain key evidence. In MAG's view:

- Air cargo is a small part of the cargo industry and in many cases is constrained by other modes of transport.
- Within air cargo, most goods are carried in the bellyhold of passenger aircraft; the rest are carried in cargo-only aircraft.
- Cargo-only airlines that carry goods that are not time-sensitive (non-express) have an array of alternatives to Stansted.
- The airlines that carry time-sensitive (express) goods are sophisticated logistics companies and would respond quickly to changes in prices.
- Airports play a number of different roles within the express goods segment (main hubs, sub-hubs and gateway airports). It is only the latter group – gateway airports – that need to be close to the final destination for the goods and therefore enjoy any degree of geographical scarcity.
- Even within the very narrow segment of gateway airports for express goods, there are many airports within an acceptable distance of London that could provide a competitive constraint on Stansted.

4.34 IAG Cargo (which until recently operated dedicated cargo services at Stansted) agreed with the CAA's minded to Consultation in relation to cargo services. It considered that STAL currently had SMP in the Stansted cargo market.

Additional consultation

4.35 In October 2013 CAA published an additional consultation on relevant market developments since the change of ownership of STAL (the additional Consultation)[116]. It noted that market developments, since the publication of the minded to Consultation, provided new evidence regarding STAL's behaviour. This new evidence primarily related to STAL agreeing long-term bilateral agreements with over 90 per cent of the existing passenger traffic at STAL.[117] At that stage, there were no similar developments related to cargo services.

4.36 The CAA indicated that, as a result of these developments, STAL may not meet the MPT in the relevant passenger market. In relation to cargo the consultation considered that if Test C was assessed separately for cargo, it was possible that the costs of regulating cargo on its own would mean the benefits of regulating cargo related AOS at Stansted would not outweigh the adverse effects and that Test C would not be met.[118]

Summary of responses to the additional Consultation

4.37 The CAA received seven responses to the additional Consultation, five of which were relevant to the STAL cargo airline market:

- FedEx (an express transportation company which operates its principal sorting and distribution centre from Stansted).
- IAG Cargo.
- London First.
- MAG.
- SACC.

4.38 The SACC's response was on behalf of all the airlines at Stansted except easyJet. The SACC stated that cargo-only airlines are dependent on hub-type operations and many have invested heavily in infrastructure at Stansted. They assessed the costs of relocating to another airport, (even were this operationally/commercially feasible) would be prohibitive.

116 Stansted Market Power Assessment: consultation on relevant market developments: October 2013 http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5807

117 The additional Consultation, paragraph 6.

118 The additional Consultation, paragraph 8.

Additionally, they argued that cargo operations run to demanding schedules and are heavily reliant on surface connectivity. Surface access to airports other than Stansted was inadequate to maintain existing operations. Moreover (as discussed in chapter 3 above), SACC noted that other potential alternative hubs are now in common ownership with Stansted [119] – and while consolidators [120] currently use third party operations, to the extent that these are possible and/or viable, the usefulness of this is strictly limited.[121] In short, cargo airlines maintained that they have no viable alternative airports from which to operate and in consequence, are subject to the SMP of STAL.

4.39 By contrast, MAG considered that, with the evidence available, it was difficult to see how the CAA could conclude that STAL had SMP in the cargo sector. MAG noted that in the time since MAG acquired STAL, some cargo bilateral agreements had been agreed and MAG had a clear commercial strategy for cargo. MAG also considered that it was not necessary for deals to be in place with all, or even a majority, of cargo airlines for the impact of the new cargo deals on the MPA to be significant. The MPA should be focused on forward-looking competitive conduct – an airport operator with SMP would have little incentive even to start negotiating such deals. MAG asserted that it was determined to help cargo airlines thrive at Stansted and that it was already working hard to attract new cargo airlines to Stansted from airports such as Heathrow, Manston, Luton and Schiphol. MAG noted that the new factual situation therefore applied to the passenger and cargo sides of Stansted's business.

4.40 MAG stated that in addition, further available evidence should significantly affect the CAA's analysis of the cargo sector at Stansted and support the arguments they had made in the response to the minded to Consultation:

[119] MAG owns Manchester, East Midlands and Stansted airports.

[120] Consolidators are also called freight-forwarders. They assemble and ship several smaller shipments together to avail of better freight rates and security of cargo. They arrange shipment of goods for the benefit of a client but generally do not operate or own aircraft.

[121] For example, by placing cargo in the hold of long-haul passenger aircraft, operating at Heathrow.

- The fact that STAL is now owned by MAG rather than BAA removes any suggestion that STAL does not compete with HAL and GAL for cargo destined for London. In addition, each of these airports, plus Luton, Manston, Southend, Cambridge, Oxford and Birmingham, are all within a two hour drive to London and could be used as a gateway airport for cargo destined for London given the lower time sensitivity compared to passengers.

- MAG also explained its commitment to forging strong long term partnerships with airline partners to encourage growth and that cargo airlines were an important part of this strategy. It would not be optimal for STAL to adopt contradictory strategies for passenger and cargo airlines whereby growth is incentivised for passenger airlines but not for cargo airlines. The same incentive – to utilise a higher proportion of Stansted's capacity – applies to both the passenger and cargo sides of STAL's business.

- The Airport Charges Regulations 2011 mean that STAL 'must not discriminate between airport users' unless it can show that 'the reason for the differentiation is relevant, objective and transparent'.[122] As a result, even if there were no strong competition in the cargo sector, strong competition in the passenger airline sector would protect all of STAL's customers.

4.41 London First considered that the burden of proof required to impose a licence on STAL had not been met and that the CAA should confirm as soon as is practicable that STAL would not be subject to a licence.

4.42 IAG Cargo reiterated its previous comments and endorsed the SACC response to the additional Consultation. In IAG Cargo's view, there had been no material change of circumstances in relation to the cargo market at Stansted. However, the CAA understands that IAG Cargo has now withdrawn from providing cargo-only services at Stansted, but some of the demand previously served only by IAG cargo will now be served by Qatar to and from Stansted via Doha. [123] [124]

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122 The Airport Charges Regulations 2011 (SI 2491/2001), paragraph 14.

123 IAG Cargo signs freight deal with Qatar Airways, 17 January 2014, https://www.iagcargo.com/iagcargo/portlet/en/html/main

124 STAL, Stansted airport welcomes Qatar Airways to global cargo network, 03/03/2014, available at http://www.stanstedairport.com/about-us/media-centre/press-releases/stansted-airport-welcomes-qatar-airways-to-global-cargo-network

4.43 FedEx considered that the CAA should continue to analyse the Stansted passenger and cargo markets separately. FedEx stated that there is an absence of supply side substitution (between passenger and cargo services) and different facilities are required to service each operation i.e. the facilities required to process cargo are not the same as that for handing passengers and vice versa. FedEx confirmed that it was not aware of any relevant developments in the cargo market akin to those in the passenger market.

4.44 FedEx considered that STAL met the MPT for the cargo market and that the CAA should continue to regulate STAL. FedEx stated that it and other cargo operators have no commercially viable alternative airports to operate from given:

- Their demanding schedules (including timely access to London).
- Their heavy reliance on surface connectivity.
- Appropriate cargo handling infrastructure and slot availability.
- Reasonable policies on noise and night flights.
- That many cargo operators have invested heavily at Stansted.

4.45 FedEx stated that Stansted is FedEx's gateway major gateway into the UK and represents an integral part of FedEx's UK business model. FedEx has invested heavily at Stansted with a 30-year lease on a 22,000 m^2 facility, allowing parking for 4 designated aeroplanes and employment of hundreds of employees directly (and more indirectly).

4.46 FedEx noted that the additional passenger flights arising as a result of the bilateral agreements with easyJet and Ryanair will:

- Reduce even further the importance of cargo as customers at Stansted.
- May incentivise STAL to increase prices/reduce quality so as to 'encourage' cargo operators to transfer their operations to East Midlands Airport (EMA).

Stakeholder letter – December 2013

4.47 On 20 December 2013, the CAA published a stakeholder letter advising that it had decided to complete two separate MPDs for Stansted – for the services to passenger airlines and the services to cargo-only airlines. The

CAA asked for any other representations and/or new evidence on cargo by 20 January 2014.[125]

Summary of response to the stakeholder letter

4.48 The CAA received two responses from:

- MAG.
- FedEx.[126]

4.49 MAG restated their view that STAL does not have SMP in relation to cargo customers (and also that Tests B and C are not met). MAG considered that the CAA had not presented any quantitative analysis showing that STAL has SMP in cargo services. MAG stated it had presented clear evidence showing that STAL does not have SMP, which is further supported by the fact that STAL is demonstrably not behaving like an airport operator with SMP. This includes:

- In January 2014, MAG wrote to STAL's cargo customers advising that STAL's conditions of use for the next two years (from 1 April 2014) will include a commitment to preserve the regulatory conditions of the current STAL price controls (that the published charges to land cargo aircraft are no more than the published charges to land passenger aircraft and that the discount for off-peak (winter) charges for large aircraft follows the same structure for smaller aircraft). This is unconditional on the outcome of the MPD.
- Since MAG acquired STAL, deals have been agreed with passenger airlines representing 97 per cent of STAL's business. However, MAG has also focused on securing agreements with cargo airlines, and is working to attract new cargo airlines, including offering price reductions, from airports such as Heathrow, Manston, Luton and Schiphol. In particular:
  - Two cargo deals have already been agreed with [✂].
  - Formal offers have been made to two other airlines [✂].

125 Completing two Market Power Determinations for Stansted airport 20 December 2013, http://www.caa.co.uk/docs/78/20131220%20Stakeholder%20Letter%20-%20Separate%20MPD%20for%20STAL%20Cargo%20Market%20FINAL.pdf

126 Responses to the stakeholder letter http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=12275

  - MAG have had deal discussions with numerous other cargo airlines, including [✂].[127]

- MAG has appointed a new Commercial Director to build stronger relationships with MAG's cargo airlines, similar to those it has achieved in relation to passenger airlines.

- MAG has established a dedicated cargo team which is committed to developing the cargo business at STAL and ensuring its cargo customers receive a first class service from the airport.

4.50 MAG considered that this approach contrasts with the position when HAL, GAL and STAL were under common ownership. MAG claimed that its acquisition of STAL has had a fundamental effect on the commercial environment at Stansted both in terms of engagement with airlines and resulting commercial agreements.

4.51 FedEx's response was received, after the end of the period for responses, on 3 February 2014. FedEx reiterated its previous response and supported the views expressed by the SACC in its earlier response.

Section 3 – CAA views on market definition

4.52 This section identifies the relevant cargo market for the purposes of assessing whether there is a market that falls within the definition in section 6 of the CA Act, in which STAL has or is likely to acquire SMP. This relevant cargo market comprises of or includes cargo related AOS provided at Stansted airport.

- Section 3.1 considers the product market.

- Section 3.2 considers the geographic market.

- Section 3.3 concludes on the relevant cargo market for the purposes of this determination.

4.53 In analysing cargo related AOS to air cargo airlines, the CAA has identified the key stakeholders set out in figure 4.1. (More detail on these stakeholders are set out in chapter 3).

127 MAG's response to the CAA's letter of 20 December 2013, dated 20 January, paragraph 14, http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=12275

Figure 4.1 AOS to air cargo airlines stakeholders

Stakeholder	Role in cargo services
Cargo owners	Cargo owners are those who own the cargo that is being transported. The CAA has a duty to '*further the interests of users of air transport services'*, in this case the owners of cargo.
Shippers	Shippers arrange the transportation of cargo on behalf of cargo owners. This can be a separate organisation who may arrange transportation on behalf of cargo owners or they may be an individual within an organisation who arranges the transportation of cargo.
Freight-forwarders	Freight-forwarders or consolidators are intermediaries who act on behalf of exporters, importers and cargo owners. Generally, they will not operate their own aircraft. Rather, they will purchase capacity from a cargo-only or passenger airline; however, they can also purchase capacity from integrators or, in some cases, charter a whole aircraft on an ACMI (Aircraft, Crew, Maintenance and Insurance) basis.
Postal providers	Postal providers which use air services to deliver some of their mail/packages; the Royal Mail in the UK is one such example. Postal providers can operate or contract regular overnight air services on small aircraft for domestic and short-haul international destinations. For longer international distances they tend to purchase capacity on other airlines that also serve other customers. With the liberalisation of postal services, the dividing line between integrators and postal providers is becoming increasingly blurred. For example, both TNT (Netherlands) and DHL Express (Germany) are owned by national postal service providers.
Integrators	Integrators provide a door-to-door service with the provision of ground transportation for the collection and delivery of packages. The four largest worldwide

	integrators are FedEx, UPS, DHL Express and TNT; two of which (FedEx and UPS) have a significant presence at Stansted. Integrators have their own fleets and aim to take the freight through their own delivery networks as much as possible but they also use bellyhold capacity on scheduled airlines to ship a substantial proportion of their air cargo.
Network airlines	Scheduled network airlines may have cargo divisions that mostly sell bellyhold capacity but can also have dedicated fleets of cargo-only aircraft, crew and staff. IAG Cargo is an example of this type of airline.
Freight airlines	Some airlines, contract freight operators, primarily provide ad-hoc cargo-only flight services and some regular services to other industry players (such as Titan Airways for Royal Mail).

Source: CAA

Section 3.1: Product market

4.54 As defined in both EC[128] and OFT[129] guidance, a relevant product market comprises all those products and/or services that are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and their intended use.

4.55 The CAA considers that a useful starting point for the product market definition is the key service bundle, which is likely to consist of one or more AOS, as defined in section 68(1) of the CA Act. Such AOS are an upstream product in that they are supplied by the airport operator to airlines who, in turn, supply a downstream product in the form of air transport services to their customers.

4.56 Given the various products and services that STAL provides to users of infrastructure at Stansted, it is appropriate to determine a service bundle rather than individual products or services as:

- These services are likely to form the key bundle of services that any airline would require to operate from an airport.

128 EC Market Definition Notice, paragraph 7.

129 OFT 403, paragraph 2.5.

- An airline would be required to bear the costs of all or a significant number of these services to provide air transport services.[130]
- In deciding whether to land at an airport, an airline would take into account the total bundle of charges it is required to pay rather than focusing on any one charge in isolation (even though services may be priced individually by the airport operator to reflect different cost drivers).
- The MPT is applied to the operator of an airport area, which is defined in section 9(1) of the CA Act as the person having overall responsibility for the management of all of the area. In determining overall responsibility, the CAA's consideration includes the extent that the person controls the matters listed in section 9(4) of the CA Act, which include the type, price and quality of services provided in the area as well as access to the area. Accordingly, while recognising that STAL may not directly supply each individual service at Stansted, STAL has some degree of control, responsibility or influence on (amongst other things) the pricing of the services or the access to the relevant infrastructure as the airport operator.

4.57 Consistent with its approach in the MPD for passenger airlines[131], the CAA has considered a bundle of AOS. This is likely to consist of at least the AOS set out below:

- the use of the runway and taxiways.
- aerodrome air traffic control (ATC).
- aircraft parking.
- the provision of access and infrastructure needed for the provision of other airside and landside groundhandling services.
- security screening.
- airline staff processing facilities.
- the provision of facilities and access to for the processing of cargo.

130 Air transport services are defined in the CA Act as a service for the carriage by air of passengers or cargo to or from an airport.

131 Market power determination for passenger airlines in relation to Stansted Airport – statement of reasons CAP 1135, paragraph 4.31.
http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5911

Section 3.1.1: Cargo related AOS to cargo-only airlines as the narrowest possible product market

4.58 This section looks at whether cargo related AOS to cargo-only airlines at Stansted should be segmented into narrower product markets. This might be appropriate, for example if STAL price discriminated across different types of cargo-only airlines or between different types of cargo with different characteristics.[132]

4.59 As set out in the chapter 3 (industry background), the CAA has identified a number of possible different products in the downstream cargo transportation market including express versus deferred cargo, and normal versus outsized/hazardous[133] cargo. Normal cargo can be transported by any means whereas for airborne services outsized and hazardous cargo can only be carried on cargo-only aircraft. The restrictions on carrying these different categories of cargo affect cargo owners' and shippers' substitution choices for air transport by cargo-only aircraft.

4.60 However, the CAA does not consider that downstream cargo characteristics are necessarily a relevant distinction for the upstream product market for cargo related AOS. No consultee suggested a narrower definition. In particular:

- Airport operators are unable to monitor the types of cargo carried and do not appear to discriminate by the type of cargo airlines carry.
- The CAA has no evidence that airport operators price discriminate between express cargo airlines and other cargo-only airlines. For example, the published charges at Stansted and other airports do not distinguish between express and non-express cargo airlines.

[132] OFT 403, paragraphs 3.8 to 3.10.

[133] Normal cargo refers to all cargo that is neither outsized nor hazardous. The carriage of dangerous goods by air is governed by international standards, which each country, under the provisions of the International Convention on Civil Aviation (Chicago Convention), is required to introduce into national legislation.

- Outsized and hazardous cargo is likely to be a small segment of overall air cargo that is shipped through Stansted and there is no evidence that any airport operator price discriminates for this limited segment of its customers. STAL and other airport operators' charges are, in general, per aircraft maximum take off tonnage and, per landing and parking time. While the CAA does not have detailed evidence on how much cargo carried by express carriers is in fact express (time-sensitive) cargo, there is no evidence that this is used in an airport operators' charges.

4.61 Therefore, the CAA considers that it is not appropriate to define a narrow upstream market for cargo related AOS based on the characteristics of a cargo airline or the cargo being carried. In the CAA's judgement the narrowest market definition is therefore cargo related AOS provided to cargo-only airlines. This was the definition used in the minded to Consultation.

Section 3.1.2: Candidate markets

4.62 As set out in the framework section, due to the limited evidence obtained, the CAA has not been able to apply a formal quantitative SSNIP test for its examination of this market. However, as explained in the previous section, the CAA has identified cargo related AOS to cargo-only airlines as the narrowest possible market and its starting position as a candidate market. The CAA has then considered the evidence obtained and judged whether this indicates that this market definition can be supported or whether the scope of the product market should be widened.

4.63 The CAA has identified three candidate markets that include STAL's cargo related AOS, listed in Figure 4.2 (below).

Figure 4.2 Candidate product market for cargo related airport operation services

Market	Product Scope
AOS to cargo-only airlines	Cargo related AOS for airlines operating cargo-only air transport services. This is the narrowest possible market product market.
AOS to air cargo airlines (including bellyhold)	Cargo related AOS for airlines operating cargo air transport services (i.e. including cargo-only and bellyhold cargo air transport services).
Cargo transportation services (including other modes)	Air cargo forms a subset of a much wider cargo transportation market including other alternative transport modes (sea, road and rail).

4.64 The following sections assess the evidence for these candidate markets. Conclusive quantitative evidence was not available so the CAA assessed the evidence obtained from stakeholders against the requirements of a SSNIP test; that is, it came to a judgement of whether the evidence suggests that sufficient substitution would take place to make a 5 to 10 per cent price increase unprofitable.

Section 3.1.3: AOS to cargo-only or air cargo airlines: assessment

4.65 This section explores whether a cargo market of cargo related AOS to cargo-only airlines is plausible or whether the market should be widened to air cargo because of possible substitution by cargo owners and shippers to bellyhold cargo operations. Evidence is considered from the standpoint of different stakeholders including: MAG, network airlines, integrators, freight-forwarders and cargo owners.

4.66 To consider that there is a cargo-only market, the CAA would have to judge that there is limited substitution opportunity between cargo that could be transported on cargo-only aircraft and within the bellyhold of a commercial passenger aircraft. For the reasons set out below, the CAA does not consider that the evidence obtained supports this contention.

Evidence from stakeholders

MAG

4.67 MAG maintained that bellyhold competes directly with cargo-only flights and that in recent years there has been a clear trend away from transporting cargo on cargo-only flights and towards using bellyhold.[134] MAG has told the CAA that

> *In the South-East of England, Stansted faces strong competition on two fronts: from Heathrow's and Gatwick's belly-hold services on the one hand, and from Heathrow's, Luton's and Manston's cargo-only services on the other.*[135]

and

> *Most air cargo goods are carried in bellyhold (2.5 million tonnes), which competes directly with cargo-only flights (800,000 tonnes).*[136]

Network airlines

4.68 IAG Cargo advised that its primary aim is to fill the bellyhold of BA passenger aircraft, [✂]] prior to using its cargo-only aircraft, [✂] . Where capacity in bellyhold is insufficient or a destination is not served by passenger flights, cargo-only aircraft are used. IAG Cargo provided the example of a shortage of bellyhold capacity for exports from Hong Kong to the UK.[137]

4.69 IAG Cargo stated that where the shipper is not concerned whether cargo is shipped via cargo-only or bellyhold, there is a choice for the operator as long as the shipment meets the overall shipping time required. Using the example of shipments to Hong Kong, there are both time and cost advantages to IAG Cargo to use bellyhold as BA operates a greater number of passenger flights to Hong Kong than it does cargo-only flights. It is therefore able to provide a quicker delivery time and it is cheaper for

134 Source MAG: MAG's response to the additional Consultation, paragraphs 48b and 61, available at http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=15482

135 Source: MAG, MAG's response to the CAA's letter of 20 December 2013, dated 20 January 2014, paragraph 27 d, available at http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=15482

136 Source: MAG, MAG's response to the CAA's letter of 20 December 2013, dated 20 January 2014, paragraph 26 b, available at http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=15482

137 Source: IAG Cargo [✂].

IAG Cargo. IAG Cargo noted that it would choose bellyhold first for cargo to Hong Kong.[138]

4.70 The CAA notes that IAG Cargo has withdrawn its cargo-only operations from Stansted by terminating its contract with Global Supply Systems from which it leases their cargo-only fleet.[139] At the same time, BA also announced that there will be more bellyhold capacity with the on-going arrival of new generation aircraft and that it will buy cargo-only one-stop capacity between London and Hong Kong via Doha from Qatar airlines to serve existing customers.[140]

4.71 Emirates SkyCargo and IAG Cargo advised the CAA that the decision about how cargo is shipped depends on the freight-forwarder and the shipper.[141] Freight-forwarders make up the majority of these airlines' customer base, and handle a proportion of traffic that cannot be sent via bellyhold due to its particular features (i.e. hazardous and outsized).[142]

4.72 Emirates SkyCargo advised that operating cargo-only services is more expensive than passenger flights carrying bellyhold cargo as there is not the passenger fare element to add to the revenue. Emirates SkyCargo considered that it would be unlikely that any cargo-only flight would be 100 per cent full of cargo-only type freight; therefore it would look to fill up spare capacity on a cargo-only service with cargo that could be moved on passenger flights.[143]

4.73 Emirates SkyCargo introduced additional cargo-only capacity at Heathrow to deal with the loss of bellyhold capacity as a result of changing from the B777-300s to A380s on the Heathrow – Dubai route.[144]

Integrators

4.74 The evidence obtained from the integrators indicates that they utilise both their own cargo-only aircraft and bellyhold for their express operations.

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138 Source: IAG Cargo [✂].

139 Source: http://atwonline.com/finance-amp-data/iag-ends-long-running-cargo-connection

140 The CAA notes that Qatar will start operating a B777 five times a week between Stansted and Doha in May 2014, as announced in "STAL, Stansted airport welcomes Qatar Airways to global cargo network," 03 March 2014, available at http://www.stanstedairport.com/about-us/media-centre/press-releases/stansted-airport-welcomes-qatar-airways-to-global-cargo-network.

141 Source: Emirates SkyCargo [✂]; and IAG Cargo [✂].

142 Source: Emirates SkyCargo [✂] and IAG Cargo [✂].

143 Source: Emirates SkyCargo [✂].

144 Source: Emirates SkyCargo [✂].

4.75 The integrators offer an end-to-end solution for their clients and place significant weight on maintaining control of the overall process.[145] Where items are sent via bellyhold this is done where it is either more expedient to do so or their networks do not have a sufficiently timely reach.[146]

4.76 This picture of integrators using bellyhold is confirmed by the SDG report[147], which noted that in particular for long-haul routes integrators would purchase bellyhold space from passenger airlines, with integrators effectively acting as freight-forwarders.[148]

4.77 FedEx confirmed that it "utilizes a number of passenger airlines for 'bellyhold' operations into and out of the UK. For example FedEx works with approximately 45 passenger airlines at Heathrow and 2 at Gatwick".[149]

4.78 DHL Express advised the CAA that it operates from Heathrow and East Midlands as a combined system. It mainly operates short-haul flights into East Midlands. Where appropriate long- haul material may be trucked to Heathrow for onward carriage in the bellyhold of commercial passenger airlines.[150]

4.79 DHL Express noted that it operates a dynamic system taking whatever the customer wants to ship and using varying routes that depend on the available capacity on any given night's operations; there is no customer booking of routes. DHL Express loads what it can onto its aircraft to maximise aircraft capacity utilisation.[151]

4.80 TNT noted that there is a level of substitutability between the use of its own network and bellyhold operations. However, TNT stated that this decision [of switching] was not on a 'shipment by shipment' basis but followed longer term trends and network planning. TNT mentioned lodgement time as an issue with utilising bellyhold. It noted that when

145 Source: TNT [✂]; DHL Express [✂].

146 Source: TNT [✂]; [✂]; DHL Express [✂].

147 Source: SDG (2010), Air Freight: Economic and Environmental Drivers and Impacts Report - Final, March, Prepared for the Department for Transport (the SDG report). The CAA notes that the SDG report was not an assessment of the market position of Stansted in relation to the air cargo industry. However, it does provide some clear evidence on the air cargo industry.

148 Source: The SDG report, paragraph 6.34.

149 Source: FedEx [✂].

150 Source: DHL Express [✂].

151 Source: DHL Express [✂].

using its own equipment it can take cargo to and from the aircraft in under an hour, whereas with bellyhold it can take up to 4 times as long to access/process the cargo. Therefore, over time it may switch from using its own equipment to using bellyhold if it becomes cheaper to do so. TNT noted that there is a ‘stickiness' in this due to the need to gain the best return on its investment that it has made in its fleet.[152]

Freight-forwarders

4.81 The SDG report states that:

> *Capacity [for freight-forwarders] will generally be purchased from passenger or freight airlines; however the forwarders will also purchase integrator capacity or even – exceptionally – whole aircraft on an ACMI*[153] *basis*.[154]
>
> *Integrators will predominantly operate their own aircraft on short haul routes within Europe. On many long haul routes, in particular where volumes are relatively low, they will seek to purchase capacity in the bellyhold of passenger aircraft. When purchasing bellyhold space, integrators effectively act as freight-forwarders, negotiating bulk discount rates with airlines and passing consignments to a handling agent at the airport of departure*.[155]

4.82 Agility Logistics advised that, beyond hazardous and outsized items (which account for some 2 per cent of its volume) the choice between bellyhold or a cargo-only service was mainly the result of the client’s preference for timeliness of delivery and how well that matched up with scheduled flights. Urgent items[156] would be sent on the next available flight whereas less urgent items would be part of a consolidated service. Agility Logistics stated that over 70 per cent of its cargo was shipped via bellyhold with the remainder going via cargo-only aircraft.[157]

4.83 Agility Logistics stated that when they hand the shipment over to the carrier they are concerned about it reaching the destination on time,

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152 Source: TNT [✂].

153 ACMI or Aircraft, Crew Maintenance and Insurance, is a type of leasing arrangement where the operator lease all the required services to operate an aircraft.

154 Source: The SDG report paragraph 6.23.

155 Source: The SDG report paragraph 6.34.

156 Urgent items are defined by Agility Logistics as requiring delivery within 2 to 3 days.

157 Source: Agility Logistics [✂].

rather than the route by which it travels. There is a choice left to the carrier as to whether it places the shipment in bellyhold or in a cargo-only service.[158]

Cargo owners

4.84 There are a huge number of individual cargo owners, and whilst the CAA conducted a public consultation, it was not practicable for the CAA to proactively seek evidence from such owners individually. However, it has considered the views of freight-forwarders and integrators (acting as freight-forwarders) as reasonably closely aligned with the interests of cargo owners. Cargo owners and shippers, in contrast with passengers, are not usually concerned about the precise route their cargo takes or the mode used (i.e. sea, air, road and rail), and they are more concerned with ensuring delivery in a specified time at the lowest cost. They are generally indifferent to whether cargo uses Stansted or another airport. This is supported by the evidence obtained from stakeholders.

4.85 For example, DHL Express told the CAA that:

> *For security reasons, the customer cannot choose how their package will reach its destination. Routing is at DHL Express's discretion and they will not tell the customer the exact route taken, although the latter can keep track of their package's general progress.*[159]

4.86 The operator of EMA told the CAA that:

> *The cargo may have to make two or three changes of plane, but it doesn't mind and the end user doesn't need to know how it is getting there. The integrator has a network and has choices as to how to send an item – if it has a full plane load then fine, but with multiple flights joining points on its network it will be trying to keep flights as full as possible...*[160]

4.87 Freight-forwarders and integrators have choices over how to transport cargo and are not usually concerned about the precise route their cargo takes or the mode used (i.e. sea, air, road and rail), and are more concerned with ensuring delivery in a specified time at the lowest cost. The CAA therefore considers that the interests of cargo owners are more aligned with these downstream operators (freight-forwarders and

[158] Source: Agility Logistics [✂].

[159] Source: DHL Express [✂].

[160] Source: MAG [✂].

integrators (acting as freight-forwarders)), with whom they are more likely to contract directly, rather than the interests of individual cargo airlines. This is in line with CAA's duty under the CA Act to protect the interests of users of air transport services – in this case, those with rights in cargo. On that basis, the CAA considers it likely that the majority of cargo owners do not have a preference for the exact routing or method of transport (as between cargo-only services or bellyhold), as long as cargo arrives safely and by the desired time-frame within a reasonable budget. The majority of them are likely to be agnostic about the way cargo is transported.

Summary on substitution between cargo-only and bellyhold operations

4.88 The CAA considers that the evidence obtained indicates that there is likely to be a significant level of substitutability between cargo-only and bellyhold.

4.89 The CAA recognises, as discussed in the background sections, that there are regulatory and physical barriers that prevent hazardous and outsized items from been shipped in the bellyhold of a passenger aircraft. Therefore, there is no substitutability between cargo-only and bellyhold for this type of traffic. However, hazardous and outsized cargo is likely to form a small discrete segment of cargo and, as discussed in section 3.1.1, airports do not discriminate between different types of cargo in their charging structures and it does not constitute a separate market.

4.90 For normal cargo, which represents the majority of shipments, there appears to be significant flexibility over how it is shipped. Integrators and freight-forwarders appear to use a mix of both bellyhold and cargo-only operations. For those airlines that have direct access to both modes within their fleets, it likewise, appears that they will be move cargo between bellyhold and cargo-only operations to maximise their returns.

4.91 The CAA notes there is likely to be a short run incentive on cargo-only airlines to fill cargo-only aircraft ahead of bellyhold, especially where they are bearing the full cost of the cargo-only assets. Bellyhold capacity is more likely to be an adequate substitute for some of the cargo carried by integrators where it would allow an integrator to reach the required destination in an adequate time-frame. However, integrators, with their own aircraft operating from Stansted may regard the costs of running their aircraft as fixed in the short term. In the longer term, they could be expected to reroute a larger proportion of their cargo to bellyhold or find alternative ways to route their cargo without using Stansted. In this time-frame they may be able to redeploy or otherwise adjust the number and size of aircraft that they operate from Stansted.

4.92 Given the respective volumes of normal cargo compared to hazardous/outsize cargo, in the CAA's judgement, there is likely to be a sufficient degree of switching by airlines at the margins over the medium term to provide a sufficient constraint on any attempt by STAL to impose a 5 to 10 per cent price increase. Network airlines have an incentive to fill the bellyhold on their passenger services first and are likely to adjust their cargo-only capacity to reflect the level and mix of demand for cargo space.

4.93 Overall, the CAA is not satisfied that STAL operates in a product market that is as narrow as AOS to cargo-only airlines due to evidence of sufficient substitution to bellyhold. The evidence above suggests that a cargo market that contains both cargo-only and bellyhold operations is more likely than a market comprising solely AOS provided to cargo-only airlines. In the CAA's judgement, the cargo market is at least as wide as cargo-only and bellyhold, i.e. the 'AOS to air cargo airlines' market as defined in Figure 4.2.

3.1.4: AOS to air cargo airlines market: substitution to other modes

4.94 This section considers whether the AOS to air cargo airlines market might sit within a wider product market that involves other modes of cargo transportation, principally road transport (trucking).

4.95 As noted above, cargo owners may have a time/cost preference but unlike passengers, most cargo owners are likely to be generally unaware and indifferent as to how precisely cargo travels. Cargo can be routed by a number of intermediary steps and cargo owners are generally indifferent between cargo routings, as long as it arrives at its destination within the service specification to which it was sold e.g. within 24 hours, two to five days or three weeks; and at an acceptable price. Therefore, cargo can be shipped over land, water or air depending on the time/cost preference of the owner. Trucking is used in two main ways that affect the decision on the determining the cargo market:

- Trucking to/from alternative airports.
- Trucking from pick up to destination.

4.96 The first is more applicable to determining the geographical market (which is assessed below) but is considered here alongside the evidence about trucking. The second is more accurately a different mode and therefore applicable to the product market definition.

Trucking to alternative airports

4.97 The SDG report states that trucking plays an important role within the air cargo industry. The report typifies trucked cargo in two categories:[161]

- **Conventional road haulage** forms part of the air cargo service in that it serves as the link between airport and either the shipper or the recipient of cargo. This supports the air cargo transportation service and does not compete with it. As it is complementary, this type of road haulage has been excluded from the assessment of the competitive constraints as being a substitute product on its own. However, trucking plays an important role in potentially widening the geographic scope of the AOS to air cargo airlines market.
- **Air cargo by road** is considered by SDG as trucks that contain air cargo that has been customs cleared or bonded trucks.[162] SDG notes that these trucks are often given a flight number and the contents remains subject to the same customs regulation as they would on an aircraft in flight.

4.98 It is common for European airlines to truck cargo to a hub that supports long-haul routes. In particular, SDG noted that '*in the air freight market, domestic and regional flights are replaced by trucks due to the significant saving in cost compared to flying and acceptable reduction in time for a general air freight product*'.[163]

- Air cargo trucking achieved a compound annual growth rate of 24 per cent between 2002 and 2007.[164]

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161 Source: The SDG report paragraph 7.3.

162 Bonded trucks: refers to trucks designated specifically for the inland transportation of bonded goods. Bonded Goods Dutiable goods upon which excise duty has not been paid, i.e., goods in transit or warehoused pending use. The bond is the agreement entered into by the owner of the dutiable goods with Customs and the excise authority in which the owner promises to pay the duty when the goods are released for final distribution or use.

163 Source: The SDG report paragraph 7.8.

164 Source: The SDG report paragraph 7.12.

- SDG's estimate that a near equal amount of trucked 'air cargo' and bellyhold cargo crosses between the UK and Europe each year.[165]

4.99 However, IAG Cargo told the CAA that there are commercial reasons why bonded trucks are not viable replacements for flying cargo to Stansted. It stated:

> *airfreight customers value time in transit and prefer services which are as direct as possible. By trucking cargo, we would be offering our customer a deferred product with additional complexity. The price we would be able to charge for this deferred product would be lower, we would retain the fixed costs of the aircraft and suffer additional trucking costs.*[166]

4.100 IAG Cargo has also raised a specific UK regulatory barrier in relation to IAG Cargo's use of bonded trucks entering the UK. The effect of the customs regulations would require additional costs and time to unpack, screen and repackage bonded cargo for onward transmission by air from the UK.[167]

4.101 The CAA considers that this indicates a potential barrier to cargo entering or moving around the UK via bonded trucks. However, this barrier does not apply to cargo leaving the UK by truck to use non-UK airports, as this is a UK specific measure with regard to cargo being placed on aircraft leaving the UK.

Trucking as an alternative mode

4.102 The SDG report noted that the integrator model supports trucking up to 500km for express cargo.[168] It indicated a boundary of 500km where road networks may compete with air cargo. Given this range, this is likely to be a constraint for some domestic and intra European air cargo flows including for express cargo. The practical difficulties of trucking cargo worldwide are likely to be substantial and limit substitutability for longer flights.

165 Source: The SDG report paragraphs 7.13 to 7.14.

166 Source: IAG Cargo [✂].

167 Source: IAG Cargo [✂].

168 Source: The SDG report paragraph 7.1, 6.37 and 6.38.

4.103 This limit for trucking express cargo has been corroborated by evidence collected directly by the CAA. DHL Express advised the CAA in relation to trucking from EMA or London to Edinburgh (637km away[169]) that:

> *Each of the four main integrators (DHL Express, FedEx, TNT, UPS) fly to EDI, and so does Royal Mail. Scotland is too far to truck cargo within a reasonable time*.[170]

4.104 DHL Express advised the CAA that it operates from Heathrow and East Midlands as a combined system. It mainly operates short-haul flights into East Midlands. Where appropriate long haul material is trucked to Heathrow for onward carriage in the bellyhold of commercial passenger airlines.[171]

4.105 TNT told the CAA that if it could use trucks rather than air cargo it would. However, it was limited by the pickup time requirements of its express products. It also noted the significant cost difference between trucking and the use of air cargo, which could be '*up to a factor of 10 times more expensive*'.[172]

4.106 Similarly, the freight-forwarder Agility Logistics informed the CAA that it would consider trucking items going to Europe, if that would fit the timelines of cargo owners or shippers.[173]

4.107 Royal Mail, which has an extensive domestic road network, has told the CAA that its preference is for road. However, for time sensitive express, first class and overnight mail flying is more suitable.[174]

Summary on intermodal substitution

4.108 The evidence obtained suggests that, for intra-Europe cargo, including domestic cargo, trucking is likely to be a substitute for some AOS to air cargo airlines. However, given the price difference, speed and the geographic constraints of the UK being an island, there may be limited scope for substitution between air cargo and road haulage, particularly for express cargo. The evidence suggests that what can be sent via road

169 According to Google Maps.
170 Source: DHL Express [✂].
171 Source: DHL Express [✂].
172 Source: TNT [✂].
173 Source: Agility Logistics [✂].
174 Source: Royal Mail [✂].

haulage is already sent via this channel and air cargo is chosen due to retail services standards imposed by the shippers.

4.109 For cargo going to non-European destinations air cargo is likely to have a time/cost advantage over other potential shipping methods.

4.110 The evidence the CAA has obtained on whether it can conclude that other modes form part of the same product market appears inconclusive. Therefore, for the purposes of this determination, the CAA has proceeded on the basis that AOS to air cargo airlines (including bellyhold) is the appropriate cargo product market. If STAL lacks market power in this market, it is unnecessary to decide whether it may be even wider.[175] In any event, the CAA notes the possibility that the market may be wider if intermodal alternatives are included. Even if other modes are not considered to be in the market, they are likely to provide a competitive constraint and therefore affect the price elasticity of AOS to air cargo airlines market in a way that reduces market power from the airport operator. The CAA has taken into account this constraint in considering whether STAL has market power, as further explained below.

Section 3.1.5: Conclusion on product market

4.111 The discussion above sets out the evidence that the CAA has obtained and the CAA's interpretation of that evidence.

4.112 Based on its understanding of the market and the evidence obtained, the CAA considered there were three potential candidate markets:

- AOS to cargo-only airlines;
- AOS to air cargo airlines, which includes air transport services for cargo-only airlines and cargo carried in the bellyhold of passenger airlines.
- Cargo transportation services (cargo related transportation services to air cargo and intermodal alternatives).

4.113 The CAA is not satisfied that it was appropriate to define a narrow upstream market for AOS based on the characteristics of a cargo airline or the cargo being carried.

175 The CAA notes that the OFT Guidelines (OFT 403, paragraph 2.14) states that "where there is strong evidence that the relevant market is one of a few plausible market definitions, and the competitive assessment is shown to be largely unaltered by which one of these market definitions is adopted, it may not be necessary to define the market uniquely."

4.114 The CAA considers that the evidence obtained indicates that there is a level of substitutability between bellyhold and cargo-only services. Integrators and freight-forwarders appear to use a mix of both bellyhold and cargo-only operations. For those airlines that have access to both, in their fleets, it appears they are prepared to move cargo between transportation in cargo-only and bellyhold to maximise their returns.

4.115 There may be some segments of cargo traffic, namely hazardous and outsized, that are restricted to cargo-only services. However, this segment is likely to be a small proportion of overall air cargo and it would share available cargo-only capacity with normal cargo. Given that this is not charged for on a different basis by the airport operator, it still forms part of the same market.

4.116 The evidence that the CAA has obtained suggests that there may be some limits on the substitutability between air cargo and intermodal alternatives. The vast majority of cargo handled at Stansted is to destinations outside the 500km limit that would make (pure) trucking of express cargo substitutable. For long-haul destinations[176], air cargo is likely to have significant time and practical advantage over alternative means. For European destinations, the cost differentials mean that such substitution is likely to be constrained by retail service standard considerations.

4.117 In conclusion:

- The CAA is satisfied that STAL does not operate in a relevant market as narrow as AOS to cargo-only airlines.
- The CAA is not able to conclude that the market is wider than AOS to air cargo airlines i.e. that it includes other modes of transport. However, there may be some competitive constraints from these other modes.

4.118 The CAA therefore considers that that the narrowest product market that STAL operates in includes AOS to cargo-only airlines and bellyhold services (the ‘AOS to air cargo airlines market’). Therefore the product market is at least as wide AOS to air cargo airlines.

Section 3.2 Geographic market

[176] At least 55 per cent of Stansted cargo goes to long-haul destinations (see chapter 3).

4.119 The geographic market 'comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous.'[177]

4.120 The geographic market area can be distinguished from neighbouring areas because the conditions of competition are materially different. In addition, it is important to recognise that, as airports serve a number of different users, there may be different relevant geographic markets for different groups of users.[178]

4.121 The assessment of competitive constraints for the geographic market definition will include an analysis of the ability of airlines to switch away from an airport as well as the potential for customers of cargo airlines to switch to AOS to air cargo airlines provided at other airports.

4.122 Similarly to the approach taken in the product market, the CAA considers the potential geographic scope of the market. To assess the geographical market, the CAA took the product market definition as its starting point and then assessed whether the narrowest area (i.e. Stansted) would pass a SSNIP test or whether sufficient substitution to other areas would occur.

Section 3.2.1: Candidate Geographic Markets

4.123 The CAA has identified three candidate geographic markets, with reference to the AOS to air cargo airlines (including bellyhold)

- ***Stansted only***. This candidate market is the narrowest geographic market conceivable.
- ***Airports in the south east of England***. The second candidate geographic market the CAA has considered is a market that would encompass Stansted and other airports in the south east of England that currently have air cargo transport services, including Luton, Heathrow, Gatwick and Manston.
- ***Airports within approximately 500km of London***. The third candidate geographic market comprises a wider set of airports – i.e. those approximately within 500km of London, including those in the near European continent.

177 The Guidelines, paragraph 3.8 and EC Market Definition Notice, paragraph 8.

178 The Guidelines, paragraph 3.59.

4.124 The following sections assess the evidence for these candidate markets. As noted in chapter 2 conclusive quantitative evidence was not obtained so the CAA's approach was to assess the evidence obtained against the requirements of a SSNIP test even though a quantitative approach was not possible. Instead, it sought to judge whether the evidence it did have suggested that sufficient substitution would take place at the margins to provide a sufficient constraint on any attempt by STAL to impose a 5 to 10 per cent price increase above competitive levels.

4.125 To do so the CAA has considered:

- Airlines' ability to switch from Stansted to other airports in response to a SSNIP in cargo related AOS to cargo airlines at Stansted (upstream substitution).
- Shippers' and cargo owners' ability to switch to cargo transport services that do not involve (routing cargo through) Stansted in response to a SSNIP in cargo related AOS to cargo airlines at Stansted (downstream substitution).

4.126 The following two sections (3.2.2 and 3.2.3) discuss whether the relevant geographical market should be limited to Stansted or broadened to include the south east of England. A wider market might be justified either if airlines at Stansted would switch enough of their services to other airports at in the south east of England to make a SSNIP unprofitable or if enough cargo demand were to be switched in the downstream cargo markets. The geographic scope is likely to be affected by a number of issues. For example, as noted in the background section, at a retail level with express and non-express operations, time-sensitivity appears to be a significant issue that may affect the airlines' choice of airport. Time sensitivity would suggest that airports closer to the airlines' customers would be preferred to those more distant airports. At a certain point, the cost of time may indicate the boundary of the geographic market, even though cargo time-sensitiveness varies by type of cargo.

4.127 For Stansted only to be the geographic cargo market the CAA would have to consider that there is insufficient substitution by airlines to other airports and that downstream substitution by shippers, freight-forwarders and integrators between Stansted and at other airports is limited. For that the CAA would need to consider that either air cargo at Stansted is almost all highly time-sensitive to the extent that the additional time taken to reach another airport in the south east of England would be critical to satisfy demand or that downstream substitution of cargo between cargo-only and bellyhold is highly constrained. The CAA does not consider to be the case (see section 3.1);

4.128 For airports in the south east of England to be the geographic cargo market the CAA would have to consider that the use of bonded trucks (or other surface modes) to transport cargo to airports further afield is limited. However, the CAA would need to consider that there is sufficient competition from other airports in the south east of England providing cargo-related AOS to cargo-only airlines and/or that there is sufficient competition between air transport service providers (i.e. cargo-only and bellyhold) across airports in the south east of England.

Section 3.2.2: Cargo-only airlines' ability to switch to other airports in the south east of England

4.129 Figure 4.3 below highlights the status of a number of key issues raised within the evidence that impact on the substitutability between airports in the south east of England and shows the current cargo tonnage at the airport. The figure highlights similarities between all the airports in these key areas. Manston is the most distant airport from Heathrow or central London, some 40 minutes more distant than Stansted, but (the current determination aside) has the most liberal night flight restrictions. Luton on the other hand is (other than Heathrow) the closest airport to both Heathrow and central London. Yet the airport has a restricted runway.

Evidence from stakeholders

MAG

4.130 MAG considers that airlines can use other airports to serve the London area. For instance MAG told the CAA that:

> *Heathrow, Gatwick, Luton, Manston, Southend, Cambridge, Oxford and Birmingham, are all within a two hour drive to London and could be used as a gateway airport for cargo destined for London.*[179]

Airlines

4.131 IAG Cargo noted that Stansted is [✂].[180] [✂][181]

[179] Source: MAG's response to stakeholder letter of December2013, dated 20 January 2014 paragraph 27b.

[180] Source: IAG Cargo [✂].

[181] Source: IAG Cargo [✂].

4.132 Emirates SkyCargo does not currently operate out of Stansted. It considered that it could operate out of any airport where it currently has assets deployed. It stated that even with this being the case there would be additional trucking costs between Heathrow and the other airports from which it operates, which it would prefer to avoid if possible. Emirates SkyCargo provided the recent example of adapting to changes in its Heathrow passenger operation with the increasing deployment of the A380 which significantly cut its bellyhold capacity.[182] To replace this lost capacity Emirates SkyCargo negotiated an additional cargo-only slot at Heathrow.[183]

Integrators

4.133 Some integrators have told the CAA that they currently operate from three to four major cargo-only bases around the UK. These are Stansted (or in DHL Express's case Luton and Heathrow) for the south of the UK, East Midlands for the middle of the UK, Edinburgh for the north of the UK and Belfast for Northern Ireland.[184] This suggests that there may be natural segregation in the UK into four regional markets: Scotland and the North, the Midlands, the South and Northern Ireland. Additionally, the Competition Commission allowed the purchase of STAL by MAG, which also owns East Midlands, which indicates that the CC did not find that there would be a significant lessening of competition by this purchase, in line with its divestment criteria outlined in the final decision on the BAA airports market investigated.[185]

4.134 FedEx listed a number of costs that it would face in switching from Stansted. These included the costs of [✂].[186] These are common relocation costs for any based airline.

4.135 Meanwhile, DHL Express does not operate from Stansted and has told the CAA it operates cargo-only services from Heathrow and into Luton.

182 Source: Emirates SkyCargo [✂], Emirates Sky Cargo noted that the A380 has half the capacity of its previous B777 aircraft. IAG Cargo noted that similar issues with the A380 compared to its traditional aircraft.

183 Source: Emirates SkyCargo [✂].

184 Source: TNT [✂]; [✂]; DHL Express [✂].

185 CAA report on 'BAA airports market investigation - A report on the supply of airport services by BAA in the UK', 19 March 2009 paragraph 10.142 http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/545.pdf

186 Source: FedEx [✂]

Additionally, it noted that integrators require a presence at an airport close to London.[187] This supports the contention above that there is a regional market and that integrators merely need to have a presence near London and not at a particular airport.

4.136 Some integrators have however raised concerns about their ability to operate from other airports in the south east of England compared to Stansted.

- Heathrow is situated ideally for the freight-forwarding industry. However, it is slot constrained, congested and has night flight limitations.[188]
- London City, though well located, does not have a sufficiently long runway or suitable cargo facilities.[189] Given the limitation of the runway there are significant restrictions on the types of aircraft that can land at the airport.[190]
- Luton is closer to central London and Heathrow than Stansted. However, the runway length prevents a fully laden wide-bodied aircraft from taking off.[191] Night flying restrictions were also identified as a barrier to operating from the airport. There are also issues in surface access around the airport perimeter.[192]
- Manston and Southend[193] were regarded generally as too distant from London in terms of travel time for cargo-only carriers transport goods from London depots and processing centres.[194]

Summary

4.137 The main issue, beyond having relevant facilities, with the scope of substitution between Stansted and other airports in the south east of England appears to be a consideration of the distance from either Heathrow or central London. It appears that Stansted may provide the

187 Source: DHL Express [✂]

188 Source: [✂]: FedEx [✂]

189 Source: FedEx [✂]

190 See: Permitted aircraft in http://www.londoncityairport.com/aboutandcorporate/page/airlinepartnersfacilities

191 Source: [✂]

192 Source: FedEx [✂]; TNT [✂]

193 The CAA notes that Southend's runway is unable to land the larger types of aircraft.

194 Source: [✂]; FedEx [✂]; TNT [✂]

most desirable combination of available facilities and distance from key customer bases at Heathrow and central London. However, other airports appear to offer similar facilities and currently provide these to airlines providing cargo services as close substitutes, even though the strength of any constraint posed is going to be a factor of both facilities and distance.

4.138 Notably, both Luton and Heathrow are used for regular integrator services by DHL Express, which does not operate from Stansted at all. DHL Express is in competition in the downstream market with the integrators at Stansted. Cargo owners, shippers or freight-forwarders are therefore likely to see it as a very close substitute to the service provided by the Stansted integrators. Therefore, DHL Express's operations at Heathrow and Luton must be considered as part of the geographic cargo market.

4.139 Likewise, IAG Cargo operates cargo services from Heathrow and purchases capacity at Luton. IAG Cargo has stated that it chooses between the use of its cargo-only and bellyhold operations on the basis of commercial requirements [✂].[195]

4.140 The CAA considers that it is necessary to look at the evidence about cargo airlines' customers preferences (i.e. shippers, freight-forwarders, integrators to the extent that they purchase services from airlines) before reaching a view on geographical market definition. This is discussed in the following section.

[195] IAG Cargo [✂]

Figure 4.3 Summary information on potential substitute airports for cargo related AOS from Stansted[196]

Airport	Time from Heathrow**	Time from central London**	Night Flight Restrictions	Suitable runway	Runway Length (m)	Spare Capacity	Regular Integrator operations	Total Cargo 2012 (tonnes)
Stansted	67	53	Yes	Yes	3,048	Yes	Yes	214,160
Heathrow	-	31	Yes	Yes	3,900/3,600	Route dependent	Yes	1,464,390
Gatwick	43	58	Yes	Yes	3,316	Route dependent	No	97,567
Luton	38	53	Yes	Yes*	2,160	Yes	Yes	29,635
Manston	108	91	No***	Yes	2,748	Yes	No	31,078
Southend	87	63	Yes	Yes*	1,856	Yes	No	9

Notes:

*Both Luton and Southend have shorter runways than the other airports consider, at least in the case of Luton this has been raised as a potential issue.

**Travel times were calculated using maps.google.co.uk as at 19 November 2013 this times do not take account for potential traffic issues.

***There is currently a public consultation on whether night flight restrictions should be imposed at Manston.

196 The CAA has excluded London City from this table due to the significant restrictions on the type of aircraft that can land at the airport.

Section 3.2.3 Cargo airlines' customers' ability to switch to other airports in the south east of England

4.141 Downstream substitution might occur where shippers, freight-forwarders and integrators reroute cargo through a transport product that does not involve Stansted. When considering downstream substitution, the integrators are in an equivalent position to freight-forwarders in that they aggregate their customers' freight for shipment and then route it by the most efficient route that will meet its delivery deadline. However, because integrators also operate some cargo-only flights, they may have a greater incentive to route cargo through their own flights if suitable capacity is available.

4.142 Cargo-only services provided at other airports can compete with cargo-only services provided at Stansted. In addition, freight-forwarders and integrators can use bellyhold services at other airports. The CAA considers that the main opportunity for other south east airports to act as a constraint on STAL's airport cargo related AOS charges would be for freight-forwarders or integrators to switch to purchasing additional bellyhold capacity on passenger flights at those airports, in response to an increase in airport charges at Stansted. The evidence obtained regarding substitutability between cargo-only and bellyhold has been set out in section 3.1.3 above.

Evidence from stakeholders

MAG

4.143 MAG considered that it competes with Heathrow and Gatwick for cargo destined for London and that Luton, Manston, Southend, Cambridge, Oxford and Birmingham, are all within a two hour drive to London and could be used as a gateway airport for cargo destined for London.

4.144 MAG also considered that bellyhold competes directly with cargo flights and that in the time-sensitive cargo-only segment; customers are sophisticated logistics companies who have plenty of choice.[197] This suggests that other airports in the south east of England should be included in the relevant geographic market.

Cargo airlines

4.145 IAG Cargo stated that its rationale for its cargo-only service is a shortage of bellyhold capacity for exports from Hong Kong to the UK. The extent to

[197] Source: MAG's response to the additional Consultation dated 11 November 2013, paragraph 48

which it would substitute into bellyhold is therefore very limited.[198] This suggests that even if freight-forwarders and integrators were willing to switch to bellyhold services at Heathrow, some of those may not find it easy to switch because of lack of capacity on some routes.

Integrators and freight-forwarders

4.146 Both integrators and freight-forwarders purchase cargo transport (bellyhold and cargo-only) services from airlines, although because integrators also operate some cargo-only flights they may have a greater incentive to route cargo through their own flights if suitable capacity is available.

4.147 FedEx considered that that “the risk of exploitative abuse against cargo operators remains high”, which would result in a “distorting of competition between cargo operators” as “heavy users of Stansted will face higher input costs”.[199] However the CAA considers that cargo airlines compete across airports and that the customers of cargo-only airlines’ (even those who are integrators and have aircraft) are still able to switch between competing airlines.

4.148 FedEx confirmed that it works with 45 passenger airlines at Heathrow and 2 from Gatwick for bellyhold operations into and out of the UK.[200] This is consistent with what other integrators have told the CAA.

4.149 TNT told us that as well as Stansted (cargo-only), it also uses Heathrow and Gatwick (bellyhold). TNT said that

> *For Heathrow and Gatwick, it is only the express service which is generally below 35 kilos, although there are occasional heavier consignments, so its documents are small parcels through Heathrow and Gatwick, but all our product offerings go through the other four airports we fly.*[201]

4.150 Agility Logistics told the CAA that about 70 per cent of their traffic is bellyhold and only 10 per cent is cargo-only. The remaining 20 per cent is air cargo but trucked to Europe first. Agility Logistics also told the CAA that it believed that some of the cargo going on cargo-only aircraft was

198 Source: IAG Cargo [✂]

199 Source: FedEx, Fedex response to the additional Consultation, dated 11 November 2013, paragraph 11.

200 Source: FedEx [✂]

201 Source: TNT [✂]

likely to also be able to go as bellyhold, as it is rare for airlines to fill a cargo-only flight with cargo that can only go on a cargo-only aircraft.[202]

Conclusion

4.151 Based on the evidence obtained, the CAA considers that the airports in the south east of England are all potentially able to satisfy the needs of freight-forwarders and integrators from a surface accessibility point of view. The CAA has already concluded in section 3.1 that the product market is the 'AOS to air cargo airlines' which includes cargo related AOS to cargo-only aircraft and passenger aircraft with bellyhold.

4.152 Therefore, the CAA is satisfied that the geographic market definition is at least as wide as the south east of England.

Section 3.2.4: A south east of England relevant cargo market or wider

4.153 Having considered the possible substitutability of airports in the south east of England, the CAA now has to consider the substitutability of a wider set of airports (i.e. the third candidate geographic market considered in section 3.2.1).

4.154 For this candidate market to be the appropriate definition, the CAA would have to judge that cargo shippers would be willing to substitute a proportion of the cargo originating in the London region currently flying from Stansted to a service based on a combination of road transport (for up to approximately 500km to other airports) followed by air cargo transport to and from those airports. The CAA would further have to be satisfied that such switching at the margins by airlines and their customers downstream was a sufficiently large proportion to represent a meaningful competitive constraint on airports in the south east of England.

4.155 The CAA did not receive any evidence to suggest that airlines would be willing to relocate outside the south east of England in response to an increase in airport charges.

4.156 This section considers whether shippers and cargo owners would be likely to substitute to airports in a wider area than the south east of England in response to a SSNIP.

[202] Source: Agility Logistics [✂]

Evidence from stakeholders

MAG

4.157 MAG considered that

There are a number of airports across Northern Europe which compete with Stansted for cargo customers as these airports are within an eight-hour drive of London (the maximum number of hours a truck driver can drive in one day). For example, the major cargo hub of Amsterdam Schiphol is within the catchment area for London as it is between 5-6 hours' drive away.

4.158 MAG also told the CAA that

The strong competition provided by European airports is further evidenced by the fact that around one-fifth of cargo from China bound for the UK is landed in continental European hubs and brought across the Channel to the UK by truck. China is an important source of UK cargo. That such a high proportion of it is delivered to the UK in this way is a strong indication that there is real competition for Stansted from other hubs across Northern Europe.

This is also a strong indication that sufficient volumes of Chinese cargo could be switched away from Stansted to large competitors such as Schiphol, in response to a small but significant price rise by Stansted, so as to render such a price rise unprofitable.[203]

Cargo airlines

4.159 IAG Cargo stated that if there was a price rise imposed by STAL it would not be able to pass this through to its customers. When asked why it thought this, IAG Cargo explained that the price rise would affect it and not its competition, which it considered to be other long haul passenger airlines such as Lufthansa and Air France/KLM operating out of their respective hubs.[204] IAG Cargo was aware that these airlines may truck bonded cargo from the UK to their European hubs.[205]

Integrators and freight-forwarders

4.160 Integrators have stated that non-London airports are too distant in terms of travel time from Heathrow and central London to be viable

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[203] Source: MAG, response to the additional Consultation dated 11 October 2013, paragraph 48

[204] Source: IAG Cargo [✂]

[205] Source: IAG Cargo [✂]

substitutes.[206] However, TNT has stated that where possible it may use trucks to take items from the UK to its Liege hub (circa 460km from central London). TNT stated that this was highly time dependent and would not work for its late pickups.[207] DHL Express has also noted that it does truck items from East Midlands for onward connection at Heathrow.[208]

4.161 Agility Logistics noted that, as well as UK airports, around 20 per cent of its volume is trucked to European hubs for onwards flights via either bellyhold or cargo-only services. Agility Logistics stated that the cost of the trucking is covered by the airlines and it charges a price for end to end delivery. The prices that were offered by the European airlines were comparable or cheaper to those operating directly out of the UK.[209]

4.162 When asked what it would do if the airlines operating out of Stansted raised their prices, Agility Logistics stated that their reaction would depend on the shippers' criteria. Agility Logistics noted that the decision is a function of both cost and time; it would be unlikely to inform the shipper which airport the shipment would go from but would advise the overall price and the delivery time. If there was a 10 per cent price rise in charges at Stansted, this may only result in a 1 or 2 per cent increase on the price that Agility Logistics charges to its customers. Agility Logistics noted that the time involved in finding a different shipper may not be worth the cost difference. However, Agility Logistics also noted that prices tend to be set in April and September every year (and not changed between those dates).[210]

CAA's analysis

4.163 The statements from Agility Logistics, DHL Express, IAG Cargo, and TNT suggest that there is the possibility that some cargo, that would otherwise have flown direct from airports in the south east of England, would be trucked to a more distant airport to connect with an air cargo service. However, other integrators have raised doubts over their ability to use more distant airports and provide the same service.

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206 Airports that have been noted and dismissed by Integrators include Cardiff; Birmingham, Southampton; FedEx [✂]; TNT [✂]

207 FedEx [✂]

208 Source: DHL Express [✂]

209 Source: Agility Logistics [✂]

210 Source: Agility Logistics [✂]

Figure 4.4 Distance from Heathrow and central London for Stansted and a selection of non-London airports

Airport	Distance from Heathrow (km)	Distance from central London (km)
Stansted	86	63
Amsterdam	577	536
Paris - Charles De Gaulle	477	436
Cologne/Bonn	635	594
Edinburgh	679	682
East Midlands	189	187
Frankfurt	799	758
Liege	501	460

Source: more direct route maps.google.co.uk

4.164 Figure 4.4 sets out a selection of non-London airports that may potentially provide a level of competition for operations at Stansted. These include the main hubs for large passenger airlines (Lufthansa and Air France/KLM) and the hubs for some integrators. A number of these airports are within 500km of either central London or Heathrow, which is indicated by the SDG report as a potential boundary for express cargo.[211]

4.165 Clearly, these distances are significantly greater than the distance to Stansted or other airports in the south east of England. As a result, they are likely to impose a significant time penalty on any cargo that is taking these routes. As highlighted by TNT the ability to truck cargo to their Liege hub from the UK is limited by the need to provide customers with a late pick up.[212]

Summary on substitution to airports outside the south east of England

4.166 There appears to be some evidence indicating that a proportion of cargo that could be flown from an airport in the south east of England is being trucked to more distant airports. This is likely to incur a significant time penalty, which may limit the substitutability of these airports for certain types of cargo or operators.

211 SDG, AIR FREIGHT Economic and Environmental Drivers and Impacts, March 2010, paragraph 1.20. http://assets.dft.gov.uk/publications/economic-and-environmental-drivers-and-impacts/report.pdf. The CAA notes that the reference to 500km in the report refers to the express cargo market.

212 Source: TNT [✂]

4.167 However, due to a lack of conclusive evidence, the CAA has not been able to assess precisely the likely extent of the constraint that these airports may pose. It cannot rule out that the geographic market may be wider than the airports in the south east of England. However, for the purposes of this determination, the CAA has proceeded on the basis that the geographic market is at least as wide as airports in the south east of England. If STAL lacks SMP in this market, it is unnecessary to decide whether it may be even wider.[213]

3.2.5: Conclusion on Geographic market

4.168 The evidence the CAA has obtained indicates that Stansted has a mix of facilities and distance from Heathrow and central London to make it the first choice for airlines seeking to provide cargo-only air services. Although a number of other airports in the south east of England are also used for cargo-only operations, they each face different limitations such as runway length and distance from London that may make them an inferior choice.

4.169 However the evidence also suggests significant scope for downstream switching between cargo-only and bellyhold services as identified in section 3.1. Once this is taken into account there is less to distinguish between airports in the south east of England from the perspective of integrators and freight-forwarders representing the interests of cargo owners.

4.170 The CAA considers that, collectively, there is likely to be sufficient constraint to suggest that the geographic market is wider than just services provided at Stansted.

4.171 The evidence suggests that:

- Some cargo, that would otherwise have been flown from an airport in the south east of England, may be able to be flown from more distant airports.
- Shippers, freight-forwarders and integrators may consider cargo air transport services via other airports to be viable substitutes even though this requires additional time for the cargo to be trucked.

213 The CAA notes that the OFT Guidelines (OFT 403, paragraph 2.14) state that "where there is strong evidence that the relevant market is one of a few plausible market definitions, and the competitive assessment is shown to be largely unaltered by which one of these market definitions is adopted, it may not be necessary to define the market uniquely."

4.172 The CAA considers that the geographic market cargo may include more distant airports, but the evidence is inconclusive on the extent of the width of the geographic market.

4.173 The CAA considers that the market is likely to be at least as wide as airports in the south east of England.

Section 3.3: Conclusion on market definition

4.174 The CAA, based on the evidence it has obtained, is satisfied that STAL does not operate in a product market as narrow as AOS to cargo-only airlines. The CAA is not able to conclude that the market is wider than AOS to air cargo airlines i.e. that it includes other modes of transport. However, there may be some competitive constraints from these other modes.

4.175 The CAA considers that the product market that STAL operates in is at least as wide as AOS to air cargo airlines i.e. a market that includes cargo-only airlines and cargo carried in the bellyhold of passenger airlines.

4.176 The CAA, based on the evidence it has obtained, is satisfied that STAL does not operate in a geographic market that is restricted to Stansted. The CAA considers that the geographic market may include more distant airports, but the evidence is inconclusive on the extent of the width of the geographic market. The CAA considers that the geographic market is at least as wide as the south east of England (i.e. including Stansted, Heathrow, Gatwick, Luton and Manston airports).

4.177 The OFT guidelines[214] allow for the CAA to define a plausible or most likely market where the competitive assessment is shown to be largely unaltered by which market definition is adopted:

> *In practice, defining a market requires balancing various types of evidence and the exercise of judgement. However, it is not an end in itself. Where there is strong evidence that the relevant market is one of a few plausible market definitions, and the competitive assessment is shown to be largely unaltered by which one of these market definitions is adopted, it may not be necessary to define the market uniquely.*

4.178 The CAA is satisfied, in the light of the evidence it obtained, that the relevant cargo market in which STAL operates is:

214 OFT Competition Law Guideline on Market Definition, December 2004 (OFT 403) paragraph 2.14, available at: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft403.pdf

- As least as wide as AOS to air cargo airlines (which includes cargo-only airlines and cargo carried in the bellyhold of passenger airlines);
- provided in a geographic area that is at least as wide as the south east of England.

4.179 In the light of the CAA's conclusion that it is not satisfied that STAL has or is likely to acquire SMP in the relevant cargo market (section 4), the CAA considers its determination would be unaltered by adopting a wider market definition.

Section 4 - CAA views on market power

4.180 This section examines the constraints on STAL from within the relevant cargo market in the south east of England[215]; and from outside this market. This section considers the general principles for assessing market power together with relevant legal precedent and then considers the key areas for potential constraints, as follows:

- Section 4.1 presents market shares in the relevant cargo market .
- Section 4.2 considers the ability of cargo-only airlines at Stansted to switch to alternative airports.
- Section 4.3 considers the ability of shippers, integrators and freight-forwarders, who currently route cargo through Stansted to switch their cargo to alternative airports or use an alternative mode of transport.
- Section 4.4 looks at switching costs of cargo-only airlines.
- Section 4.5 discusses the difficulties in carrying out a critical loss analysis for Stansted cargo.
- Section 4.6 discusses regulatory and operational barriers to entry and expansion.
- Section 4.7 discusses whether airlines at Stansted have buyer power.
- Section 4.8 examines the level of STAL's airport charges and its impact on the CAA's ability to assess market power.
- Section 4.9 examines MAG's and STAL's behaviour in relation to cargo airlines since MAG purchased STAL.
- Section 4.10 concludes on whether STAL has or would be likely to acquire SMP.

215 This geographical definition includes Stansted, Heathrow, Gatwick, Luton and Manston airports

4.181 SMP is equivalent to dominance in European competition law. The European Court has defined a dominant market position as:

> *a position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of consumers*[216]

4.182 Market power can be thought of as the ability profitably to sustain prices above competitive levels or restrict output or quality below that which would be seen in a market with effective competition. An undertaking with market power might also have the ability and incentive to harm the process of competition in other ways; for example, by weakening existing competition, raising entry barriers or slowing innovation. Although market power is not solely concerned with the ability of a supplier to raise prices, for convenience, it is referred to in this chapter as the ability profitably to sustain prices above competitive levels.[217]

4.183 When assessing whether and to what extent market power exists, it is helpful to consider the strength of any competitive constraints, i.e. market factors that prevent an undertaking from profitably sustaining prices above competitive levels.

4.184 Competitive constraints include:

- The constraint from businesses already in the relevant market. If an undertaking (or group of undertakings) attempts to sustain prices above competitive levels, this might not be profitable because customers would switch their purchases to existing competitors. The market shares of competitors in the relevant market are one measure of the competitive constraint from existing competitors.
- The constraint from outside the relevant market, which may contribute to the aggregate competitive constraint on an airport operator.
- Potential competition from new entry into the relevant market or expansion by existing ones. Where entry barriers are low, it might not be profitable for one or more airport operators in a market to sustain prices above competitive levels because this would attract new entry which would then drive the price down – if not immediately, then in the long term.

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216 7 Case 27/76 *United Brands v Commission* [1978] ECR 207. This definition has been used in other cases.

217 OFT 415, Assessment of market power.

- Buyer power - Buyer power exists where buyers have a strong negotiating position with their suppliers, which weakens the potential market power of a seller.

4.185 The competitive constraint on STAL from airports within and outside the relevant cargo market is analysed by examining ways that that cargo-only airlines at Stansted, or owners of cargo or cargo shippers at Stansted, might discipline STAL, if faced with a 5 to 10 per cent increase in airport charges. It should be noted that the integrators operate as both airlines and freight-forwarders and therefore may react either by switching aircraft away from Stansted or by switching cargo to alternative delivery lines. Consistent with competition law guidelines and notices, the CAA considers and comes to a judgement on whether the total constraint on STAL, from inside and outside the relevant cargo market identified above would be sufficient to constrain it from increasing prices above or reducing quality below competitive levels.

Section 4.1: Market shares

4.186 Market shares are an indicator of the competitive constraint from within a market. The CAA considers that market shares should be interpreted in the light of competitive constraints that may come from outside the relevant cargo market, and taking account of differentiation of services in the relevant cargo market.[218]

4.187 STAL's market share was calculated for the relevant cargo market in the south east of England identified in section 3. Market shares were calculated from the level of cargo tonnage carried as the best available means of aggregating the different methods used to deliver cargo.

4.188 The European Court has stated that dominance can be presumed in the absence of evidence to the contrary if an undertaking has a market share persistently above 50 per cent.[219]

4.189 The geographical scope of the relevant cargo market which, as explained in section 3, is at least as wide as the south east of England (i.e. Stansted, Luton, Heathrow, Gatwick and Manston as airports).[220] Market

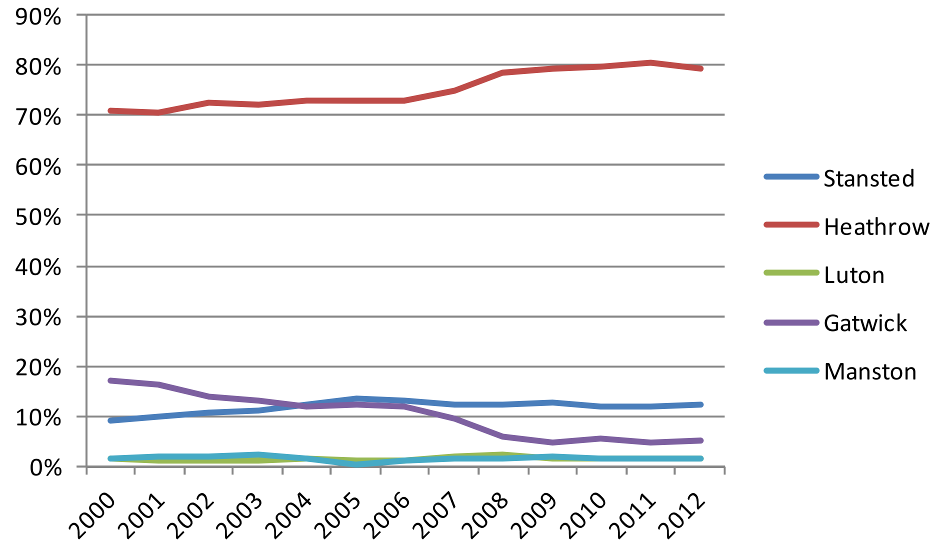
218 The CAA notes that when a relevant market contains products or services that are differentiated, a low market share will not necessarily mean absence of market power because other products in the market are may not be very close substitutes. See, for example, OFT assessment of market power guidelines, OFT415, paragraph 4.4.

219 Case C62/86 AKZO Chemie BV v Commission [1991] ECR I-3359.

220 See section 3.2 (geographic market definition).

shares in terms of cargo tonnage and their evolution based on this market definition are shown in Figure 4.5 (below).

Figure 4.5: Market Shares: in the relevant cargo market (cargo-only and bellyhold) (tonnes)



Source: CAA Airport Statistics

4.190 STAL's market share in this market is around 12 per cent, a market share that would be inconsistent with a finding of dominance, as any attempt to increase prices would be expected to be constrained by substitution to other suppliers in the relevant cargo market.

4.191 If the market were defined more narrowly as AOS to cargo-only airlines then Stansted would have a much higher market share, around 64 per cent, supporting a rebuttable presumption of dominance under European competition law. However, in its consideration of market definition in section 3 above, the CAA has set out why it considers that this narrow market is inappropriate, taking account of the evidence of potential substitution to bellyhold operations.

4.192 In practice, some bellyhold capacity will be more substitutable for cargo-only services than others. Bellyhold capacity is more likely to be an adequate substitute for some of the cargo carried by integrators where it would allow an integrator to reach the required destination in an adequate time-frame. Integrators, with their own aircraft operating from Stansted may regard the costs of running their aircraft as fixed in the short term. In the longer term, they could be expected to reroute a larger proportion of their cargo to bellyhold or find alternative ways to route their cargo without using Stansted. In this time-frame they may be able to redeploy or otherwise adjust the number and size of aircraft that they operate from Stansted.

4.193 Freight-forwarders and other purchasers of capacity on cargo-only services do not have their own airline operations. Therefore, if an increase in airport charges is passed on to them, there is no such barrier to them routing cargo to bellyhold in response to an increase in the cost of shipping by cargo-only flights.

4.194 The CAA has not been able to assess STAL's market share on potentially wider markets. However, this would be lower than the 12 per cent share in the relevant cargo market.

Conclusion on Market shares

4.195 STAL has a market share of around 12 per cent in the relevant cargo market.

4.196 A market share of 12 per cent is inconsistent with a finding of dominance, as any attempt to increase prices would be expected to be constrained by substitution to other suppliers in the relevant cargo market.

4.197 However, the CAA considers that it cannot rely solely on STAL's low market share in the relevant cargo market as determinative that STAL does not have SMP. While market shares can indicate the strength of competition for *homogenous* goods and services, they are not decisive where the services in a market are *differentiated*. In the downstream cargo air transport market, bellyhold services are differentiated. That is because the constraint from bellyhold depends on there being a suitable passenger flight to a destination that would represent an acceptable substitute to a cargo-only flight. Where the services in a market are differentiated, it is also necessary to consider the strength of the constraint from each source. This is considered in the next two sections. Section 4.2 considers the ability of airlines at Stansted to switch to alternative airports in response to an increase in airport charges ('upstream switching'). Section 4.3 considers the ability of cargo shippers and users to switch to their cargo to an alternative means of delivery ('downstream switching').

Section 4.2: Airlines' ability to switch

4.198 This section considers the upstream market - the airlines' ability to switch to different airports. It does not consider the freight-forwarders and integrators ability to switch to use other airlines.

4.199 It considers the airlines' ability to switch away from Stansted in order to constrain an increase in airport charges at Stansted. The switching possibilities of integrators (including airlines who serve Royal Mail) as well as general cargo carriers differ and, therefore, are considered separately.

Evidence from stakeholders

Integrators' airlines

4.200 Integrators such as [✂] , DHL Express, FedEx and Royal Mail stressed the importance of operating from a London airport. They have told the CAA that the reasons for this include the need to make their latest pick-up time from London and the south east of England competitive and to ensure they can meet their guaranteed next-day delivery targets.[221]

4.201 The choice of airports is determined by their location relative to the relevant population centres in each area, as well as road access, runway length and ability to operate cargo flights through the night.

4.202 The CAA considers that the integrators' explanation of their demand for an airport to serve London implies that the constraint from integrators at Stansted switching to airports outside London airports is not significant.

4.203 Although DHL Express (a major integrator) is able to use Heathrow and Luton airports, it does so as a system and is able to do so because DHL Express has grandfather rights to slots at Heathrow.[222] The CAA considers that it would not be straightforward for the integrators based at Stansted to switch some or all of their services to Luton or Heathrow, as they would need to acquire scarce slots at Heathrow, and Luton may be unsuitable for operational reasons.

4.204 Given the traffic distribution rule restrictions on cargo-only flights and night time flights (described in more detail below) the CAA considers that the scope for integrators to switch all or some of their services away from Stansted to other London airports[223] is limited. Switching to non-London airports would be inconsistent with their need for latest London pick up times.

4.205 Restrictions on night time flying are another regulatory barrier to switching to another London airport for integrators. Royal Mail stated they require night flight operations, in order to meet the retail service standards set for

[221] Source: Royal Mail [✂]; DHL Express [✂]; FedEx [✂]; [✂]

[222] Source DHL Express [✂]

[223] London airports comprise Heathrow, Gatwick Stansted, Luton, London City and Southend.

their express products from London and the south east of England.[224] Jet2 and Titan carry Royal Mail's cargo and the majority of their flights at Stansted take place between 10pm and 1am.[225] Night time restrictions are discussed in section 4.6 below.

4.206 The CAA considers that the scope for integrators' airlines to switch their services between airports within the relevant geographical market is relatively restricted.

General cargo carriers

4.207 IAG Cargo, a general cargo carrier, told the CAA that it requires its cargo-only operations to be near the centre of the freight-forwarding community at Heathrow.[226]

4.208 IAG Cargo cited Stansted's proximity to Heathrow as one of its reasons for using Stansted. However, the CAA's view is that there is evidence that suggests that that it is not necessarily critical for airlines whose cargo is predominantly deferred such as IAG Cargo to be as close to Heathrow as Stansted. Express cargo forms substantially less than [✂] per cent of IAG Cargo's total cargo by weight.[227] In its internal documents, STAL noted an unsubstantiated report that:

> *IAG Cargo very nearly relocated [its] entire operation to Manston Airport in 2010 but cancelled late on following Thanet's (Thanet District Council) lack of discretion and a deal made with Stansted Airport/handling agent. (emphasis in the original)*[228]

4.209 Furthermore, the CAA notes that, since it purchased STAL in 2013, MAG has attempted to attract airlines [✂] to Stansted. For example, MAG's recent negotiations[229] with cargo airlines to move their operations [✂]:

- [✂]:
  - [✂].
  - [✂].

4.210 In addition, the CAA understands that MAG has commenced discussions about [✂].[230] The CAA recognises that it is possible that the potential

224 Source: Royal Mail [✂]
225 See Figure 3.3 in chapter 3.
226 IAG Cargo [✂]
227 Source: IAG Cargo [✂].
228 Source: MAG [✂]
229 Source: MAG [✂]

constraint that STAL poses to [✂] is asymmetric although it is not clear why this should be so.

Conclusion on airlines' ability to switch

4.211 For those airlines that are based at Stansted principally in order to carry express cargo to and from London, including integrators and Royal Mail, the constraint from other airports within the relevant cargo market appears to be relatively weak due to barriers to switching. General cargo carriers also face constraints to switching to other London airports but they are much less dependent on carrying express cargo and consequently the CAA considers that time from central London or from the freight-forwarding community at Heathrow is less critical for them. Therefore, there may be some constraint from Manston and even from airports outside the relevant geographical market.

4.212 The CAA recognises that some airlines and types of cargo may be, in the short term, quite price inelastic or 'captive' to Stansted. However, the CAA notes that the question relevant for this assessment of market power is whether there would be sufficient substitution at the margin to make an increase in airport cargo related AOS charges uneconomic at Stansted. Therefore, as long as sufficient demand would be likely to switch, an increase in airport charges may still be unprofitable.

Section 4.3: Downstream substitution

4.213 This section considers downstream substitution which occurs when cargo owners, shippers, freight-forwarders or integrators reroute cargo through a different airport or switch to a different mode of transportation in response to an increase in STAL's airport charges that is passed on to them. Even if airlines are inhibited from switching air cargo services, STAL may still be constrained if cargo demand in the downstream market was to switch to other transportation alternatives that used different airports and/or other transport modes.

4.214 Although cargo owners and shippers (unless they have infrastructure at an airport) are generally indifferent over the route that cargo takes, they can contract with a different freight-forwarder or integrator. Freight-forwarders and integrators might reroute cargo if routing it through an option that involved Stansted were to become more expensive as a result of an increase in airport charges. Integrators' ability to switch their airline operations was considered above. When considering downstream substitution, the integrators are in an equivalent position to freight-

[230] Source: MAG [✂]

forwarders in that they aggregate their customers' cargo for shipment and then route it by the most efficient route that will meet its delivery deadline, although, because integrators also operate some cargo-only flights, they may have a greater incentive to route cargo through their own flights if suitable capacity is available. Therefore, it may be possible for them to switch cargo away from Stansted without switching their airline operations to an alternative airport.

4.215 Airport charges are a low percentage of cargo transport costs overall, although this percentage may vary considerably across airlines (e.g. airport costs are likely to be a higher for proportion of short haul cargo transport costs than long haul ones). IAG Cargo stated that the cost of landing fees in relation to the cost of transporting cargo overall is relatively small at about 2 per cent.[231]

4.216 It might be considered that the reaction of integrators and freight-forwarders or their customers to a 5 to 10 per cent increase in airport charges would be small because airport charges form a small proportion of price that they pay for shipping cargo by air. However, owners and shippers of cargo, in contrast with passengers, in general have no strong preference for its routing but are more concerned that it reaches its destination within the required time at the minimum cost.[232] The majority of cargo owners and shippers do not have a preference between downstream products that use Stansted and downstream products that do not. Furthermore, some purchasers of airlines' services are themselves sophisticated logistics businesses (such as freight-forwarders and shipping companies) and, as such, able to compare the options available, negotiate and purchase the most cost-effective product to meet their clients' needs. Therefore, the CAA considers that a 10 per cent increase in STAL's airport charges that is passed onto downstream cargo products may well provoke some reaction in a downstream market where participants compete principally on price and the reach of their network and may often be operating on tight profit margins. A 2012 report in Air Cargo World news noted:

> *Currently, BB&T [an American bank] found, TNT's operating margin of 3.7 percent ranks a distant fourth among worldwide integrators behind UPS (14 per cent), FedEx (8.1 per cent), and DHL Express (7.9 per cent).*[233]

[231] Source: IAG Cargo [✂]

[232] See evidence from cargo owners in section 3.1.3 above.]

[233] Source: Air Cargo World, UPS acquisition of TNT may still occur, 24/02/2012, available at

4.217 In 2012, Stansted handled 0.24 million tonnes, or about 10 per cent of all UK cargo. Bellyhold volumes at Heathrow are much bigger – in 2012 Heathrow handled 1.56 million tonnes of cargo with 95 per cent of as bellyhold cargo. Evidence, from shippers, freight-forwarders and integrators (acting as freight-forwarders), is that for large segments of cargo, bellyhold capacity at Heathrow and other airports, can be a substitute to Stansted. Given the significantly larger cargo capacity at Heathrow (and other airports), it is likely that there is enough bellyhold capacity to allow some substitution from Stansted.

4.218 Furthermore, the CAA has not identified any regulatory and operational barriers as well any significant switching costs to downstream switching (by shippers, freight-forwarders and integrators).

Types of downstream constraint

Using a integrator not based at Stansted

4.219 The simplest means by which shippers or owners of express cargo might react to an increase in airport charges by STAL would be to use an alternative integrator serving the London area. As noted in chapter 3, DHL Express operates out of Luton and Heathrow. DHL Express noted:

> *The majority of the major integrators fly from East Midlands but also need a southern airport close to London to make the latest pick-up time competitive.*[234]

4.220 The CAA considers that this indicates that DHL Express may be in direct competition with integrators operating at Stansted (FedEx, UPS and TNT), for the latest pick up of express cargo from London.

4.221 As DHL Express competes for the same business as the Stansted integrators, and the market for express cargo is competitive, cargo owners or shippers could react to an increase in airport charges at Stansted by switching their business to DHL Express.

Increased use of bellyhold

4.222 As noted in chapter 3 above, the vast majority of normal cargo can be transported as bellyhold cargo. Cargo-only services are provided by some network airlines because their cargo demand exceeds the bellyhold capacity available on their passenger flights. For example, IAG Cargo stated that its rationale for its cargo-only service is based on a shortage of

http://www.aircargoworld.com/Air-Cargo-News/2012/02/ups-acquisition-of-tnt-may-still-occur/245358

234 Source: DHL Express [✂]

bellyhold capacity for exports from Hong Kong to the UK.[235] The extent to which it would substitute into bellyhold in response to an increase in airport charges at Stansted may therefore be limited.

4.223 As noted in paragraph 4.217, given the significantly larger cargo capacity at Heathrow (and other airports), it is likely that there is enough bellyhold capacity to allow some substitution from Stansted.

4.224 The integrators also use bellyhold capacity. The SDG report[236] states that

> *The majority (62%) of express freight is flown by the integrators although a significant minority (35%) travels in the bellyhold of commercial passenger aircraft.*

4.225 The use of bellyhold was confirmed by FedEx, DHL Express and TNT. However, integrators expressed a preference to use their own assets when available to maximise utilisation. They also noted that the extent to which bellyhold capacity is substitutable for cargo-only would depend on the destination. TNT noted:

> *They (routing decisions) are not decisions consignment by consignment; they are decisions much longer term. So if we find our own equipment from Liege to Hong Kong was much more expensive than commercial uplift, then we would change that. But, of course, you can't do that in the short term because you've still got the asset so these are much longer term decisions... We would look at it over the coming months to see which is the most cost effective way of providing the required service.* [237]

4.226 Unlike integrators, freight-forwarders do not have their own transport infrastructure. The CAA considers that this is likely to make them more likely to switch to bellyhold capacity on passenger flights from Heathrow in response to an increase in airport charges at Stansted.

4.227 The SDG report found that freight-forwarders would purchase capacity from passenger and cargo-only airlines as well as from the integrators. This was confirmed by Agility Logistics.[238]

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235 Source: IAG Cargo [✂]

236 SDG (2010), Air Freight: Economic and Environmental Drivers and Impacts Report - Final, March, Prepared for the Department for Transport. (the SDG report). The CAA notes that the SDG report was not an assessment of the market position of Stansted in relation to the air cargo industry. However, it does provide some clear evidence as to the functioning of the air cargo market.

237 Source: TNT [✂]

238 Source: Agility Logistics [✂]

4.228 The CAA considers that the ability to transport cargo in the bellyhold (of passenger flights) is likely to act as an effective constraint on an increase in STAL's airport charges to cargo-only airlines. This is because the destinations of passenger flights can make them suitable as substitute routes to the distribution of cargo by cargo-only aircraft. When asked whether cargo, that could go in bellyhold, would be switched in response to an increase in STAL's airport charges, TNT noted:

> *It could go yes. But, again, depending on where it is going to, it might not be the [most] cost effective solution.*[239]

Switching cargo to cargo-only services at alternative airports

4.229 For deferred cargo, including items that are hazardous or outsized and therefore cannot be carried as bellyhold, the CAA considers that shippers could reroute cargo to alternative airports in the south east of England or wider, for example to near European continental airports such as Amsterdam and Paris CDG. When asked what its reaction would be if STAL levied a 10 per cent price increase in aeronautical charges, IAG Cargo noted that:

- *It would not have many options other than to absorb it.*
- *It has limited ability to pass through the cost because of price competition with its competitors*.[240]

4.230 IAG Cargo also noted:

> *most of our competition does not operate out of Stansted. So we are competing against the Lufthansa's, Air France, KLM to the world.*[241]

4.231 The CAA considers that IAG Cargo's description of its inability to pass on an increase in airport charges indicates that it does face effective competition in the market for the air transport of cargo from Lufthansa, Air France and KLM trucking cargo to their hub airports. Agility Logistics use of trucking to continental European airports was noted in section 3.1.4 above. The SDG report describes the use of trucking European hubs:

239 Source: TNT [✂]
240 Source: IAG Cargo [✂]
241 Source: IAG Cargo [✂]

Long Haul airlines tend to use European hubs for distribution, whether as a dedicated freighter service or in the belly of a long haul passenger aircraft. The airline provides a through flight number using a truck service which extends their market penetration for both imports and exports.

From Heathrow, annual trucked air freight totals an estimated 72,600 tonnes, similar to the 72,300 tonnes carried in the bellyhold of passenger aircraft on European routes. Based on detailed discussions with cross channel hauliers and analysis of data compiled by the CAA, we estimate that a total of approximately 97,000 tonnes of "air freight" crosses the channel by truck each year. This compares with 87,000 tonnes flown in the belly of passenger aircraft.

4.232 The CAA considers that this suggests that enough of IAG Cargo's customers would be able to switch their cargo to airlines operating out of other airports to constrain IAG Cargo from passing on an increase in airport charges. Also, the CAA considers that even though IAG Cargo may be able to absorb increases in airport charges in the short term, in a longer time-frame increases in airport charges that are not passed on may question the economic viability of some of its more marginal services.

4.233 When asked how it would react to a 5 per cent increase in airport charges TNT said:

...quite honestly with a 5 per cent increase I don't believe we would change our operation. If Stansted became prohibitively expensive, we would look to route as much material to East Midlands as possible, downsize the aircraft in Stansted to as small as we can and put as much on the road and Euro Tunnel as we possibly can.[242]

4.234 The CAA considers that the evidence from IAG Cargo and TNT indicates that STAL may be constrained from increasing its airport charges significantly and sustainably above competitive levels by the possibility of downstream substitution. This could take the form of cargo owners, shippers and freight-forwarders purchasing cargo transportation options using alternative airports to Stansted (both within and outside the relevant cargo market, i.e. including airports that are not in the south east of England).

242 Source: TNT [✂]

Conclusion on downstream substitution

4.235 The CAA has identified a number of means, by which cargo owners, shippers, freight-forwarders and integrators could constrain an increase in airport charges at Stansted by substituting to other ways of delivering their cargo. Alternatives are available both within and outside the relevant cargo market for all types of cargo, including express, deferred hazardous and outsized items. On the limited empirical evidence obtained, it has not been possible to exactly quantify the strength of these constraints. However, the CAA judges that there is sufficient evidence that downstream substitution provides a significant constraint on STAL. This means the CAA is satisfied that STAL would not be able to increase airport charges significantly and sustainably above competitive levels.

Section 4.4: Switching Costs

4.236 The constraints to STAL from potential competitors may be muted if the airlines, shippers, and freight-forwarders (including integrators acting in this capacity) who use Stansted would face costs in switching to use competitor airports. This section considers the switching costs faced by operators currently at Stansted.

Evidence from stakeholders

Integrators' airlines

4.237 FedEx listed a number of costs that it would face in switching from Stansted.[243] These included the costs of [✂]. These are common relocation costs for any based airline.

4.238 DHL Express advised the CAA that integrators are "*wed*" to the airport from which they operate.[244] This appears to be due to a mixture of a number of factors with two common factors:

- Economies of scale in operation; and
- Network optimisation.

4.239 [✂][245]

4.240 On network optimisation, TNT told the UK that it operates fixed routes and that shipments from certain areas will go to different airports.[246] The

[243] Source: FedEx [✂].

[244] Source: DHL Express [✂].

[245] Source: [✂]

[246] Source: TNT [✂]

network optimisation takes account of the advantages of Stansted described in section 4.6 below.

4.241 IAG Cargo stated that although it did not have sunk investments at Stansted, as it leased its aircraft and outsources its groundhandling, it would face significant logistical costs if moving away from Stansted.[247] These are similar to the network optimisation issues raised by the integrators including:

- Changes in trucking and transit time from the freight-forwarding community at Heathrow.
- Possible increases in aviation fuel costs if a new airport would mean that the sector lengths are increased.

4.242 The crew for IAG Cargo's leased aircraft (leased [✂] from Global Supply Systems (GSS)) were based at STAL; therefore the additional transit time for staff would be incurred as well as aircraft repositioning costs.[248] However, the CAA notes that in February 2014 IAG Cargo ceased its relationship with GSS. Steve Gunning, CEO of IAG Cargo, said:

> *The review (of IAG Cargo's capacity) took account of the growing cargo capacity available to us from our passenger fleet, as well as the outlook for the airfreight industry overall, and we have made the strategic decision to significantly revise our long-haul freighter program.*[249]

4.243 The CAA considers that this indicates that the leasing arrangement with GSS was not in itself a barrier to IAG Cargo switching.

4.244 The CAA's analysis is consistent with the CC's findings when it interviewed integrators to assess if MAG's purchase of STAL would lessen competition. The CC summarised as follows*:*

> *Cargo integrators considered that they have some choice of alternative airports but that a switch would be considered as a major move involving large costs due to investments in sorting facilities, leasehold properties and employees based at the sites and therefore could not be considered likely.*[250]

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247 Source: IAG Cargo [✂]

248 Source: IAG Cargo [✂]

249 Source: Air Cargo World, "Qatar to operate freighters on behalf of IAG Cargo | Air Cargo World", available at http://www.aircargoworld.com/Air-Cargo-World-News/2014/01/qatar-operate-freighters-behalf-iag-cargo/6082

250 Competition Commission, Stansted Airport Remedy – summary of calls with cargo integrators,

Downstream switching costs

4.245 In contrast to airlines, the CAA considers that shippers and freight-forwarders do not face significant costs of switching, as generally, they do not have to make significant investments to find an alternative carrier for their cargo.

Conclusion on switching costs

4.246 The CAA considers that integrators at Stansted would incur relocation costs if they were moving their aircraft away from Stansted as well as incur costs of reorganising their networks. General cargo carriers such as IAG Cargo would also face relocation costs, although the CAA notes that IAG Cargo threatened to switch to Manston in 2010 [✂].[251]

4.247 The CAA considers that the evidence implies that integrators would be prepared to incur relocations costs in the medium term if STAL increased its cargo related AOS changes above a competitive level. However, this would be part of a strategic decision on network optimisation in response to the costs and synergies of the transport options each integrator currently utilises and the alternative options available to it.

4.248 The CAA did not identify significant costs or barriers for shippers and freight-forwarders seeking to switch cargo from Stansted to alternative means of delivery. As noted above, cargo owners and shippers are generally indifferent to the routing of their cargo as long as it meets their required delivery deadline. Therefore, longer or more complex routes do not involve the non-pecuniary costs that would apply to passenger travel.

Section 4.5 Critical / likely loss in response to SSNIP

4.249 Critical loss analysis is a further means of assessing whether the aggregate constraint from competitors is or is not sufficient to constrain a business from increasing prices.

4.250 Critical loss analysis examines the level of demand reduction that would be required for an increase in airport charges to be unprofitable for the airport operator. The analysis considers the revenue increase that an airport operator would earn from a SSNIP (a sustained 5 to 10 per cent price increase) on its service. It then looks at what level of demand reduction would make such an increase unprofitable. To do so, it is necessary to know the margin over variable costs that would be lost on each unit of demand reduction.

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dated 17 December 2013.

251 IAG Cargo [✂]

4.251 The CAA recognises that some airlines and types of cargo may be, in the short term, quite price inelastic or 'captive' to Stansted. However, the CAA notes that the question relevant for this assessment of market power is whether there would be sufficient substitution at the margin to make an increase in airport charges to cargo-only services uneconomic at Stansted. Therefore, as long as sufficient demand would be likely to switch, an increase in airport charges may still be unprofitable.

4.252 As it has no historical evidence of the operation of the relevant cargo market without regulation, it has not been possible to make a clear assessment of what the unregulated market might look like. In particular, the CAA is not confident about being able to take regulated charges as an indicator of competitive charges.

4.253 Furthermore STAL's airport charges for cargo-only airlines are not subject to separate RAB-based[252] regulation and therefore STAL is not required to keep separate regulatory account information for its cargo operation. Consequently, the margin lost on any demand reductions as a result of an increase in airport charges is unknown. As a result of these two issues a quantitative critical loss calculation would require a separate and detailed data gathering exercise.

4.254 The CAA considers that gathering evidence for a full critical loss analysis would be costly in that it would require surveying cargo owners, shippers, freight-forwarders and integrators; and would be unlikely to provide a clear indication of the strength of their response to an increase in STAL's airport charges because of the hypothetical nature of the question and the difficulty that parties would have in making an informed assessment about the extent of their response.

4.255 However it is clear that, unlike passenger services, changes in the volume of cargo aircraft traffic have little effect on STAL's commercial (non-airport charge) revenue.

- For passenger services, apart from airport charges, the airport operator also gets income from passengers' spend in the terminal building, car parks, etc.
- It is possible that cargo services generate some non-airport charge income for the airport operator such as income in property, staff ID cards, and staff car parks. However, this is likely to be considerably less than that for passenger services.

[252] RAB is Regulatory Asset Base

4.256 Therefore, the CAA considers that the critical elasticity (i.e. the elasticity required to make an increase in STAL's airport charges to cargo-only airlines unprofitable) will not be reduced by the loss of non-airport charge revenues in the same way that the critical elasticity for passenger services was.[253]

4.257 Also, as in the passenger MPD for Stansted, the CAA considers that there is spare capacity presently available at Stansted, so any cargo business lost is unlikely to be backfilled by unfulfilled demand.

Conclusion on critical / likely loss in response to SSNIP

4.258 Given the limited accounting information available on STAL's cargo-only operations, and the inconclusive evidence the CAA has obtained, the CAA did not attempt to calculate the critical loss or estimate quantitatively the loss that would be likely to occur if STAL were to levy a SSNIP in airport charges on airlines operating cargo-only services at Stansted.

Section 4.6 Barriers to entry and expansion

4.259 Potential competition from new entry into the relevant cargo market or expansion by existing cargo-only airlines, freight-forwarders and integrators might constrain an airport operator from increasing prices, especially where entry barriers are low.

4.260 Entry into the relevant cargo market or expansion by existing providers, and/or the threat thereof, may represent a source of competitive constraint on an airport operator. Where there are low barriers to entry the constraint is greater than when there are high and persistent barriers. This section looks at the barriers to airport operators expanding to accommodate additional cargo-only services.

4.261 Airport entry and expansion require planning consent and in the south east of England are subject to Government policy on runway expansion. Given the time taken to obtain planning permission, entry and expansion would not be effective achieving an expansion of supply that would constrain an increase in STAL's airport charges to cargo-only airlines over the medium term.

4.262 According to DfT forecasts, Luton is not forecast to be full until 2027 while Southend is forecast to be at 42 per cent capacity by 2020. Heathrow is already full, while Gatwick is expected to be full by 2018.[254] Stansted itself

[253] See CAA's MPD for STAL's passenger related airport services

[254] Airports Commission discussion paper No1: Aviation demand forecasting, Figure 3.5, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/73143/aviation-

is forecast to be at 69 per cent capacity by 2020. Therefore, the current situation regarding capacity for cargo to grow at Stansted in comparison to other London airports is likely to continue over the period to 2020.

Regulatory barriers

4.263 The CAA has identified two regulatory barriers that act to restrict expansion of cargo-only services by other London airports in the relevant cargo market: Air Traffic Distribution Rules (TDRs) and night flight restrictions.

The TDRs

4.264 The current London TDRs date from 1991. Essentially, they can prevent dedicated cargo aircraft from using Heathrow and Gatwick at peak times. According to BAA the original purpose of the TDRs was to prioritise passenger aircraft during peak times.[255]

4.265 The relevance of the TDRs to the Stansted cargo assessment is that cargo-only aircraft are unlikely to be able to substitute into Heathrow or Gatwick during peak times in response to an increase in airport charges there.

4.266 In practice, substitution to Heathrow is also unlikely to be attractive for cost and access reasons (slot availability/prices).

Night time restrictions

4.267 While the TDRs apply at peak times, night time regulations and charging are more relevant to cargo-only airlines that operate at night. The integrators and Royal Mail advised that they require night flight operations, in order to meet the retail service standards set for their products which are broadly considered to be express.[256] These products require late pickups from their customers and therefore are processed and shipped over night, the clearest example is that of Royal Mail whose service standards are set by statute.

4.268 Night flight restrictions therefore restrict the ability of airlines to substitute between airports. At Heathrow, Gatwick and Stansted these restrictions are imposed by the Secretary of State for Transport. At both Heathrow and Gatwick the night flight quotas are currently taken by passenger

demand-forecasting.pdf.

255 Competition Commission, The London traffic distribution rules – Background note. Available at http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/545_6_2

256 Source: FedEx [✂]; [✂]; TNT [✂]; and Royal Mail [✂].

operations. Luton has greater flexibility with regards to night flights. London City is not able to provide night services due to planning restrictions. Manston has an agreement with Thanet District Council not to schedule night flights.

4.269 Although Luton does not operate under a movement cap, it does have to comply with a stricter noise contour between 23:00 and 07:00 of 48dB(A) over 85km^2 compared to 57dB(A) over a 31.5km^2.[257] Royal Mail considers that Luton is too restricted for the requirements of its night time operations.[258]

Barriers to entry: Operational barriers

Advantage of Stansted

4.270 This section considers the operational issues at the airports that might prevent expansion of airports that are possible substitutes to Stansted. It goes on to consider operational barriers that shippers or cargo owners might face if they were to reroute cargo away from Stansted.

4.271 The evidence, that the CAA has collected, suggests that there are a number of advantages to operating from Stansted that are not present to the same extent at other airports. For instance Stansted is considered to have

- Good road network access.
- Developed cargo facilities.
- Favourable access time to central London and the freight-forwarding community at Heathrow to allow for late pick up and early drop off.
- Capability to provide night time operations.

Travel time and Access to Heathrow and central London

4.272 A common operational theme that has been raised by airlines operating at Stansted regarding their cargo operations is the travel time from London, and from Heathrow, to various other airports.

4.273 Figure 4.6 highlights that Heathrow is the closest airport to central London followed by Luton and Stansted. Manston airport is the furthest from both Heathrow and central London of the group included in the market definition. Given that the CAA has evidence that some cargo is shipped

257 Luton, noise fact sheet, available at http://www.london-luton.co.uk/en/content/8/1219/noise-factsheet.html

258 Source: Royal Mail [✂]

via airports on the near continent and that most air cargo handled at Stansted goes to long-haul destinations, the 40-minute difference between Stansted and Manston does not appear particularly significant for the majority of cargo. Gatwick, Heathrow and Luton are also closer to central London or Heathrow than Stansted, which would suggest that there is a time advantage in using these airports.

Figure 4.6: Travel times in minutes from Heathrow Airport and central London to near London airports

Airport	Time from Heathrow	Time from central London
Stansted	67	53
Heathrow	-	31
Gatwick	43	58
Luton	38	53
Manston	108	91
Southend	87	63

Source: maps.google.co.uk calculated 19 November 2013

Heathrow

4.274 Heathrow is the UK's largest passenger and cargo airport in terms of passenger numbers and cargo tonnage. However, the majority, 95 per cent, of the cargo tonnage from the airport is provided via the bellyhold of commercial passenger services with the remaining being via cargo-only aircraft. Less than 1 per cent of total air transport movements (ATMs) at the airport are by cargo-only aircraft.

4.275 Heathrow is effectively full in terms of ATM capacity and the CAA considers that passenger aircraft operators would find it difficult to switch to Heathrow in response to an increase in Stansted's airport charges if they had to acquire slots.[259] The CAA considers that operators of cargo-only aircraft would also find it difficult to obtain slots at Heathrow, particularly integrators with their need to operate a comparatively high number of frequencies.

4.276 In addition, the incentives on HAL focus on passenger operations, as these are likely to be more profitable for the airport operator. Passenger services bring revenue not only in the form of the aeronautical revenue but also commercial revenues from passenger spending in terminals, car parks, etc.

[259] CAA's STAL and GAL Market power determinations for passenger related airport services.

4.277 The capacity constraints at Heathrow imply that direct airline substitution to Heathrow is likely to be very limited. However, as already discussed the substitution of cargo into bellyhold at Heathrow is likely to be a significant constraint on STAL.

Gatwick

4.278 Gatwick is the second largest airport in the UK by passenger numbers. In contrast, as shown in Figure 3.9, it did not have any significant cargo-only operations in 2012.

4.279 Like HAL, GAL is likely to have a preference for passenger operations over that of cargo. However, Gatwick has spare capacity off-peak and therefore may have an incentive to accept additional cargo aircraft during the off-peak period. However, given night flight restrictions (noise quotas) at Gatwick, it will be more difficult for airlines to switch night operations as currently passenger flights use all of the noise quotas.

4.280 Additionally there are a number of limitations that have been raised by the integrators with the use of Gatwick:

- Historic joint ownership meant cargo was not able to develop at Gatwick.[260]
- Limited slot availability.[261]
- Night flight limitations.[262]
- Geographic location.[263]
- Limited access and cargo facilities.[264]

4.281 For example, FedEx report that:

> *LGW is the wrong side of the London for FedEx's optimum operating scenario, has limited cargo facilities on airport and limited transport infrastructure, meaning that transit times to and from London would be negatively affected.*[265]

260 Source: [✂]
261 Source: TNT [✂]
262 Source: Royal Mail [✂]
263 Source: FedEx [✂]
264 Source: FedEx [✂]
265 Source: FedEx [✂]

4.282 Emirates SkyCargo, on the other hand, suggested that Gatwick may be a viable alternative for some of its cargo given that it currently operates passenger flights from both Heathrow and Gatwick. However, using Gatwick would involve additional trucking costs from Heathrow where the bulk of its freight-forwarding clients are based.[266]

4.283 Given the capacity situation at Gatwick, the operational limitations and its passenger focus, Gatwick is unlikely to pose a significant constraint with regards to cargo-only airlines. However, these issues do not diminish the ability of bellyhold services (using the large passenger flight network at the airport) posing a significant competitive constraint on STAL by means of downstream substitution.

Luton

4.284 Luton is primarily a passenger airport. The CAA has previously stated that from a passenger perspective there is some spare capacity for inbound operators; though, capacity for aircraft based at Luton is currently limited.[267]

4.285 DHL Express currently operates at Luton using it as part of a system with Heathrow.[268] However, DHL Express has advised that the cargo facilities at the airport are limited and it may have difficulty expanding its operations at the airport at the current time.[269]

4.286 Other integrators have raised the issue of limited cargo facilities at Luton.[270] Other limitations, to do with access to the airport and the runway infrastructure which does not allow for the takeoff of fully laden wide-bodied cargo-only aircraft, have been raised.[271]

Manston

4.287 The majority of the integrators and indeed those operating deferred cargo, to which the CAA has been able to speak, have stated that Manston is not suitable due to its distance from London[272] and the significant extra time and travel costs that would be incurred.[273]

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266 Source: Emirates SkyCargo [✂]

267 CAA's STAL and GAL Market power determinations for passenger related airport services.

268 Source: DHL Express [✂]

269 Source: DHL Express [✂]

270 Source: FedEx [✂]; TNT [✂]

271 Source: DHL Express [✂], TNT [✂]; [✂]

272 Source: [✂]; IAG Cargo [✂]; Royal Mail [✂]; FedEx [✂]

273 Source: IAG Cargo [✂]

4.288 However, it is not clear if this is the case for airlines carrying mainly deferred cargo. Although it is almost twice the distance from London as Stansted, as time is less of an issue for deferred cargo, Manston may present an acceptable alternative.

Southend

4.289 Southend is similar to Manston in that it is considered to be too distant by many cargo airlines and freight-forwarders.[274] Additionally, there are other considerations at Southend relating to its operational capacity (e.g. short runway).

Regulatory and operational barriers to downstream entry and expansion

4.290 Outsized and certain hazardous items cannot be carried as bellyhold cargo. Air transport of hazardous items is regulated under the Chicago Convention, Annex 18 of which deals with the 'Safe Transport of Dangerous Goods by Air'.[275] In the UK the legislation is contained in the Air Navigation (Dangerous Goods) Regulations. The Regulations identify those goods which are forbidden on passenger aircraft but permitted on cargo-only aircraft in normal circumstances; and those that are permitted on both passenger and cargo-only aircraft in normal circumstances.

4.291 When asked what they considered to be outsized cargo Agility Logistics noted:

> *From our point of view, anything over 160 centimetres high has to go on a freighter aircraft.*[276]

4.292 The CAA considers that Agility Logistics was referring to a unit load device, a pallet or container used to load luggage, freight, and mail on wide-body aircraft and specific narrow-body aircraft. It allows a large quantity of cargo to be bundled into a single unit.

4.293 Although bellyhold is not suitable for hazardous or outsized items, there is considerable spare bellyhold capacity at Heathrow. MAG has provided evidence showing that, in 2012, only 48.5 per cent of bellyhold capacity at Heathrow was in use, based on available capacity on each flight and the tonnage flown.[277] Therefore, there could be scope for cargo to be switched between cargo-only aircraft at Stansted and bellyhold capacity at Heathrow. However, the CAA notes that the estimate of 48.5 per cent

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274 Source: Royal Mail [✂]

275 More information is available at http://www.icao.int/safety/DangerousGoods/Pages/default.aspx.

276 Source: Agility Logistics [✂]

277 Source: MAG [✂]

spare bellyhold capacity is an average across all services operated from Heathrow. It does not take into account the specific destinations of the capacity.

Conclusion on barriers to entry and expansion

4.294 The TDRs form a barrier to expansion of new cargo-only services at Heathrow and Gatwick, although, as noted above, in practice airline substitution from Stansted to Heathrow would be insignificant for slot availability/price reasons.

4.295 A night flight movement's limitation is in place in one form or another at all the airports under consideration. The movement limitation is tighter at both Heathrow and Gatwick than at Stansted and therefore may to some extent limit the expansion of cargo-only services at Heathrow and Gatwick.

4.296 While hazardous and outsized items cannot be carried in the bellyhold of passenger aircraft, the CAA was unable to identify barriers that would prevent greater use being made of bellyhold capacity at other airports for normal cargo if STAL were to increase airport charges above the competitive level. The CAA notes that cargo owners and shippers do not have a preference for routing as long as delivery is timely and therefore might be expected to be more sensitive to price than passengers. Consequently, the CAA considers that bellyhold at HAL and GAL provides a significant constraint even though there are some barriers to entry and expansion.

Section 4.7: Buyer Power

4.297 According to the OFT guidelines[278], countervailing buyer power (CBP) is

> *most commonly found in industries where buyers and suppliers negotiate, in which case buyer power can be thought of as the degree of bargaining strength in negotiations.*

4.298 This guidance further states that

> *size is not sufficient for buyer power. Buyer power requires the buyer to have choice.*

4.299 CBP relates primarily (although not always) to the strength of a buyer in negotiations with sellers.[279] The existence of substantial spare capacity

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278 OFT, Assessment of market power – Understanding competition law, 2004, OFT415.

279 See, for example, the OECD competition committee round table on buyer power and the contributions by OECD members to that debate, summarised in OECD (1998). The OFT and the

and lack of competitive backfill at Stansted is relevant to the assessment of buyer power as it means that promises of additional traffic or threats or actual withdrawal of capacity could have a material effect on STAL's profitability (as it may not be easily replaced).

4.300 CBP might be exercised by airlines switching their aircraft to other airports or by integrators, acting as freight-forwarders, switching their Stansted freight to another airport or mode of delivery. The CAA considers that threats of switching freight would be an unlikely instrument of buyer power as the airport operator earns revenue on aircraft movements rather than the volume of freight that they carry.

4.301 The CAA has therefore considered CBP as the power of airlines to offset the powers of the airport operator, whose allegedly superior powers are under consideration, and the important question is what degree of CBP is there, and (bearing in mind the other competitive constraints) does it operate to a sufficient extent so as to mean that there is no SMP. CBP is not an absolute concept in terms of its strength. It is a concept which embodies a possible range of strengths. In any case where it is considered, the relevant question is whether there is any CBP, and if so how much and what effect does it have.[280]

4.302 Various factors will contribute to, or detract from, the power of the buyer, and they will have various strengths depending on the market in question.[281] The assessment of CBP is an assessment of how the market actually operates (or is likely to operate) on the true facts to see whether an airline or other stakeholder in the supply chain has a real and effective bargaining position that is sufficient to counter the factors which would otherwise point in favour of an airport operator having SMP.

4.303 Figure 4.7 shows the cargo-only carriers with the 8 largest shares of cargo tonnage at Stansted. Three carriers, FedEx, IAG Cargo and UPS each have a 15 per cent or more share of cargo tonnage at the airport, a level that might afford them buyer power if they could switch all or a substantial proportion of their aircraft operations to another airport. Together, these carriers represent 76 per cent of STAL's cargo-only traffic.

EC Commission refer to buyer power in a bargaining framework at OFT (2004a), paragraph 6.2 and EC (2004a), paragraph 64.

280 See also *Hutchinson 3G v Ofcom* [2005] CAT 39, paragraphs 110 to 111.

281 *Hutchinson 3G v Ofcom* [2005] CAT 39, paragraph 111.

Figure 4.7: Proportion of cargo tonnage at handled at Stansted by airline, 2012

Airline	Proportion of cargo tonnage at handled at Stansted (%)
FedEx	35
IAG Cargo	26
UPS	15
Titan Airways	6
Jet2.com	5
ABX Air	3
Asiana	2
Martinair	2

Source: CAA Airport Statistics

4.304 While a significant share of cargo tonnage at Stansted might indicate a potential for the existence of buyer power, the existence of viable alternative airports and the ability to switch is also important.

4.305 Based on the discussion of the substitutability of other airports in the south east of England for Stansted discussed in section 4.2 above, the CAA considers it unlikely that FedEx and UPS could credibly threaten to switch a substantial proportion of their aircraft away from Stansted.

4.306 However, in 2010, when STAL was owned by BAA, IAG Cargo threatened to switch away. In its internal documents, STAL noted an unsubstantiated report that:

> *BAWC very nearly relocated [its] entire operation to Manston Airport in 2010 but cancelled late on following Thanet's* *<u>lack of discretion and a deal made with Stansted Airport/handling agent</u>*.[282] *<u>(emphasis in the original)</u>*

4.307 Regarding its potential move to Manston, IAG Cargo told the CAA that:

> *To add context, the discount was offered at a time when the cargo industry was in recession.*
>
> *The discount was offered in response to BAWC's threat to move its STN [Stansted airport] operations to MSE:*

282 Source: MAG [✂]

[✂].[283]

4.308 The CAA considers that IAG Cargo's threat in 2010 and the subsequent discount granted to IAG Cargo by STAL indicates that Manston was perceived as a viable alternative to Stansted. IAG Cargo's threat was credible and was taken seriously by STAL, even under the previous BAA ownership.

4.309 However, STAL has recently [✂].[284] Also, IAG Cargo's discount was negotiated in the context of the recession in 2010.[285] Therefore, it is difficult to conclude that STAL has offered price discounts as the result of an exercise of buyer power.

4.310 In conclusion, given that cargo airlines account for just a small part of STAL's business, the CAA does not consider that airlines can exert much CBP on the airport operator.

Section 4.8: Current regulation and pricing

4.311 For all regulated airport operators, cargo aircraft are excluded from the regulated yield. However, economic regulation sets a requirement on the airport operator that the charges applied to cargo aircraft (e.g. for landing) should not be higher than charges levied to equivalent passenger aircraft.

4.312 At Stansted there is an additional obligation to give aircraft in excess of 250 metric tonnes maximum takeoff weight (MTOW) at least the same level of off-peak (winter) discount on landing charges as the discount offered in the next lower weight band (aircraft with MTOW between 55 and 250 metric tonnes).[286] This is because short-haul passenger services (the vast majority of flights operating at Stansted) are in the 55 to 250 metric tonnes bracket. This condition was imposed by the CAA, as result of a CC public interest finding.

4.313 However, as part of its response to the CAA's December 2013 letter to stakeholders,[287] MAG has committed to keep published charges for landing cargo aircraft the same as published charges for landing passenger aircraft in a way that would fulfil both conditions of current

283 Source: IAG Cargo [✂]

284 Source: MAG, response to December 2013 CAA stakeholder letter, dated 20 January 2014

285 Source: IAG Cargo [✂].

286 recommended by the CC, Stansted price control review Q5, paragraph 13.53 available at: http://www.caa.co.uk/docs/5/ergdocs/ccstansted.pdf

287 Available at http://www.caa.co.uk/docs/78/magcargoresponse.pdf

economic regulation of charges for cargo-only aircraft, for a period of two years from 1 April 2014.

Airport charges at Stansted and other airports

4.314 The structure of airport charges applicable to cargo-only aircraft differs significantly across airports. Landing charges may be levied according to takeoff weight, quota count (noise charging) categories and time of day. It is only possible to compare published charges, as actual prices paid are commercially confidential information. The airports that the CAA has used in this section to compare to Stansted's charges are, except for Heathrow, not subject to economic regulation by the CAA.

4.315 This section considers whether regulation has distorted the level of STAL's airport charges. If regulation has held STAL's charges below the competitive level that might have implications for the evidence the CAA has obtained on substitution to other airports. If STAL's airport charges were below the competitive level, then other means of delivering cargo might not appear to be substitutes, when they might be at competitive prices.

Published charges at STAL

4.316 STAL's current charges for landing, based on the aircraft size, are set out in Figure 4.8. This is based on STAL's Conditions of Use for airport charges from 1 April 2013.[288]

Figure 4.8: STAL landing charges 2013/14

Flights	**Peak (GBP)[289]**				**Off-peak GBP[290]**			
Noise Category	Ch 2 & Non cert	Ch 3 High	Ch 3 Base	Ch 4 & 3 Minus	Ch 2 & Non cert	Ch3 High	Ch 3 Base	Ch 4 & 3 Minus
Fixed wing aircraft over 16 Metric tonnes not exceeding 55 metric tonnes	599.49	299.74	199.83	179.85	444.92	222.46	148.31	133.48
Fixed wing aircraft over 55 metric tonnes not exceeding 250 metric tonnes	980.41	490.20	326.80	294.12	551.72	275.86	183.91	165.52
Fixed wing aircraft over 250 metric tonnes	1,689.16	844.58	563.05	506.75	955.63	477.81	318.54	286.69

4.317 In addition to the above, an ANS charge per landing of £136.17 applies to all flights.

4.318 STAL's standard charges for aircraft parking over 15 metric tonnes will be a charge per quarter hour or part thereof of £3.47 plus 21.2p per metric tonne of the aircrafts MTOW.

STAL's consultation on its Conditions of Use from 1 April 2014

4.319 STAL has consulted on its Conditions of Use for cargo and passenger services.[291]

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288 Available at: http://www.stanstedairport.com/media/4167/stal_conditions_of_use_%202013_14.pdf

289 Peak Period - 1 April to 31 October.

290 Off Peak - 1 November to 31 March.

4.320 In that consultation, STAL proposed, for 2014/15, to increase charges by RPI (3.2%) across each of the tariff structures, which equates to an effective yield of £7.897 per passenger. Landing and parking charges for cargo-only aircraft will increase by RPI (3.2%).

4.321 Therefore, if the cargo airlines continue to pay published charges and use the same mix of services, the costs for their use of Stansted are likely to increase in line with inflation next year.

Published charges at other airports

4.322 Published airport charges, including airport and air navigation services (ANS) charges applicable to cargo-only aircraft at East Midlands, Manston, Luton, Heathrow, Prestwick and Birmingham are examined below. These are principally those related to the landing (and takeoff of aircraft) and parking charges.[292] The CAA then compared the total charges for a 747-800F, an MD-11 and a 737-300 implied by published charges for those airports, making some assumptions about how airlines use airports (see Figure 4.9 below).

East Midlands (EMA) published charges (2013/14)

4.323 For each arrival and departure at East Midlands[293], airlines pay an ANS charge of £1.10 per tonne (or part) of the aircraft's certified MTOW plus a £0.82 runway charge. In addition, if the arrival or departure time is between 06:01 and 07:00 or between 21:01 and 23:29 local time, airlines will pay a "*shoulder supplement*" of £1.69 per MTOW tonne. However, if the arrival or departure time is between 23:30 and 06:00 the airlines will pay instead a "*night supplement*" ranging between £2.54 and £3.11 per MTOW tonne, depending on the noise characteristics of the aircraft. Very noisy aircraft (QC8 and QC16) will only be allowed to land or take-off between 2300 and 0700 in exceptional circumstances and will face surcharges of £5,000 to £10,000 per movement.

4.324 Parking charges are free for the first 2 hours followed by £0.29 per tonne of the aircraft's certified MTOW per hour or part thereof.

4.325 However, if an aircraft arrives and departs during the same day between 07:00 and 21:00 the free parking period is extended by 2 and 4 hours for

291 STAL, Charges Consultation Meeting – 20 December 2013

292 Some airports published charges (such as Manston and Luton) may also describe other charges for services provided that are cargo-related or for groundhandling. For the purpose of this analysis, the CAA has ignored those charges, as they were not easily comparable across airports and some will not be provided by the airport operator.

293 These available at http://www.eastmidlandsairport.com/emacargo.nsf/Content/AirportFees

aircraft with MTOW between 200 and 300 tonnes and more than 300 tonnes, respectively. There are also reduced charges for remote stand facilities, where aircraft cannot be serviced for small aircraft or for maintenance of aircraft that require long parking periods.

Manston (MSE) published charges (2013/14)

4.326 For each landing at Manston[294] airlines pay £8 per tonne (or part) of the aircraft's certified MTOW, which includes ANS charges. Because of an agreement between Manston and the Local Authority, in general, flights between 23:00 and 07:00 are not permitted. When they are permitted they are normally limited to less noisy aircraft (QC4 or below).

4.327 Manston also has a charge for a ramp service charge for cargo aircraft of £4.50 per tonne. The CAA has assumed that it would not be appropriate, in a like for like comparison, to include this charge. It is not known if this is included in the landing charges at STAL.

4.328 Parking charges are free for the first 2 hours followed by £4.00 per tonne of the aircraft's certified MTOW for 24 hours or part thereof.

Luton (LTN) published charges (2013/14)

4.329 For each landing at Luton[295] airlines pay £117.46 plus £1.75 per tonne of the aircraft's certified MTOW. In addition airlines pay ANS charges of £71.00 per approach plus £1.97 per tonne of the aircraft's certified MTOW. Night operations (between 23:00 and 06:00) pay an additional £77.97 per movement plus £1.43 per tonne of the aircraft's certified MTOW.

4.330 Aircraft parking is free for the first 15 minutes plus £0.0134 per tonne of the aircraft's certified MTOW.[296]

Heathrow (LHR) published charges (2013/14)

4.331 For aircraft at Heathrow[297], exceeding 16 metric tonnes, airlines pay landing charges depending on the aircrafts' noise certification and the time of the day as described in Figure 4.9 below.

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294 http://www.manstonairport.com/userfiles/files/T-Cs/Manston-Fees-Charges-Eff-01-April-2013.pdf

295 http://www.london-luton.co.uk/en/download/217/Charges%20&%20Conditions%20of%20Use%20-%202013/2014.pdf

296 This is based on the standard charge for stays of 12 hours or less. There is a lower charge for remote stands and a higher charge for passenger aircraft handled by a Fixed Base Operator. For longer parking times charges are higher.

297 http://www.heathrowairport.com/about-us/partners-and-suppliers/conditions-of-use

Figure 4.9: Heathrow's noise-related landing charges 2013/14 for aircraft with MTOW greater than 16 tonnes

	Ch 2 & Ch 3 High	Ch 3 Base	Ch 4 High	Ch 4 Base	Ch 4 Minus
Day	7,817.88	2,605.96	1,563.58	1,302.98	781.79
Night 00:00-03:29	19,544.70	6,514.90	3.908.95	3,257.45	1,954.48

Source: Heathrow's conditions of use

4.332 In addition, airlines pay an ANS charge of £78.58 per landing plus £1.06 per metric tonne. Airlines also pay an emission charge of £7.76 per kg of NOx that represents around 3 per cent of Heathrow's airport charge revenue.[298]

4.333 For wide-bodied aircraft (such as the B747 and the MD-11) the first 90 minutes' parking are free followed by a charge of £54.45 per 15 minutes or part thereof. For narrow-bodied aircraft (such as the B737) the first 30 minutes' parking are free followed by a charge of £22.68 per 15 minutes or part thereof. Parking is also free between 22:00 and 05:59.

Glasgow Prestwick (PIK) published charges (with effect from 01/07/2012)

4.334 For each landing at Glasgow Prestwick[299], airlines pay £7.70 per tonne (or part) of the aircraft's certified MTOW, which includes ANS charges.

4.335 After a two-hour free parking period, airlines pay £0.27 per hour per tonne of the aircraft's certified MTOW.

Birmingham (BHX) published charges (with effect from 01/04/2013)

4.336 For each landing at Birmingham International[300], airlines pay £10.02 per tonne (or part) of the aircraft's certified MTOW, which includes ANS charges. There are also noise violation charges; for instance, a surcharge equivalent to a runway charge will be levied against an operator should it exceed a noise level of 85 dB(A) on departure between 23:30 and 06:00.

4.337 After a two hour free parking period, aircraft over 30 tonnes pay £56.90 + £11.50 per 10 tonnes or part over 30 tonnes and aircraft over 100 tonnes

298 Source: Heathrow Airport Charges Consultation Document, October 2012.

299 http://www.glasgowprestwick.com/userfiles/files/Glasgow-Prestwick-Terms-eff-01-July-2012(3).pdf

300 http://www.birminghamairport.co.uk/meta/about-us/doing-business/fees-charges.aspx

pay £137.40 + 10.40 per 10 tonnes (or part over 100 tonnes) for a period of 24 hours.

CAA's analysis

Comparison of published charges

4.338 The CAA has calculated estimate prices for landing three different aircraft at these airports: the B747-800F the MD-11F and the B737-300. This is set out in figure 4.10 below. The calculation includes ramp charges at Manston but does not include other groundhandling charges

Figure 4.10: Airport charges (£) for selected aircraft at Stansted (STN), East Midlands (EMA), Manston (MSE), Heathrow (LHR), Prestwick (PIK), and Birmingham (BHX) according to 2013/14 published charges

Aircraft	Type	STN - Summer	STN - Winter	EMA	LTN	MSE	LHR	PIK	BHX
B747-8F	Landing	643	423	1,697	N/A	3,536	1,329	3,403	4,429
	3h parking	1,116	1,116	0	N/A	1,768	545	119	501
	2h parking	777	777	0	N/A	0	327	0	0
	Total (3h)	1,809	1,589	1,697	N/A	5,304	1,873	3,523	4,930
	Total (2h)	1,420	1,200	1,697	N/A	3,536	1,656	3,403	4,429
MD-11F	Landing	699	455	1,048	1,204	2,184	2,974	2,102	2,735
	1.5h Parking	368	368	0	344	0	218	0	0
	Total	1,067	823	1,048	1,548	2,184	3,192	2,102	2,735
B737-300	Landing	430	302	238	419	496	1,708	447	621
	1h Parking	66	66	0	47	0	45	0	0
	Total	497	368	238	466	496	1,753	477	621

Source: Airports' published conditions of use for 2013/14.

Notes:- The table above assumes a rotation (one landing and one departure) and a assumes aircraft parking of 2 to 3 hours for a 747-8f turn around, 1.5 hours for the MD-11 and 1 hour for the 737-3.

- The CAA chose these three aircraft types because they are examples of large and small aircraft currently often used by airlines at Stansted. The B747-8F has a MTOW of 442 tonnes, typically requires a long runway, such as at Stansted, Heathrow, East Midlands, Manston but not Luton or Southend and its noise certification is chapter 4 minus. The MD-11 has a MTOW of 273 tonnes and its noise certification is chapter 3 base. The 737-300 has a MTOW of 62 tonnes, it can land at most airports that handle cargo and its noise certification is Chapter 4 high.
- The CAA notes that each airport will have its own pricing nuances and restrictions as described below that are not fully captured in a comparison table like this one.

4.339 Given the difference in the structure of tariffs at different airports it is difficult to ensure the comparisons are on a like for like basis. The level of airport charge at each of the airports is likely to vary according to the needs of the individual airline. Furthermore, airlines can make bilateral deals with airport operators, which reduce the reliability of a comparison of published charges.

4.340 For larger aircraft such as the 747-800F, Stansted charges are of the same magnitude as those at Heathrow and East Midlands but are substantially below Manston’s. The CAA has not been able to explain the marked difference between published charges at Stansted and Manston. Regulation may have resulted in lower charges for larger aircraft at Stansted or Manston may be able to charge more because its airlines have a preference for it based on additional factors, for example its proximity to distribution centres in the South East.

4.341 Heathrow and East Midlands charge a night supplement that can almost double the costs of landing compared to their day time charges. As noted, STAL does not vary its landing charges between daytime and night; neither does it have restrictive night flight restrictions.

4.342 STAL’s published charges appear to be somewhat lower than at some of the other airports that serve cargo-only flights, particularly for the night period and winter. However, it is difficult to conclude that STAL’s airport charges are substantially below those at other airports for comparable services.

4.343 Some airport operators make revenue from other services provided to cargo airlines, which may influence their charging strategy.

4.344 Heathrow is more expensive, but it is not an appropriate comparator to Stansted’s prices, due to its size and capacity constraints. Also Heathrow’s charges are subject to economic regulation by the CAA.

4.345 Despite the apparent price differential, Manston seems to be able to retain existing business. This may be because airlines at Manston are cautious of moving their existing operations, for example, because it is a simpler airport for cargo-truck transfer operations. Also, Manston may offer discounts on their published charges.

4.346 Without economic regulation via a licence at STAL, prices may rise but the CAA cannot rule out that this would be an increase to a competitive price rather than above it. In addition, STAL has made a commitment to preserve the link with published charges for landing passenger aircraft for 2 years from 1 April 2014.

Competitive price vs. current price

4.347 One of the key difficulties associated with defining markets is identifying the competitive price level for an airport. Using too high a price as the starting point risks defining an overly wide market (the Cellophane Fallacy), while the use of too low a price risks defining an overly narrow market (the reverse Cellophane Fallacy[301]).

4.348 The CAA has based its consideration of potential relevant cargo markets for Stansted cargo operations on the prevailing, regulated price[302], which is the price faced by cargo-only airlines. As shown in Figure 4.10 above, STAL's airport charges are somewhat lower than some other UK airports, possibly as a result of regulation but it is difficult to conclude that they are substantially below a range of airport charges that the CAA considers to represent a competitive level.

Conclusion on Current regulation and pricing

4.349 The CAA has compared the current regulated level of airport charges at Stansted to charges at other airports. The comparison with other airports indicates that the regulated prices at Stansted may be below a competitive level. However, the CAA considers that it is difficult to conclude on the impact of current pricing given the existence of economic regulation.

Section 4.9: MAG and STAL's behaviour

4.350 The relatively recent change of ownership of STAL has complicated the CAA's assessment of whether behavioural indicators suggest that STAL

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301 Refers to the fallacy of defining an inappropriately wide market definition in conducting a SSNIP where the price used for the analysis are above the competitive price level. The reverse occurs in defining an inappropriately narrow market definition where prices used are below the competitive price level.

302 The CAA notes that in merger cases the hypothetical monopolist test is conducted from prevailing prices. OFT and CC, Merger Assessment Guidelines, A joint publication of the Competition Commission and the Office of Fair Trading, OFT1254/CC2(Revised), September 2010, paragraph 5.2.12.

has or does not have SMP. Most of the evidence the CAA has previously considered relates to STAL under BAA ownership and the acquisition of STAL by MAG in February 2013 has not left sufficient time for the full implementation of the new owner's commercial policies.

4.351 According to DfT forecasts, Luton is not forecast to be full until 2027 while Southend is forecast to be at 42 per cent capacity by 2020. Heathrow is already full, while Gatwick is expected to be full by 2018.[303] Stansted itself is forecast to be at 69 per cent capacity by 2020. Therefore, the current situation regarding capacity for cargo to grow at Stansted in comparison to other London airports is likely to continue over the period to 2020.

4.352 Furthermore, even with the forecast increase in passengers as a result of the bilateral agreements made with passenger airlines, STAL is not expected to be full at least until 2020. Therefore, any business that STAL might lose due to a SSNIP would be unlikely to be backfilled by other airlines who use Stansted. As such, STAL is more likely to engage in activity to seek to attract cargo (and passenger) airlines and other stakeholders to use Stansted. .The CAA has considered the behaviour of STAL since it has been owned by MAG. The evidence suggests that STAL has a more constructive engagement and commercial negotiation approach with its airlines customers than under BAA's ownership.

4.353 MAG considered that its new commercial strategy at Stansted, and the importance of allowing STAL to compete freely, applies equally to both the passenger and the cargo sides of the business. It has stated that there would be no commercial logic to adopting contradictory strategies for passenger and cargo airlines whereby growth is incentivised for passenger airlines but not for cargo airlines.

4.354 MAG considered that there is a significant opportunity to grow the cargo business at Stansted by adopting a different commercial approach, and it has committed resources to engaging with existing and potential customers. It advised that it is working to attract new cargo services, including attracting new cargo airlines from airports such as Heathrow, Manston, Luton and Amsterdam (Schiphol). MAG considered that this contrasts starkly with BAA's historic approach to engaging with cargo customers at STAL.

4.355 MAG behaviour which demonstrates its new commercial approach includes:

303 Airports Commission discussion paper No1: Aviation demand forecasting, Figure 3.5, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/73143/aviation-demand-forecasting.pdf.

- MAG appointed a new Commercial Director for cargo, who is focused on building relationships with MAG's cargo airlines, with a view to replicating the successes it has achieved in relation to passenger airlines.

- MAG has established a dedicated cargo team which is committed to developing the cargo business at STAL and ensuring its cargo customers receive a first class service from the airport operator.

- In January 2014, MAG wrote to STAL's cargo customers advising that STAL's conditions of use for the next two years (from 1 April 2014) will preserve the existing conditions in the current STAL price controls related to cargo. This is unconditional on the outcome of the MPD. There are two aspects to these conditions:

  - The schedule of published airport tariff charges at Stansted airport shall not contain higher tariffs in respect of cargo air services than in respect of equivalent passenger air services. For these purposes, "*passenger air services*" means air services carrying passengers that join or leave an aircraft at Stansted airport, including air services operated for the purpose of business or general aviation, and "*cargo air services*" means air services carrying cargo, which do not fit within the definition of passenger air services.

  - The charges for landing aircraft at Stansted airport are fixed so that the charge levied for landing an aircraft in excess of 50 metric tonnes but below 250 metric tonnes during a peak period is higher than the charge levied for landing at other times. The charges levied for landing aircraft in excess of 250 metric tonnes shall, at all times, bear the same relationship to the equivalent charges levied on aircraft in excess of 50 metric tonnes but below 250 metric tonnes.

- Cargo deals have been agreed with two airlines – [✂].

- Formal offers have been made to two airlines – [✂].

- MAG have had deal discussions with a number of other cargo airlines, including [✂].[304]

4.356 MAG considered that this contrasts with the position when HAL, GAL and STAL were under common ownership. MAG's acquisition of STAL has

304 Source: MAG's response to the CAA's letter of 20 December 2013, dated 20 January 2014, paragraph 14, http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=12275

had a fundamental effect on the commercial environment at STAL both in terms of engagement with airlines and resulting commercial behaviour.

Conclusion on MAG and STAL's Behaviour

4.357 MAG has not yet agreed deals that cover a high percentage of its cargo business. However, overall, the CAA considers that it has seen a significant change in behaviour from the new owners. STAL appears to be operating in a way that is consistent with there being competitive constraints on STAL.

Section 4.10: Conclusion on market power

4.358 Based on the evidence the CAA has obtained, the CAA considers that the evidence does not establish that STAL has or is likely to acquire SMP in the relevant cargo market at Stansted.[305]

4.359 With respect to market shares, STAL only has a share of around 12 per cent of the relevant cargo market (section 4.1). STAL's market share is inconsistent with a finding of dominance, as any attempt to increase prices would be constrained by substitution to other suppliers in the relevant cargo market.

4.360 Although the scope for cargo-only airlines based at Stansted to switch from Stansted is relatively limited, there is some constraint from other airports, including from cargo-only airlines using Manston (section 4.2). In any case, the CAA's duties are to 'further the interests of users of air transport services', in this case the owners of cargo, rather than particular cargo airlines or other cargo industry stakeholders.

4.361 Cargo owners, in contrast with passengers, are not generally concerned about the precise route their cargo takes or the mode used (i.e. sea, air, road and rail), they are more concerned with ensuring delivery in a specified time at the lowest cost. They are generally quite indifferent to whether cargo uses Stansted or another airport or another transport mode. The scope for switching by integrators and freight-forwarders would constrain STAL's behaviour (section 4.3).

4.362 Cargo-only airlines and integrators (who have cargo-only aircraft), based at Stansted, would face relocation costs in moving their cargo-only services away from Stansted. However, freight-forwarders do not face

305 The product market is as least as wide as the provision of cargo related AOS to airlines providing cargo-only services and cargo carried in the bellyhold of passenger aircraft. The geographic market is at least as wide as airports in the south east of England (including Stansted, Heathrow, Gatwick, Luton and Manston).

these costs. he costs involved in downstream switching to alternative services, especially by shippers, freight-forwarders and integrators (acting as freight-forwarders) do not significantly inhibit downstream switching (section 4.4).

4.363 The CAA was not able to carry out a quantitative critical loss analysis. However, given the analysis on switching opportunities, the CAA judges that STAL would not be able to sustain a SSNIP above the competitive price level (section 4.5).

4.364 There may be some restrictions on entry and expansion of other providers (section 4.6). For example, the TDRs form a barrier to expansion of new cargo-only services at Heathrow and Gatwick, although, as noted above, in practice airline substitution from Stansted to Heathrow would be insignificant for slot availability and price reasons. Therefore the constraint from airline switching to Heathrow must be considered to be insignificant. Likewise, night flight movements are limited in one form or another at all the airports under consideration. The movement limitation is tighter at both Heathrow and Gatwick than at Stansted and therefore may to some extent limit the expansion of cargo-only services at Heathrow and Gatwick.

4.365 The CAA does not consider that the cargo-only airlines can assert much buyer power. Therefore, it is difficult to conclude that STAL has offered price discounts as the result of an exercise of buyer power. Given that cargo airlines account for just a small part of STAL's business, the CAA does not consider that airlines can exert much CBP on the airport operator (section 4.7).

4.366 The CAA considers that it is difficult to conclude on the impact of current pricing given the existence of economic regulation at STAL (section 4.8). The behaviour of MAG since acquiring STAL (section 4.9) appears to be consistent with there being competitive constraints on STAL.

4.367 In summary, the CAA's primary duty in assessing this market is to identify whether regulation is necessary in the interests of owners of cargo. Given the nature of the supply chain in cargo, this means looking not only at the constraints posed by cargo airlines' alternatives but also those of cargo owners or those who contract for cargo owners AOS to air cargo airlines, directly or indirectly, on their behalf. The CAA has identified a number of means by which downstream switching by cargo owners and shippers could constrain an increase in airport charges at Stansted by switching to other ways of delivering their cargo, including switching to making greater use of bellyhold or even rerouting deferred cargo to alternative airports in the south east of England or airports outside of the relevant cargo market.

4.368 The CAA, having regard to all of the evidence obtained and its general duties under the CA Act and the relevant notices and guidance issued by the EC and the OFT regarding the competition law notices and guidance, is not satisfied based on the evidence obtained that STAL has or is likely to acquire SMP in the relevant cargo market. .

Section 5 – Final decision on Test A for STAL's cargo related AOS

4.369 The CAA therefore concludes, based on the evidence that the CAA has obtained, that the relevant cargo market for STAL's cargo services at Stansted is likely to be at least as wide AOS to air cargo airlines provided in the south east of England.

- AOS to air cargo airlines includes cargo-only flights and cargo carried in the bellyhold of passenger aircraft.
- The CAA defines the south east of England for the purposes of this determination as the London area (including Stansted, Luton, Heathrow and Gatwick airports), plus Manston airport.

4.370 As it has no historical evidence of the operation of the relevant cargo market without regulation, the CAA has therefore had to base its conclusion on the limited evidence obtained of the wider cargo sector and the indicators regarding constraints.

4.371 Test A is whether the CAA considers that STAL '*has or is likely to acquire SMP...*'. The CAA is not satisfied on the basis of its analysis on market definition and constraints that the statutory test is met. Overall, the analysis of the evidence obtained on these two key areas does not point to a basis for concluding that STAL has or is likely to acquire SMP in the relevant cargo market. As such the CAA concludes that STAL does not meet Test A for cargo related AOS at Stansted.

CHAPTER 5

Test B: Adequacy of competition law

5.1 As outlined in chapter 1 above, section 3 of the CA Act prohibits the operator of a dominant area at a dominant airport from requiring payment of charges in respect of AOS without a licence.

5.2 As outlined in chapter 4 above, the CAA's final decision under Test A is that STAL does not have, nor is likely to acquire, SMP in the relevant cargo market. As a result, there can therefore be no risk of STAL engaging in conduct that would amount to an abuse of that SMP. In circumstances where Test A is not met, Test B cannot be met.

5.3 This chapter sets out the CAA's evidence and analysis relating to Test B for the relevant cargo market for STAL. In particular, it considers:

- The legal framework.
- History of consultation on Test B.
- Final decision on Test B for Stansted's cargo related AOS.

Legal framework for assessment of Test B

The statutory test

5.4 In its assessment of the MPT, having established that an airport operator has or is likely to acquire SMP in a relevant market, the CAA may only go on to consider the benefits of licence regulation of that airport operator where it '*is satisfied that competition law does not provide sufficient protection against the risk that the operator may engage in conduct that amounts to an abuse of that SMP*'.[306]

5.5 Although Test B is a separate test, it cannot be divorced from the wider regulatory context: i.e. that the CAA has already determined whether the relevant operator has or is likely to acquire SMP in the relevant market. If the operator does not have and is not likely to acquire SMP, there is no risk that the operator will abuse that SMP.

5.6 The assessment of Test B must be conducted in accordance with the CAA's general duty in section 1 of the CA Act; that is in a manner which it

306 Section 6(4) of the CA Act.

considers will further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of AOS[307] and to do so, where appropriate, by carrying out its functions in a manner which it considers will promote competition in the provision of AOS.[308] The CAA must also have regard to various matters set out in section 1(3) of the CA Act, including:

- The need to secure that all reasonable demands for AOS are met.
- The regulatory principles in section 1(4) of the CA Act, namely that its regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases where action is needed.

5.7 Lastly, the CAA has a duty to avoid the imposition or maintenance of unnecessary burdens when exercising its functions under Chapter 1 of the CA Act.[309]

5.8 Test B itself requires the CAA to assess the adequacy of competition law from the perspective of '*users of air transport services'*, which are defined in section 69(1) of the CA Act as passengers carried by the air transport service or a person who has a right in property carried by the service. Accordingly, when assessing the merits of competition law, the CAA has to further the interests of passengers and cargo owners, and not the interests of commercial passenger airlines or cargo airlines or other intermediary service providers, such as freight-forwarders, integrators, groundhandling providers, car parking or retail concessionaires.

History of consultation on Test B

Minded to Consultation

5.9 In January 2013, the CAA published the minded to Consultation.[310] The minded to Consultation, considered that the MPT as set out in the CA Act could be met in relation to Stansted.[311]

5.10 In the minded to Consultation, the CAA considered there was a distinct product for services provided to cargo-only airlines compared to services

[307] Section1(1) of the CA Act.

[308] Section 1(2) of the CA Act.

[309] Section 104 of the CA Act amends section 73 of the Regulatory Enforcement and Sanctions Act 20008 so as to place a duty on the CAA not to impose or maintain any unnecessary burdens when carrying out its functions under Chapter 1, Part 1 of the CA Act.

[310] Stansted minded to Market Power Assessment January 2013, http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14395

[311] The minded to Consultation, paragraph 1.

provided to passenger airlines at Stansted.[312] The CAA based this on the difference in handling facilities for passengers and for cargo and on the fact that, unlike Heathrow and Gatwick, at Stansted the predominant means for transporting cargo is through cargo-only aircraft.[313] Because the minded to Consultation considered that Test A could be met for the relevant markets for services to passenger airlines and services to cargo-only airlines, both Tests B and C were assessed together for the two relevant markets. This consultation considered that Test B was met as competition law alone would not be sufficient to prevent the risk of STAL abusing its market power in the two relevant markets identified – airport services to passenger airlines and airport services to cargo airlines.[314]

5.11 The CAA considered that some form of ex ante regulation under the CA Act could provide a more effective safeguard against the risk of abuse than competition law alone and would be better adapted to protect the interests of passengers and owners of cargo.[315]

5.12 The CAA noted that the imminent change of ownership of STAL[316] might affect STAL's behaviour, which might modify the CAA's view.[317] The CAA welcomed representations, within a period of three months, on its views. The period for representations was extended until 28 May 2013, to enable MAG (as the new owners) to comment on the MPA in conjunction with the Initial Proposals on the form of regulation.[318]

Summary of responses to the minded to Consultation

5.13 The CAA received seven responses to the minded to Consultation, three of which were relevant to the STAL's cargo related AOS:

- IAG Cargo.
- MAG.

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312 The minded to Consultation, paragraphs 4.154 and 4.155.

313 The minded to Consultation, paragraphs 4.45 to 4.47.

314 The minded to Consultation, paragraphs 24 and 8.71

315 The minded to Consultation, paragraphs 24 and 8.71.

316 MAG acquired STAL in February 2013, after the minded to Consultation was published in January 2013.

317 The minded to Consultation, paragraph 7.26 and 7.29.

318 The CAA published its consultation on the initial Q6 proposals for the economic regulation of Heathrow, Gatwick and Stansted (the Initial Proposals), on 30 April 2013, on the assumption that if STAL met the MPT it would need to be regulated by means of a licence. This is available at: http://www.caa.co.uk/docs/33/CAP%201031%20Economic%20regulation%20at%20Heathrow%20Gatwick%20and%20Stansted.pdf

- London Southend Airport Company Limited (Southend).[319]

5.14 The responses on Test B to the minded to Consultation were mixed.

5.15 The Stansted Airport Consultative Committee (SACC) did not respond to this consultation.

5.16 IAG Cargo (which operated cargo-only services at Stansted) agreed with the CAA's minded to assessment in relation to cargo related AOS, in particular the conclusion that STAL currently has SMP in the relevant cargo market. IAG Cargo suggested the need for specific measures relating to cargo related AOS to replace the current CC public interest non-discrimination measure.[320] IAG Cargo asserted that this measure was imposed in response to past discrimination against cargo carriers.

5.17 Southend stated that the assessment should be based on a forward looking assessment of market power and economic regulation should be a matter of last resort.

5.18 MAG considered that Test A was not met and that it was not therefore necessary to consider whether Test B was met. MAG also considered that CAA's assessment of Test B represented a misdirection on the requirements and purpose of Test B and, a misapplication of the Test. In MAG's view, competition law provided 'sufficient protection' against the risk that STAL may engage in conduct that would amount to abuse of any SMP it may hold.

The additional Consultation

5.19 On 17 September 2013, the CAA announced that, as market conditions appeared to have changed materially since the minded to Consultation closed, and stakeholders may have new evidence that would not have been possible for them to present previously, it would publish a further consultation to seek representations on how these developments may affect the MPA in relation to Stansted.[321] In October 2013, the CAA

319 Non-confidential versions of these submissions were published on the CAA's website: http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14785

320 The CC's finding for the Q5 price control was that the current structure of landing charges at STAL, which failed to give off-peak discounts to aircraft in excess of 250 metric tonnes, had no objective basis and had been operating against the public interest. This finding is from Airport Regulation Price control review – CAA reference to the Competition Commission for Stansted Airport, April 2008, which can be found at http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=3131

321 CAA to consult on market power assessment for Stansted Airport following long-term deals between airlines and new owners, 17 September 2013

issued an additional targeted and limited phase of consultation in relation to the specific matters raised – Stansted Market Power Assessment: consultation on relevant market developments, CAP 1104 (the additional Consultation). The additional Consultation considered the services to passenger and cargo airlines separately.[322]

5.20 The market developments since the publication of the minded to Consultation primarily related to STAL agreeing long-term bilateral agreements with over 90 per cent of the existing passenger traffic at STAL. At that stage, there were no significant developments to take into account for cargo related AOS.[323]

5.21 The CAA indicated that as a result of the developments, STAL may not meet the MPT for its passenger services.[324] The consultation considered that if Test C was assessed separately for cargo it was possible that the costs of regulating cargo on its own would mean the benefits of regulating cargo related AOS at Stansted would not outweigh the adverse effects and that Test C would not be met.[325]

Summary of responses to the additional Consultation

5.22 The CAA received seven responses to the additional Consultation, five of which were relevant to the STAL's cargo related AOS:

- FedEx (an express transportation company which operates its principal sorting and distribution centre from Stansted).
- IAG Cargo.
- London First.
- MAG.
- SACC.[326]

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http://www.caa.co.uk/application.aspx?catid=14&pagetype=65&appid=7&newstype=n&mode=detail&nid=2282

322 CAP 1104, Stansted Market Power Assessment: consultation on relevant market developments, 17 October 2013, http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5807

323 The additional Consultation, paragraph 1.3.

324 The additional Consultation, paragraph 6.

325 The additional Consultation, paragraph 8.

326 Non-confidential versions of these submissions were published on the CAA's website http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=15482

5.23 The SACC response to the additional Consultation was on behalf of all the airlines at Stansted except easyJet. The SACC did not specifically comment on Test B.

5.24 MAG set out its views as to why Tests A to C under section 6 of the CA Act were not met by STAL in the relevant cargo market. MAG considered that the CAA's analysis on Test B for the relevant passenger market should apply to Test B for the relevant cargo market. MAG asserted that the analysis of its commercial approach applies equally to passenger and cargo airlines and the new factual situation reinforces its view that STAL does not have SMP in relation to services to cargo airlines. MAG noted that its engagement with cargo airlines already demonstrated (and will continue to do so) a strong appetite for developing the cargo business at Stansted, based on strong commercial relationships.

5.25 MAG noted that the additional Consultation invited it and cargo airlines to consider the implications for the MPA of a public commitment by STAL to maintain the non-discrimination principles that have applied as part of the CAA's Q5 settlement.[327] MAG stated that it would be prepared to offer such a commitment to cargo airlines at Stansted for a defined period of time if the CAA considered that this would be necessary for it to reach a conclusion that the MPT was not met for cargo.

5.26 MAG considered that the CAA's analysis in relation to the passenger business applied equally to the cargo business. MAG noted:

- The deterrent effect of seeking to avoid regulatory intervention, that was noted in the additional Consultation, applied to the passenger and cargo sides of the business.
- MAG has already built a track record that shows its commercial strategy is a long way removed from any risk of an abuse of market power.
- STAL needs to incentivise new and existing airlines to use its spare capacity, which applies equally to passenger and cargo airlines.

[327] Airport Regulation Economic Regulation of Stansted Airport 2009-2014, CAA Decision, 13 March 2009, http://www.caa.co.uk/docs/5/ergdocs/20090313StanstedPriceControl.pdf

- All airlines (passenger and cargo) are protected by the Airport Charges Regulations 2011 (ACR), which prevent discriminatory pricing. This means that airlines that do not have a bilateral deal in place with STAL by April 2014 will benefit from tariffs that are equivalent to other airlines, unless there is a justification for a difference that is relevant, objective and transparent.

5.27 London First considered that the burden of proof required to impose a licence on STAL had not been met and that the CAA should confirm as soon as is practicable that STAL would not be subject to a licence.

5.28 IAG Cargo reiterated its previous comments and endorsed the SACC's response to the additional Consultation. In IAG Cargo's view, there had been no material change of circumstances in relation to the relevant cargo market at STAL, and freight-forwarders need to be protected from the threat of excessive charges. However, the CAA understands that IAG Cargo has now withdrawn from providing cargo-only services at Stansted but some of the demand previously served by IAG cargo-only will now be served by Qatar to and from Stansted via Doha.[328] [329]

5.29 FedEx considered that STAL met the MPT in the relevant cargo market and that the CAA should continue to regulate STAL for its cargo related AOS. FedEx considered that an economic licence was clearly better than the application of competition law alone and that the risk of exploitative abuse against cargo operators remains high. FedEx stated that there is nothing to suggest that the CAA's minded to assessment, that ex ante regulation is a more effective safeguard than competition, is affected by any recent or any other developments in the relevant cargo market. In addition, FedEx considered that it would be very difficult for (cargo) operators to challenge prices ex post and the CAA was better placed and more experienced than competition authorities to constrain STAL's SMP.

Stakeholder letter – December 2013

5.30 On 20 December 2013, the CAA published a stakeholder letter advising that it had decided to complete two MPDs for Stansted – for the services to passenger airlines and the services to cargo-only airlines. The CAA

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[328] IAG Cargo signs freight deal with Qatar Airways, 17 January 2014, https://www.iagcargo.com/iagcargo/portlet/en/html/main

[329] STAL, Stansted airport welcomes Qatar Airways to global cargo network, 03/03/2014, available at http://www.stanstedairport.com/about-us/media-centre/press-releases/stansted-airport-welcomes-qatar-airways-to-global-cargo-network .

asked for representations and/or new evidence on cargo by 20 January 2014.[330]

Summary of response to the stakeholder letter

5.31 The CAA received two responses to the December 2013 stakeholder letter:

- MAG.
- FedEx.[331]

5.32 MAG stated that Test B was not met in relation to the cargo side of STAL's business, as competition law clearly provides '*sufficient protection* against the risk that STAL may engage in conduct that '*amounts to an abuse of market power'* (section 6(4) CA Act).

5.33 MAG added that:

- The need for STAL to incentivise new and existing airlines to use Stansted's spare capacity by moderating its prices applies equally to passenger and cargo airlines.
- The deterrent effect of regulation logically applies to both the passenger and cargo sides of the business.
- MAG has already built a track record that clearly shows its commercial strategy is a long way removed from any risk of an abuse of market power.
- All current and future cargo airlines are now protected against abusive pricing by the commitments[332] given by STAL which significantly affect any assessment of Test B in relation to cargo. Competition law provides more than 'sufficient protection' against any residual, theoretical risk that STAL would abuse its market power (assuming such market power exists) in some other way.

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330 Completing two Market Power Determinations for Stansted airport, 20 December 2013, http://www.caa.co.uk/docs/78/20131220%20Stakeholder%20Letter%20-%20Separate%20MPD%20for%20STAL%20Cargo%20Market%20FINAL.pdf

331 Responses to the stakeholder letter http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=12275

332 On 16 January 2014, MAG wrote to its air cargo customers to make the following commitments: "For a period of two years beginning on 1 April 2014, MAG (on behalf of itself and its subsidiaries including STAL) commits to the following:

(a) The schedule of published airport tariff charges at Stansted Airport shall not contain higher

- All cargo airlines are protected by the ACR, which prevent discriminatory pricing, which means that cargo airlines that do not have a deal in place with STAL by April 2014 will benefit from tariffs that are the equivalent to other passenger and cargo airlines, unless there is a justification for a difference that is relevant, objective and transparent.

5.34 FedEx's response was received, after the end of the period for responses, on 3 February 2014. FedEx reiterated its previous response.

Final decision on Test B for STAL's cargo related AOS

5.35 As set out in the assessment of Test A in chapter 4, the CAA is not satisfied that STAL has or is likely to acquire SMP in the relevant cargo market. As such, the CAA concludes that STAL does not meet Test A in the relevant cargo market.

5.36 Test B presupposes a finding of SMP against which to assess the sufficiency of competition law to protect against the risk of abuse of that SMP. The reference to '*that substantial market power'* in section 6(4) of the CA Act makes this clear.

5.37 In the light of the CAA concluding that Test A is not met, the CAA cannot conclude that there is a material risk of STAL engaging in conduct that would amount to an abuse of that SMP (Test B). Accordingly, Test B cannot be met.

tariffs in respect of cargo air services than in respect of equivalent passenger air services. For these purposes, 'passenger air services' means air services carrying passengers that join or leave an aircraft at Stansted Airport, including air services operated for the purpose of business or general aviation, and 'cargo air services' means air services carrying cargo, which do not fit within the definition of passenger air services.

(b) For so long as the charges for landing aircraft at Stansted Airport are fixed so that the charge levied for landing an aircraft in excess of 50 metric tonnes but below 250 metric tonnes during a peak period is higher than the charge levied for landing at other times, the charges levied for landing aircraft in excess of 250 metric tonnes shall, at all times, bear the same relationship to the equivalent charges levied on aircraft in excess of 50 metric tonnes but below 250 metric tonnes."

These are freestanding commitments. In order to make the commitments legally binding, they will be included in the next iteration of STAL's Conditions of Use, which will come into force on 1 April 2014. As a result, these commitments will be in force at Stansted Airport irrespective of the outcome of the MPD.

CHAPTER 6

Test C: Adverse effects/benefits of licence regulation

6.1 As outlined in chapter 1 above, section 3 of the CA Act prohibits the operator of a dominant area at a dominant airport from requiring payment of charges in respect of AOS without a licence. The CA Act provides that an airport area is dominant if the CAA has made a determination that the MPT is met in relation to that area.

6.2 As outlined in chapter 4 above, the CAA's final decision under Test A is that it is not satisfied that STAL has or is likely to acquire SMP in the relevant cargo market. As such, the CAA concludes that STAL does not meet Test A in the relevant cargo market.

6.3 As outlined in chapter 5 above, the CAA's final decision under Test B is it cannot be met because it presupposes a finding of SMP under Test A. In circumstances where Test A and Test B are not met, the CAA has not gone on to assess Test C.

6.4 This chapter sets out the assessment of Test C of the MPT for the relevant cargo market at Stansted.

6.5 The structure of the rest of this chapter is:

- The legal framework for the assessment of Test C.
- History of consultation on Test C.
- Final decision on Test C for STAL's cargo related AOS.

Legal framework for assessment of Test C

6.6 Test C of the MPT requires '*that, for users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects.'*

6.7 The relevant operator is *'the person who is the operator of the airport area at the time the test is applied.'*

6.8 *'Users of air transport services'* are defined in the CA Act as passengers or those with a right in cargo and includes future users of such services.

6.9 Test C requires the CAA to assess whether the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects. Test C does not expressly require the CAA to apply this test by reference to a specific set of regulatory licence conditions. Such a requirement would reverse the logical structure of the CA Act and would require the determination of individual licence conditions before the decision on whether to grant a licence is made.

6.10 The assessment of Test C must be conducted in accordance with the CAA's general duty in section 1 of the CA Act; in a manner which it considers will further the interests of users of air transport services (passengers and those with rights in cargo) regarding the range, availability, continuity, cost and quality of AOS. The CAA must also carry out its functions in a manner which it considers will promote competition in the provision of AOS.

6.11 The CAA must also have regard to various matters set out in section 1(3) of the CA Act, including:

- The need to secure that all reasonable demands for AOS are met.
- The regulatory principles in section 1(4) of the CA Act, namely that its regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases where action is needed.

6.12 As part of any such assessment, the CAA must also consider the extent to which any likely net benefits are transposed into users' benefits. Under section 1(5) of the CA Act, if the CAA considers that there is a conflict between the interests of different classes of users or between the interests of users in different matters its duty is to carry out the functions in a manner which it considers will further such of those interests it thinks best.

6.13 The CA Act also sets out the provisions for granting a licence and what a licence may contain. A licence may include such conditions as the CAA considers necessary or expedient in relation to the risks of abuse of market power and any other conditions the CAA considers necessary or expedient having regard to its duties.

6.14 Although Test C is a separate test, it cannot be divorced from the wider statutory context: i.e. Tests A and B. Under Test A, the CAA needs to determine whether the relevant operator has or is likely to acquire SMP in the relevant market. Under Test B, the CAA needs to determine whether ex post regulation of that SMP via competition law is inadequate.

6.15 If the CAA has determined that the relevant operator has or is likely to acquire SMP in the relevant market and that ex post regulation via competition law is insufficient in preventing the operator engaging in abuse of its SMP, then the CAA needs to assess, under Test C, whether benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects, when compared to the situation in which there was no licence.

6.16 In assessing the benefits of economic regulation via a licence, as set out in the minded to Consultation[333], the CAA would normally consider its likely positive impact on such matters as price, efficiency, service quality investment incentives and operational resilience.

6.17 The assessment of adverse effects includes considering the direct costs and other adverse effects of economic regulation via a licence. Direct costs include the time and expenditure of management and regulation staff at the CAA, the regulated airport and their airlines. They can also include the crowding out of more commercial approaches to such issues as commercial innovation, investment and development and distortions to incentives.

6.18 The assessment of the benefits of introducing licence regulation includes an assessment of the situation in the absence of a licence (the counterfactual). The counterfactual includes competition law and the sectoral regulatory powers that are already in place.[334]

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333 Stansted market power assessment: Developing our minded to position In January 2013, chapter 9 http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14395

334 Under section 62 of the CA Act, the CAA has concurrent powers with the Competition and Markets Authority (CMA) to undertake investigations into whether STAL is breaching a prohibition under the Competition Act 1998 or under European competition law. Under section 60 of the CA Act, the CAA has concurrent powers with the CMA to make market investigation references to the CMA under the Enterprise Act with respect to the provision of airport operation services. The CMA takes over the duties of the CC and the OFT from 1 April 2014.

Airport Charges Regulations (ACR) – STAL remains subject to the ACR which provide airlines with a number of protections. There are no explicit duties directed towards passengers or owners of cargo. The CAA may commence an investigation under the ACR for an apparent breach of its requirements. The ACR can be found at: http://www.legislation.gov.uk/uksi/2011/2491/pdfs/uksi_20112491_en.pdf

Airports Groundhandling Regulations (AGR) – The AGR transpose the European groundhandling directive into UK law. The AGR can be found at: http://www.legislation.gov.uk/uksi/1997/2389/made

6.19 The counterfactual would also include the fact that, the CAA has a duty under section 64 of the CA Act, so far as it appears practicable to do so, to keep under review the provision of AOS and to collect information about those services. Section 50 of the CA Act also allows the CAA to require the provision of information or documentation that it reasonably requires for the purpose of carrying out its regulatory functions under Chapter1 of the CA Act.

History of consultation on Test C

Minded to Consultation

6.20 In January 2013, the Stansted market power assessment: Developing our minded to position (the minded to Consultation)[335] identified separate services to cargo-only airlines and passenger airlines at Stansted. Passenger flights account for 92.4 per cent, and cargo flights account for 7.6 per cent of flights at Stansted.[336]

6.21 The minded to Consultation, considered that the MPT as set out in the CA Act could be met in relation to Stansted.[337] It provisionally concluded that STAL met Test A in the passenger and cargo markets.[338] As a consequence, Test C was assessed for both markets together.

6.22 That consultation assessed Test C together for the relevant passenger and cargo markets as the CAA was minded to consider that Test A could be met for the relevant passenger and cargo markets. The CAA considered that Test C could also be met[339] and that some form of licence regulation should apply to STAL.[340] The CAA's view was that with the level of market power provisionally identified in relation to STAL, the Airport Charges Regulations (ACR) or Airports Groundhandling Regulations (AGR) would not necessarily provide sufficient protection for users.[341]

335 The minded to Consultation.
336 CAA Airport Statistics.
337 The minded to Consultation, paragraph 1.
338 The minded To Consultation, paragraphs 17 and 7.28.
339 The minded to Consultation, paragraph 9.7.
340 The minded to Consultation, paragraph 30.
341 The minded to Consultation, paragraph 9.22.

6.23 The CAA noted that the imminent change of ownership of STAL[342], might affect STAL's behaviour, which might modify the CAA's view.[343] The CAA welcomed representations, within a period of three months, on its views. The period for representations was extended until 28 May 2013, to enable MAG (as the new owners) to comment on the MPA in conjunction with the Initial Proposals on the form of regulation.[344]

Summary of responses to the minded to Consultation

6.24 The CAA received seven responses to the minded to Consultation, three of which were relevant to the Stansted cargo related AOS:

- IAG Cargo.
- MAG.
- Southend.[345]

6.25 The SACC did not respond to this consultation.

6.26 Southend stated that the assessment should be based on a forward looking assessment of market power and economic regulation should be a matter of last resort.

6.27 MAG disagreed with the minded to assessment of Test C. MAG considered that STAL does not have SMP (in cargo or passengers), and as a result Test A could not be met. Test B is also not met and as a result it is not necessary to consider whether Test C is met. MAG added that the CAA, in provisionally concluding that Test C was met in relation to STAL, failed to have proper regard to relevant factors, in particular the emerging proposals for a licence and the representations on this. MAG considered that the CAA in proceeding on the basis that any licence terms would be "proportionate", and not taking the specific characteristics of the likely licence terms into account in assessing Test C was irrational and frustrated the statutory purpose of section 6 of the CA Act.

342 MAG acquired STAL in February 2013, after the minded to Consultation was published in January 2013.

343 The minded to Consultation, paragraphs 7.26 and 7.29.

344 The CAA published its consultation on the initial Q6 proposals for the economic regulation of Heathrow, Gatwick and Stansted (the Initial Proposals), on 30 April 2013, on the assumption that if STAL met the MPT it would need to be regulated by means of a licence. This is available at: http://www.caa.co.uk/docs/33/CAP%201031%20Economic%20regulation%20at%20Heathrow%20Gatwick%20and%20Stansted.pdf

345 Non-confidential versions of these submissions were published on the CAA's website: http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14395

6.28 IAG Cargo (which operated dedicated cargo-only services at Stansted) agreed with the CAA's minded to assessment in relation to cargo related AOS, in particular the conclusion that STAL currently has SMP in the relevant cargo market. IAG Cargo was concerned that the controls relating to STAL's total income could allow the airport operator to discriminate against cargo-only flights because they account for a relatively small proportion of total aeronautical income. IAG Cargo proposed the following measures to address its concerns:

- Firstly, the continuation of the existing public interest provision[346] in a licence.
- Secondly, a small change to the proposed transparency, monitoring and show cause trigger arrangements[347], such that the income provisions apply separately to cargo-only flights from other flights. A discrete transparency requirement for income from cargo-only flights would provide reassurance to operators that any discrimination against cargo flights would be readily identified. The CAA's annual price monitoring statement would then provide a separate cargo assessment.
- IAG Cargo also considered that the show cause protection trigger should apply separately to cargo only flights, discouraging the airport operator from exercising its market power selectively. This small change would recognise the special case of cargo flights, providing reassurance to cargo shippers that London will remain a competitive place to do business, despite the competition restrictions imposed under the Traffic Distribution Rules.

Additional consultation

6.29 Market developments that occurred between January and September 2013 meant that the CAA considered that the services to passenger and cargo airlines could have different outcomes for Test A and should therefore be assessed separately.[348]

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346 This refers to the CC public interest finding that is explained in paragraph 6.32 below.

347 This refers to the CAA's Initial Proposals for the regulation of STAL in Q6 as set out in CAP 1030 Economic Regulation at Stansted from April 2014: Initial Proposals http://www.caa.co.uk/docs/33/CAP%201030%20Economic%20Regulation%20at%20Stansted%20from%20April%202014%20initial%20proposal.pdf

348 CAA to consult on market power assessment for Stansted Airport following long-term deals between airlines and new owners, 17 September 2013 http://www.caa.co.uk/application.aspx?catid=14&pagetype=65&appid=7&newstype=n&mode=detail&nid=2282

6.30 In October 2013, the CAA consulted on the impact of these developments. In the Stansted Market Power Assessment: consultation on relevant market developments, CAP 1104 (the additional Consultation)[349], Test C was considered separately for each relevant market. The Consultation noted that the market developments since the publication of the minded to Consultation provided new evidence regarding STAL's behaviour. This new evidence primarily related to STAL agreeing long-term bilateral agreements with over 90 per cent of the existing passenger traffic at STAL. At that stage, there were no significant developments to take into account for cargo related AOS.[350]

6.31 That consultation indicated that, as a result of the relevant market developments, STAL may not meet the MPT in the relevant passenger market.[351] In relation to the relevant cargo market the consultation considered that if Test C was assessed separately for cargo, it was possible that the costs of regulating cargo on its own would mean the benefits of regulating STAL's cargo related AOS would not outweigh the adverse effects even if Tests A and B were met.[352]

6.32 The consultation noted that the CC's finding[353] for the Q5 price control was that the current structure of landing charges of STAL, which failed to give off-peak discounts to aircraft in excess of 250 metric tonnes, had no objective basis and had been operating against the public interest. This finding was incorporated into the CAA's Q5 price control decision for STAL[354] and into CAP 1030 Economic Regulation at Stansted from April 2014: Initial Proposals (the initial proposals) for the regulation of STAL in Q6.[355] [356]

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349 Stansted Market Power Assessment: consultation on relevant market developments, CAP 1104. This document is available at: http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5807.

350 The additional Consultation, paragraph 1.3.

351 The additional Consultation, paragraph 6.

352 The additional Consultation, paragraph 8.

353 Airport Regulation Price control review – CAA reference to the Competition Commission for Stansted Airport, April 2008 http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=3131

354 Airport Regulation – Economic Regulation of Stansted Airport 2009-2014 – CAA Decision, chapter 8 http://www.caa.co.uk/docs/5/ergdocs/20090313StanstedPriceControl.pdf

355 CAP 1030 Economic Regulation at Stansted from April 2014: Initial Proposals, paragraphs 4.59 to 4.61 http://www.caa.co.uk/docs/33/CAP%201030%20Economic%20Regulation%20at%20Stansted%20from%20April%202014%20initial%20proposal.pdf

356 The present regulatory arrangements cover the financial years 2009/10 to 2013/14 and are known

6.33 For Q6, the CAA proposed that STAL fix its airport charges for the landing of aircraft so that the charge levied for landing an aircraft in excess of 50 metric tonnes but below 250 metric tonnes during a peak period was higher than the charge levied for landing at other times. Where this condition continues to apply, the charges levied for landing aircraft in excess of 250 metric tonnes shall, at all times, bear the same relationship to the equivalent charges levied on aircraft in excess of 50 metric tonnes but below 250 metric tonnes.

6.34 The earlier minded to Consultation had noted that the airport operator and airline direct costs of management and regulation staff at the airport as well as the direct costs of compliance with regulatory measures, if STAL were to be licensed (for both the passenger and cargo market), could be £2 million to £4 million per year, and possibly significantly greater.[357]

6.35 The additional Consultation noted that the direct costs of a cargo-only licence would be less than a licence for all of STAL's services, although relatively speaking it would be higher because of the smaller size of the cargo related AOS to be regulated. As such, if Test C were considered separately for cargo, it is possible that the costs of regulating cargo on its own would mean the benefits would not outweigh the adverse effects.[358]

6.36 In reaching a final conclusion on this particular aspect, the CAA stated that it would expect to take into account the extent to which the concerns of cargo customers around future pricing levels would be addressed in the absence of regulation. In particular, the CAA indicated that it would want to consider what, if anything, would replace the pricing principles adopted by the CC and itself in past reviews.[359]

6.37 The CAA welcomed any specific proposals from MAG or cargo stakeholders on how the concerns of cargo customers around future pricing levels would be addressed in the absence of regulation. The CAA also sought stakeholders' views on the benefits and the adverse effects of regulating the cargo related AOS at Stansted on its own.[360]

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as the fifth quinquennium (Q5). The regulatory arrangements that will apply from 2014/15 onwards are commonly known as the sixth quinquennium (Q6).

357 The minded to Consultation paragraph 9.98.

358 The additional Consultation paragraphs 3.64 to 3.65.

359 The additional Consultation paragraph 3.66.

360 The additional Consultation paragraph 3.67.

Summary of responses to the additional Consultation

6.38 The CAA received seven responses to the additional Consultation, five of which were relevant to the cargo related AOS at Stansted:

- FedEx (an express transportation company which operates its principal sorting and distribution centre from Stansted).
- IAG Cargo.
- London First.
- MAG.
- SACC.[361]

6.39 The SACC's response was on behalf of all the airlines at Stansted except easyJet. The SACC considered that the costs of regulating cargo related AOS at Stansted were marginal and insignificant (based on the initial proposals[362] for the regulation of STAL's cargo related AOS), when compared with the benefits – and so, STAL's cargo related AOS should be subject to ongoing regulation.

6.40 MAG considered that there would be additional costs in regulating only the cargo side of STAL's business and in establishing how to regulate the cargo related AOS on its own. However MAG stated that if the CAA would otherwise find that the MPT was met for the cargo market, it would offer a public commitment that would have the effect of mirroring the current regulatory conditions for a further two years. MAG considered that such a commitment would provide clear assurance to cargo operators around its approach to setting tariffs over the next two years and would strengthen its commercial relationships with these airlines.

361 Non-confidential versions of these submissions were published on the CAA's website: http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=15482

362 CAP 1030 Economic Regulation at Stansted from April 2014: Initial Proposals, available at: http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5523

6.41 MAG also argued that:

- The balancing exercise between the costs and benefits of regulation fundamentally changes in relation to cargo if there is no regulation of the passenger side of STAL's business. Cargo represents only around 3 per cent (in 2012) of STAL's total revenues (and 6 per cent of its aeronautical revenues). However, many of the direct costs of regulation would still be incurred to regulate cargo on its own. Therefore, as noted in the additional Consultation, the proportional cost of regulating the cargo sector only would increase significantly. Such an increase demonstrates that the cost of regulating cargo only would significantly outweigh any benefit that regulation of cargo might bring.

- The CAA's duty under section 1(2) of the CA Act is to "*promote competition in the provision of airport operation services*". Regulation at Stansted would risk undermining the competitive environment that has recently been established. Indeed, MAG considered that the CAA has correctly recognised that an adverse effect of regulation is that it risks the "crowding out of a more commercial approach" at Stansted (paragraph 28 of the minded to Consultation). Regulation at Stansted would inevitably inhibit the commercial approach adopted by MAG. There are still deals to be agreed with airlines, and the newly agreed deals need to be given the chance to flourish. Any regulatory intervention at this time would risk 'crowding out' precisely the positive competitive behaviour that the CAA should promote in accordance with its duty under section 1(2) of the CA Act, and would hamper the development of a freely-competitive airport business operating in the South East.

6.42 London First considered that the burden of proof required to impose a licence on STAL had not been met and that the CAA should confirm as soon as is practicable that STAL would not be subject to a licence.

6.43 IAG Cargo reiterated its previous comments and endorsed the SACC’s response. In IAG Cargo’s view, there had been no material change of circumstances in relation to the cargo market at Stansted and that the cost of regulation was likely to be small in relation to the benefits of protecting freight-forwarders from the threat of excessive charges. However, the CAA understands that IAG Cargo has now withdrawn from providing cargo-only services at Stansted but some of the demand previously served by IAG Cargo will now be served by Qatar to and from Stansted via Doha.[363], [364]

[363] IAG Cargo signs freight deal with Qatar Airways, 17 January 2014,

6.44 FedEx stated that cargo operators have no commercially viable alternative airports to operate from given their demanding schedules, heavy reliance on surface connectivity, cargo handling infrastructure and availability of slots and policies on noise and night flights. It considered that STAL met the MPT in the relevant cargo market and that the CAA should continue to regulate STAL for cargo related AOS at Stansted. FedEx noted that the benefits of regulating cargo related AOS at Stansted most likely outweigh its costs. FedEx added that it was waiting for the CAA's breakdown of the regulation costs and details on the application of the proposed price monitoring and other regulations for cargo related AOS at Stansted in order to express a detailed view on this. However FedEx considered that the cost of implementing a price monitoring regime for cargo related AOS at Stansted would be very modest and that the benefits of curbing STAL's SMP in the relevant cargo market most likely outweigh its costs.

6.45 FedEx concluded that STAL clearly enjoys SMP in the relevant cargo market as cargo operators do not have any meaningful alternatives, there is a risk of price increases, and an effective price control safeguard mechanism is needed to constrain STAL's SMP in cargo related AOS at Stansted.

Stakeholder letter – December 2013

6.46 On 20 December 2013, the CAA published a stakeholder letter advising that the CAA had decided to complete two MPDs for Stansted – one for passenger services and the other for cargo related AOS. The CAA asked for representations and/or new evidence on cargo by 20 January 2014.[365]

Summary of response to the stakeholder letter

6.47 The CAA received two responses to the December 2013 stakeholder letter:

- MAG.

https://www.iagcargo.com/iagcargo/portlet/en/html/main

364 STAL, Stansted airport welcomes Qatar Airways to global cargo network, 03/03/2014, available at http://www.stanstedairport.com/about-us/media-centre/press-releases/stansted-airport-welcomes-qatar-airways-to-global-cargo-network

365 Completing two Market Power Determinations for Stansted Airport, 20 December 2013, http://www.caa.co.uk/docs/78/20131220%20Stakeholder%20Letter%20-%20Separate%20MPD%20for%20STAL%20Cargo%20Market%20FINAL.pdf

- FedEx.[366]

6.48 MAG stated that:

- STAL does not have SMP power in relation to cargo customers (and also Tests B and C are not met).
- It had written to STAL's air cargo customers on 16 January 2014 to inform them that it would be including a condition in its Conditions of Use from 1 April 2014 which would continue the public interest condition imposed by the CC in the present price control for two years.[367] These changes to its Conditions of Use will come into force at Stansted irrespective of the outcome of the MPD.
- Test C is a balancing exercise between the adverse effects and benefits of regulation. This exercise is fundamentally different now that the passenger side of STAL's business will not be regulated and now that unconditional cargo pricing commitments have been made. Any possible benefits of regulation would be significantly outweighed by the direct and indirect costs of regulating such a small part of STAL's business, particularly in the presence of the commitments that have been recently given to cargo operators.
- In the short time since MAG acquired STAL, deals have been agreed with passenger airlines representing 97 per cent of STAL's business. However, MAG has also been focused on securing agreements with cargo airlines, and is working hard to attract new cargo airlines from airports such as Heathrow, Manston, Luton and Schiphol. In particular:
  - Two cargo deals have already been agreed two airlines – [✂].

366 Responses to the stakeholder letter
http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=12275

367 For a period of two years beginning on 1 April 2014, MAG (on behalf of itself and its subsidiaries including STAL) commits to the following:

(a) The schedule of published airport tariff charges at Stansted Airport shall not contain higher tariffs in respect of cargo air services than in respect of equivalent passenger air services. For these purposes, "passenger air services" means air services carrying passengers that join or leave an aircraft at Stansted Airport, including air services operated for the purpose of business or general aviation, and "cargo air services" means air services carrying cargo, which do not fit within the definition of passenger air services.

(b) For so long as the charges for landing aircraft at Stansted Airport are fixed so that the charge levied for landing an aircraft in excess of 50 metric tonnes but below 250 metric tonnes during a peak period is higher than the charge levied for landing at other times, the charges levied for landing aircraft in excess of 250 metric tonnes shall, at all times, bear the same relationship to the equivalent charges levied on aircraft in excess of 50 metric tonnes but below 250 metric tonnes.

- Formal offers have been made to two airlines – [✂].
- MAG have had deal discussions with numerous other cargo airlines who use or could use Stansted, including [✂][368]

6.49 FedEx's response was received, after the end of the period for responses, on 3 February 2014. FedEx reiterated its previous response. and supported the views expressed by the SACC in its earlier response.

Final decision on Test C for STAL's cargo related AOS

6.50 In performing its duties under Chapter 1 of the CA Act, the CAA must under section 1(4) of the CA Act have regard to, amongst other things, the following two regulatory principles:

(a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and

(b) regulatory activities should be targeted only at cases in which action is needed.

6.51 As set out in the assessment of Test A in chapter 4, the CAA is not satisfied that STAL has or is likely to acquire SMP in the relevant cargo market, and as such the CAA concludes that Test A is not met for STAL. Accordingly, Test B cannot be met.

6.52 In circumstances where Test A and Test B are not met, the CAA has not gone on to address Test C

368 MAG's response to the CAA's letter of 20 December 2013, dated 20 January, paragraph 14, http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=12275

CHAPTER 7

Conclusion

7.1 The CA Act prohibits the operator of a dominant area at a dominant airport from requiring payment of charges in respect to AOS without a licence. For these purposes, an airport area is dominant if the CAA has made a determination that the market power test is met in relation to that area, and an airport is dominant if all or part of its core area is a dominant area or part of a dominant area.

7.2 The CAA has carried out its assessment of the MPT in relation to STAL, pursuant to its duties specified under the CA Act and having regard to the relevant:

- notices and guidance published by the EC about the application and enforcement of the prohibitions in Articles 101 and 102 of the TFEU;
- advice and information published under section 52 of the Competition Act 1998 (advice and information about the application and enforcement of the prohibitions in Part 1 of that Act and Articles 101 and 102 of the TFEU); and
- the advice and information published under section 171 of the Enterprise Act 2002 (advice and information about the operation of Part 4 of that Act).

7.3 In carrying out its assessment, the CAA has identified a number of candidate product cargo markets in which STAL operates. Of these the CAA is satisfied that on the evidence obtained (particularly what the CAA has been able to learn of the preferences and priorities of cargo owners and their intermediaries), a product market that comprises at least cargo related AOS to airlines operating cargo air transport services (i.e. including cargo carried in the bellyhold of passenger aircraft and in cargo-only aircraft) is the relevant product market. There is insufficiently robust evidence for the CAA to conclude that the market is narrower than this e.g. AOS to cargo-only airlines.

7.4 The CAA is not able with any certainty to define a geographic scope for this market on the evidence obtained. However, it is satisfied that the geographic market is at least as wide as the south east of England. The CAA defines the south east of England for the purposes of this determination as the London area (including Stansted, Luton, Heathrow and Gatwick airports), plus Manston airport. There is evidence to suggest that it may be wider and include airports with suitable infrastructure in the midlands and on the near continent.

7.5 The CAA therefore concludes, based on the evidence obtained, that the relevant cargo market for STAL's cargo related AOS at Stansted is *at least as wide as AOS to air cargo airlines provided in an area comprising at least the south east of England*.

7.6 In that relevant cargo market, STAL provides the following cargo related AOS at Stansted:

- The use of the runway and taxiways.
- Aerodrome air traffic control.
- Aircraft parking.
- The provision of access and infrastructure needed for the provision of other airside and landside groundhandling services.
- Security screening.
- Access to and facilities for the processing of cargo.

7.7 The services are provided from part of the core area as defined in section 5(4) of the CA Act:

- the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport; and
- the cargo processing areas.

7.8 The CAA, having regard to all of the evidence obtained and its general duties under the CA Act and the relevant notices and guidance issued by the EC and the OFT regarding the competition law notices and guidance, is not satisfied based on the evidence obtained that STAL has or is likely to acquire SMP in the relevant cargo market. Consequently, the CAA determines that Test A of the CA Act is not met in relation to STAL's cargo related AOS.

7.9 The CAA's decision on Test B is that it cannot be met in respect of STAL, because the CAA considers that the evidence does not establish that STAL has or is likely to acquire SMP, in the relevant cargo market (Test A). In the absence of a conclusion that STAL has or is likely to acquire SMP, Test B cannot be met.

7.10 As the CAA concludes that Tests A and B are not met for STAL, it has not gone on to consider Test C.

7.11 Accordingly, the CAA finds that the MPT in section 6 of the CA Act is not met in relation to the airport area comprising cargo processing facilities and the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at Stansted.

7.12 Having made this decision, the CAA also notes that:

- It found that the MPT in section 6 of the CA Act was not met in relation to the passenger services at Stansted.[369]
- The value of cargo related AOS at Stansted is small in proportion to STAL's overall business and has a total value of £8 million.[370]
- MAG has committed to preserve the current price conditions in regard to charges for cargo-only airlines, for two years from 1 April 2014 regardless of the outcome of this determination.
- Published charges to cargo airlines for cargo-related AOS at Stansted indicate that the regulated prices at Stansted may be below a competitive level. As such it may be that regulation has depressed charges below a competitive level.
- Even with the increase in passengers as a result of the bilateral agreements made with passenger airlines, the capacity for cargo volumes to grow at Stansted in comparison to other London airports is likely to continue over the period to 2019-20.

7.13 Notwithstanding the CAA's finding that the MPT is not met in by STAL in relation to the provision of cargo related AOS in the relevant cargo market at the current time:

369 The CAA's determination for airport operation services to passenger airlines was released on 10 January 2014 (CAP 1135) and is available at: http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5911

370 In 2012, cargo flights accounted for 7.6 per cent of flights at Stansted and less than 7 per cent of revenue generated by airport charges. Source: STAL Regulatory Accounts.

- The CAA has sectoral regulatory powers[371] that still apply and which the CAA will consider using in appropriate circumstances.
- The CAA recognises that circumstances may change in the future. Where such a change in circumstances, whether considered on its own or in aggregate with other changes as well as pre-existing circumstances, is regarded as material, this may necessitate a fresh look at the question of whether the three elements of the MPT are met in relation to STAL.

7.14 Under section 7 of the CA Act:

- The CAA may make an MPD whenever it considers it appropriate to do so. In considering whether to exercise this discretion, the CAA is likely to consider whether there has been a material change in circumstance since its previous MPD.
- STAL or another person whose interests are likely to be materially affected may request that the CAA makes a new MPD and if the CAA considers that there has been a material change in circumstances since it last made an MPD, then the CAA must, in those circumstances, make an MPD.

7.15 The results of any subsequent MPD could lead the CAA to consider afresh the need for economic regulation of STAL.

[371] Under section 62 of the CA Act, the CAA has concurrent powers with the CMA to undertake investigations into whether STAL is breaching a prohibition under the Competition Act 1998 or under European competition law. Under Section 60 of the CA Act, the CAA has concurrent powers with the CMA to make market investigation references to the CMA under the Enterprise Act with respect to the provision of airport operation services. The CMA takes over the duties of the CC and OFT from 1 April 2014.

Airport Charges Regulations (ACR) – STAL remains subject to ACR, which provide airlines with a number of protections. There are no explicit duties directed towards passengers or owners of cargo. The CAA may commence an investigation under the ACR for an apparent breach of its requirements. The ACR can be found at: http://www.legislation.gov.uk/uksi/2011/2491/pdfs/uksi_20112491_en.pdf

Airports Groundhandling Regulations (AGR) - The AGR transpose the European groundhandling directive into UK law. The AGR can be found at: http://www.legislation.gov.uk/uksi/1997/2389/made

APPENDIX A

List of representations

A.1. The CAA engaged with numerous stakeholders as part of the process to make this decision. While the CAA considers that it has made all reasonable enquiries, the level of engagement and the number of cargo-related stakeholders who submitted material to the CAA was limited, despite repeated attempts by the CAA to encourage them to do so. While the CAA recognises the importance of all submissions, and thanks stakeholders for the time and effort that went into preparing submissions, the CAA notes that the number of stakeholders that provided detailed supporting evidence for their position was limited. For example, of the 30 cargo carriers/freight-forwarders contacted only 7 responded to the CAA's requests, with one of these being no comment.

A.2. The CAA is somewhat surprised by the lack of industry engagement as the purpose of its meetings and teleconferences was to gain a better understanding of the cargo industry, particularly as it operated at Stansted and to see if there were any particular aspects of the industry's operation or STAL's behaviour that were of concern.

A.3. Where evidence was limited or not forthcoming, the CAA has therefore drawn reasonable inferences about the operation of the industry and the degree of concern among those the CA Act seeks to protect about current or potential exercise of market power in the cargo industry on the part of STAL.

Responses to Initial Views – February 2012

A.4. The following stakeholders responded to the CAA's Initial Views:

- David Starkie, regulatory and competition economist.
- Ryanair Ltd (Ryanair).
- Stansted Airport Limited (STAL).
- Gatwick Airport Limited (GAL).
- Heathrow Airport Limited (HAL).

- Virgin Atlantic Airways Limited (VAA).[372]

Responses to minded to Consultation – January 2013

A.5. The following stakeholders responded to the CAA's minded to Consultation:

- IAG Cargo is the cargo handling division of International Consolidated Airlines Group, SA (IAG). (IAG was formed by the merger of British Airways Group and Iberia Group, IAG Cargo is the merger of British Airways World Cargo and Iberia Cargo).
- London Southend Airport Company Limited (Southend).
- Manchester Airports Group plc (MAG).[373]

Responses to additional Consultation – October 2013

A.6. The following stakeholders responded to the CAA's additional Consultation:

- FedEx Corporation (FedEx).
- IAG Cargo.
- London First.
- MAG.
- Stansted Airline Consultative Committee (SACC).[374]

Stakeholder meetings / telephone conferences held

A.7. The CAA had meetings and telephone conference calls with the following stakeholders:

- Agility Logistics Ltd (Agility Logistics).
- bmi Cargo, part of the bmi group.
- DHL Express, part of DHL International (UK) Limited.
- East Midlands International Airport Limited (EMA).
- Emirates SkyCargo is a subsidiary of The Emirates Group.

372 Non-confidential versions of these submissions are available of the CAA's website.
373 Non-confidential versions of these submissions are available of the CAA's website.
374 Non-confidential versions of these submissions are available of the CAA's website.

- FedEx.
- IAG Cargo.
- Jet2.com Limited (Jet2).
- MAG.
- Royal Mail plc (Royal Mail).
- STAL.
- Titan Airways Ltd (Titan Airways).
- TNT Express N.V. (TNT or TNT Express).
- United Parcel Service of North America, Inc. (UPS).[375]

Information gathered using statutory powers

A.8. Information gathering using statutory powers under section 73 of the Airports Act 1986 and section 50 of the Civil Aviation Act 2012.

- FedEx.
- STAL.
- IAG Cargo.

[375] Included in this are airlines that met the CAA Board as part of the consultation process.

APPENDIX B

Glossary

Term	Description
The additional Consultation	CAP 1104 Stansted Market Power Assessment: consultation on relevant market developments October 2013.
AOS to air cargo airlines candidate market	Cargo related AOS for airlines operating cargo air transport services (i.e. including cargo-only and bellyhold cargo air transport services).
AOS to cargo-only airlines candidate market	Cargo related AOS for airlines operating cargo-only air transport services. This is the narrowest possible market product market.
air cargo services	Transport of cargo by both cargo-only flights and in the bellyhold of passenger aircraft.
ACD	Airport Charges Directive. EU Directive 2009/12/EC sets out the rules for the setting of airport charges at European airports with over five million passengers.
ACI	Airports Council International.
ACL	Airport Coordination Limited, which is responsible for slot allocation at certain airports in the UK.
ACMI	Aircraft Crew Maintenance Insurance; this is a form of aircraft leasing where all the operational requirements are leased.
ACR	Airport Charges Regulations 2011 – the transposition of Directive 2009/12/EC into domestic law. See ACD.
Aeronautical revenue(s)	Revenue(s) derived from aeronautical activities. The revenues encompass the income from both regulated charges and unregulated charges.
AGR	Airports (Groundhandling) Regulations 1997.
AA86	Airports Act 1986.
Airport charges	Charges that are, in general, levied on airlines in connection with the landing, parking or taking off of

Term	Description
	aircraft and charges levied on passengers in connection with their travel at, or departure from, the airport by air.
Airports Commission	Set up by the Government in 2012, this commission is examining the need for additional UK airport capacity and is to recommend to the Government how this can be met in the short, medium and long term. Its final recommendations are due in 2015. This commission is chaired by Sir Howard Davies.
Airport operator	As defined in section 72(1) of the CA Act – a person who is the operator of an area that consists of or forms part of an airport.
AOS	Airport operation services as defined in section 68 of the CA Act.
ATC	Air Traffic Control.
ATMs	Air transport movements. Landing or take off of an aircraft engaged in the transport of passengers and cargo on commercial terms.
BA	British Airways.
BAA	BAA Plc (previously the British Airports Authority) refers to the BAA group and any company in the group as appropriate. Since 15 October 2012, BAA has operated under the name of Heathrow Airport Holdings Limited.
Based carrier	A based carrier is a carrier that has aircraft based at an airport. A base consists not only of overnight parking of aircraft but the home destination of the crew and in some cases maintenance of the aircraft.
BAWC	British Airways World Cargo (a subsidiary of BA) now part of IAG Cargo.
Bellyhold cargo	Cargo carried in the bellyhold of passenger aircraft on passenger flights
CA1982	Civil Aviation Act 1982.
CA98	Competition Act 1998.
CAA	Civil Aviation Authority.

Term	Description
CA Act	Civil Aviation Act 2012.
CAA Passenger Survey	A survey undertaken by the CAA to obtain information about air travellers and the determinants of the travel market.
Capex	Capital expenditure.
cargo-only aircraft	Aircraft that are configured to only carry cargo or freight only aircraft
cargo-only flights	Flights that only carry cargo and do not carry passengers
Cargo-only candidate market	Market for cargo-related airport operation services to cargo-only operators – this is the smallest possible product market for cargo and was used in the minded to consultation.
Cargo owners	Those with rights in cargo.
Cargo transportation services (including other modes) candidate market	Air cargo forms a subset of a much wider cargo market including other alternative transport modes (i.e. sea, road and rail).
Cargo pipeline	The pipeline from the cargo owner's decision to send cargo and deciding which freight-forwarder or integrator to use, the freight-forwarder or integrator deciding which method of shipment is appropriate (sea, road, rail, air or some combination of these) to its delivery of the cargo to the specified destination in the cargo owner's required timeframe.
CAT	Competition Appeal Tribunal.
CBP	Countervailing buyer power.
CC	Competition Commission. A public body responsible for investigating mergers, markets and other enquiries related to regulated industries under competition law in the UK. Responsibilities are assumed by the Competition and Markets Authority from 1 April 2014.
Cellophane Fallacy	Refers to the fallacy of defining an inappropriately wide market definition in conducting a SSNIP where the price used for the analysis are above the

Term	Description
	competitive price level. The reverse occurs in defining an inappropriately narrow market definition where prices used are below the competitive price level.
CMA	Competition and Markets Authority. The CMA takes over the duties of the Competition Commission and the Office of Fair Trading from 1 April 2014.
Commercial activities or RCP activities	Activities at an airport that are not directly related to the aeronautical services provided by an airport operator. These activities include retail, duty-free sales, letting of commercial premises such as hotels and offices, and provision of car parking facilities.
Commercial revenues	Income derived by an airport operator from commercial activities.
Conditions of Use	The terms and conditions published by the airport operator under which the operator's facilities and services at an airport can be accessed/used by airlines.
Core area	The land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport; the passenger terminals; and the cargo processing areas as specified in section 5(4) of CA Act.
Consumers Rights Bill 2013	Sets out a simple, modern framework of consumer rights.
Countervailing buyer power	Buyer power exists where buyers have a strong negotiating position with their suppliers, which weakens the potential market power of a seller. Countervailing buyer power (CBP) relates primarily (although not always) to the strength of a buyer in negotiations with sellers. CBP is most commonly found in industries where buyers and suppliers negotiate, in which case buyer power can be thought of as the degree of bargaining strength in negotiations. Size is not sufficient for buyer power. Buyer power requires the buyer to have choice.
DfT	Department for Transport.
Directive 96/67/EC or GHD	Groundhandling Directive.

Term	Description
Downstream market	The market at the next stage of the production/distribution chain.
EA02	Enterprise Act 2002.
EC	European Commission.
Empirical Methods	CAA's empirical methods for assessing behaviour, performance & profit of an airport operator.
Freight-forwarders	Freight-forwarders / Consolidators are intermediaries who act on behalf of exporters, importers and cargo owners. Generally, they will not operate their own aircraft. Rather, they will purchase capacity from a cargo-only or passenger airline; however, they can also purchase capacity from integrators or, in some cases, charter a whole aircraft on an ACMI (Aircraft, Crew, Maintenance and Insurance) basis.
FSC	Full Service Carriers. While there is no formal definition, typical characteristics of an FSC include facilitation of connecting services or transfers, multiple service classes with meals and/or baggage allowance included in the ticket price.
GAL	Gatwick Airport Limited – the operator of Gatwick Airport.
GSS	Global Supply Systems.
HAL	Heathrow Airport Limited – the operator of Heathrow Airport.
IAG Cargo	International Airlines Group World Cargo, a company formed upon the merger between British Airways World Cargo and Iberia Cargo.
Inbound carrier	An airline that has its base located at an airport other than that under consideration.
Initial Views	The documents, published by the CAA in February 2012, set out the CAA views on the market power held by the operators of Heathrow, Gatwick and Stansted. These views reflect the evidence that was available to the CAA at that time.
Integrators	Integrators provide a door-to-door service with the provision of ground transportation for the collection

Term	Description
	and delivery of packages. The four largest worldwide integrators are FedEx, UPS, DHL and TNT, two of which (FedEx and UPS) have a significant presence at Stansted. Integrators have their own fleets and aim to take the cargo through their own delivery networks as much as possible but they also use bellyhold capacity on scheduled airlines to ship a substantial proportion of their air cargo.
LCC	Low Cost Carriers. While there is no formal definition, typical characteristics of an LCC include direct point-to-point flights, no connecting services or transfers, a single class of service with no frills, greater use of secondary airports, ticket sales carried out directly by airlines, short-haul flights to allow fast turnarounds, and a simplified fleet structure.
Gatwick	Gatwick Airport.
Heathrow	Heathrow Airport.
LGW	Gatwick Airport.
LHR	Heathrow Airport.
LPA	Local Planning Authority.
LTN	Luton Airport.
Luton	Luton Airport.
MAG	Manchester Airports Group PLC – owner and operator of Manchester, Stansted, East Midlands and Bournemouth Airports.
Manston	Manston Airport.
Mppa	Million passengers per annum.
Market power	The power to influence market prices, output, innovation, the variety or quality of goods and services, or other parameters of competition on the market for a significant period of time. Market power is not absolute but a matter of degree, and is dependent on the circumstances of the market(s) concerned.
The minded to	Stansted market power assessment: Developing our

Term	Description
Consultation	minded to position, January 2013.
MPA	Market Power Assessments – the assessment of market power undertaken by the CAA for consultation purposes.
MPD	Market Power Determination – the CAA's decision after conducting the market power test as defined in section 6 of the CA Act.
MPT	Market Power Test as defined in section 6 of the CA Act.
MSE	Manston Airport.
MTOW	Maximum takeoff weight.
Network airline	Airlines that operate on a hub-and-spoke basis rather than point-to-point. The networks of these airlines tend to permit a greater number and frequency of routes as the profitability of the route does not depend solely on point-to-point demand but also the ability of the airline to connect passengers between flights.
OFT	Office of Fair Trading.
OFT 403	OFT market definition guidelines.
OFT 415	OFT Assessment of market power guidelines.
PED	Price Elasticity of Demand.
Price cap	Refers to the CAA's regulation of airport operators which caps the maximum revenue yield per passenger that the airport operator can obtain via its airport charges.
Quinquennium	The present regulatory arrangements for Stansted cover the financial years 2009/10 to 2013/14 and are known as the fifth quinquennium (Q5). The arrangements to apply beyond this date are commonly known as the sixth quinquennium (Q6) although the length of the regulatory period can be more or less than five years.
Q5	The present regulatory arrangements for Stansted cover the financial years 2009/10 to 2013/14 and are

Term	Description
	known as the fifth quinquennium (Q5).
Q6	The sixth quinquennium for Stansted would have covered the period from April 2014 to March 2019, although the length of the regulatory period can be more or less than five years.
Q6 Initial Proposals	Documents that set out the CAA's initial proposals for the appropriate economic regulatory framework for the operators of Heathrow, Gatwick and Stansted that will apply when the present regulatory arrangements expire in March 2014.
RAB	Regulatory Asset Base – the regulated value of the regulated company. It is updated by investment and depreciation. The fair return to the airport operator is based on a return on the RAB.
Regulated charge(s)	The charges at an airport that fall within the definition of Airport Charges. These charges are regulated by the price cap.
SACC	Stansted Airport Consultative Committee.
Scheduled service(s)	A service publicly advertised by an airline through its issued timetables. Non-scheduled services are other flights by airlines carrying passengers or cargo, e.g. charter services.
SDG	Steer Davies Gleave, an independent economic consultancy.
shippers	Those who place cargo on behalf of owners.
Short haul	For the purposes of this assessment, any flight lasting less than 5 hours (although service provision may vary according to a range of factors, not just the duration of the flight).
Slots	Landing and departure rights for airlines at airports. These are administered for certain UK airports by Airport Coordination Limited (ACL). The ACL is responsible for slot allocation at certain airports in the UK.
SMP	Substantial Market Power. This can be likened to what the European Court has defined as a dominant market position: 'a position of economic strength

Term	Description
	enjoyed by an undertaking, which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.'
South east of England	The CAA defines the south east of England for the purposes of this determination as the London area (including Stansted, Luton, Heathrow and Gatwick airports), plus Manston Airport.
Southend	London Southend Airport Company Limited – the operator of Southend Airport.
SSNIP and SSNIP test	Small but significant and non-transitory increase in price. SSNIP test (also known as the hypothetical monopolist test) is a framework used for market definition that analyses the effects of a five to ten per cent price rise.
stakeholder letter	Letter to stakeholders - Completing two Market Power Determinations for Stansted Airport, December 2013
STAL	Stansted Airport Limited – the operator of Stansted Airport.
STAL passenger determination	The CAA's determination for airport operation services to passenger airlines was released on 10 January 2014 (CAP 1135)
STN	Stansted Airport.
Stansted	Stansted Airport.
TDRs	Air Traffic Distribution Rules.
Test A	The relevant operator has, or is likely to acquire, substantial market power in a market, either alone or taken with such persons as the CAA considers appropriate. This test is set out in section 6(3) of the CA Act.
Test B	Competition law does not provide sufficient protection against the risk that the relevant operator may

Term	Description
	engage in conduct that amounts to an abuse of that substantial market power. This test is set out in section 6(4) of the CA Act.
Test C	For users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects. This test is set out in section 6(5) of the CA Act.
TFEU	Treaty on the Functioning of the European Union.
The additional Consultation	The consultation on relevant market developments.
The Guidelines	The CAA Guidance on the Assessment of Airport Market Power published in April 2011.
Upstream market	The market at the previous stage of the production/distribution chain.
VAA	Virgin Atlantic Airways.