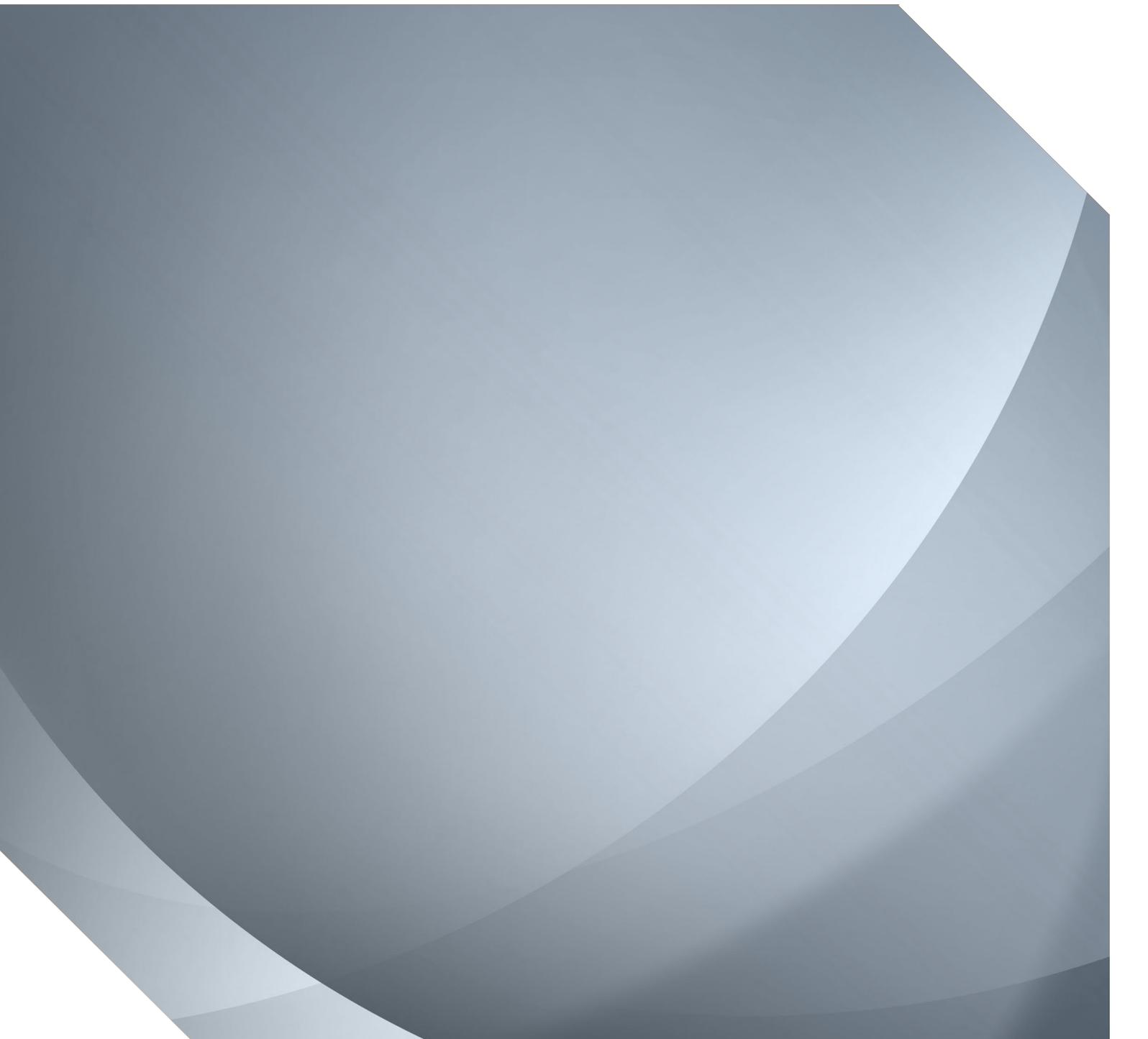


Appeal to the Civil Aviation Authority under
Regulation 20 of the Airports (Groundhandling)
Regulations 1997 made by Ryanair Limited against
Gatwick Airport Limited

The CAA's Decision and draft Directions

CAP 1046

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CAP 1046

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The CAA's Decision and draft Directions

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Introduction

Purpose of the document

1. This document sets out the CAA's decision in respect of an appeal by Ryanair against Gatwick Airport Limited ("GAL") under Regulation 20 of the Airports (Groundhandling) Regulations 1997 ("the Regulations"). The CAA has decided to give a direction to GAL in accordance with paragraph 7(2)(b) of Schedule 2 Part 1 of the Regulations. This decision includes draft directions to GAL on which the CAA is inviting comments from interested parties (see paragraph 3.10).
2. Alongside this document the CAA has also published the following material on its website that provides further background to the Appeal and the CAA's decision:
 - a full transcript of the Appeal Hearing held on 13 and 14 November 2012; and
 - a copy of the "Case Brief" that the CAA issued to the parties to the appeal in advance of the Appeal Hearing summarising the main arguments that had been made in this case.

Background

3. On 30 April 2012 Ryanair appealed to the CAA under the Regulations. The Regulations transposed into UK law the provisions of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports ("the Directive"). Recognising that groundhandling services are essential to the proper functioning of air transport and make an essential contribution to the efficient use of air transport infrastructure, the broad aim of the Directive was to open up access to the groundhandling market. The Directive stated in the recitals that "the opening up of access to the groundhandling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users".
4. Regulation 16(d) of the Regulations stipulates that the managing body of an airport or, where appropriate, the public authority or any other body which controls it, shall take the necessary measures to ensure that any fee charged for access to airport installations necessary

for groundhandling is determined according to relevant, objective, transparent and non-discriminatory criteria.

5. Under Regulation 20 (that implemented Article 20 of the Directive) any person who is aggrieved by a decision or individual measure taken pursuant to Regulation 16 by the managing body of the airport, or by another body controlling the airport, has the right of appeal to the CAA. The grounds for Ryanair's appeal were that GAL had not determined the charges for check-in desks and departure and arrival baggage facilities that it introduced on 1 April 2012 according to the criteria set out in Regulation 16(d).
6. The appeal process is governed by the procedures in Part 1 of Schedule 2 to the Regulations. Under paragraph 7(2), at the conclusion of the appeal the CAA may determine to dismiss the appeal or give such direction in relation to the airport's decision or individual measure concerned as it thinks fit.

Preliminary issue

7. As a preliminary issue, the CAA considered whether Ryanair's appeal had been submitted in time under the Regulations. On 15 May 2012 the CAA advised the parties of its view that Ryanair's appeal had been submitted in time because it was served within a month of the issuing by GAL of an invoice based on the new charging scheme implemented on 1 April 2012. The CAA did not therefore have to consider whether it should exercise its discretion to allow an extension to the period for lodging an appeal.

Status of Ryanair

8. While Ryanair is neither a supplier of groundhandling services nor a self-handling airline it has a right to appeal to the CAA as a party aggrieved by GAL's decision or individual measure in relation to charges for access to groundhandling installations at Gatwick, namely the check-in desks and departure and arrival baggage systems. Such access charges at Gatwick are levied directly on airlines rather than on suppliers of groundhandling services.

CAA Appeal Hearing

9. The CAA convened a public Appeal Hearing under the Regulations that was held on 13 and 14 November 2012 to consider written and oral representations from the parties to the appeal, Ryanair and GAL.
10. Participants in the Appeal Hearing were as follows.

CAA Panel:	Iain Osborne (chair) David Gray
Adviser to CAA Panel:	Richard Moriarty
Case Manager and Secretary:	Paul Taylor
Appellant:	Ryanair Limited, represented by Paul Harris QC
Witnesses:	Ian Clayton, General Manager, UK Operations, Ryanair Louise Congdon, Managing Partner, York Aviation
Respondent:	Gatwick Airport Limited (GAL), represented by Nicholas Saunders
Witnesses:	Nicholas Dunn (Chief Financial Officer, GAL) Christopher Woodroofe (Head of Engineering, GAL) Greg Harman (Senior Managing Director, FTI, Consulting LLP)

Events subsequent to the Hearing

11. Paragraph 3.2 below describes the events subsequent to the Hearing, and in particular the submission by the parties of further representations on the appropriate remedy in this case.

Next Steps

12. Once the CAA has considered responses on the draft directions in section 4, it will issue a final decision and directions to GAL as the determination for the purposes of paragraph 7(2)(b) of Schedule 2 Part 1 of the Regulations.

SECTION 1

Ryanair's 2009 appeal and related matters

- 1.1 This is the second appeal from Ryanair under Regulation 20. In August 2009 Ryanair submitted an appeal on the grounds that GAL had not determined the check-in and baggage charges then in effect against the criteria in Regulation 16(d).
- 1.2 Following a public Appeal Hearing with GAL and Ryanair held on 8 and 11 April 2011 the CAA published its decision on the appeal on 27 May 2011¹. The CAA concluded that GAL had not fully complied with Regulation 16(d) of the Regulations. It upheld Ryanair's appeal in the following respects:
- GAL did not use objective criteria when it set the internet check-in charge. Over time Ryanair had increased its share of passengers carrying no hold baggage but GAL had not reviewed its relative check-in charges. This had a discriminatory effect because similar terms were established for dissimilar transactions without a sufficient objective justification. Passengers carrying no hold baggage generated the same fee for check-in as passengers with hold baggage; and
 - The criteria that GAL adopted were not transparent in that users were unable to gain an understanding of how precisely their charges had been calculated. For example, users would not have been aware that an important criterion that led GAL to the final calculation of the internet charge was that no airline should face a 'shock' to its price path.
- 1.3 The CAA exercised its discretion under paragraph 7(2)(b) in Part 1 of Schedule 2 to the Regulations and issued Directions to GAL that were aimed at ensuring that the defects of GAL's charging system that the CAA had identified were remedied. The CAA Directions to GAL were in the following terms:

¹ Appeal to the Civil Aviation Authority under Regulation 20 of the Airports (Groundhandling) Regulations 1997 made by Ryanair Limited against Gatwick Airport Limited and BAA Airports Limited. The CAA's Decision of May 2011 is available at <http://www.caa.co.uk/docs/5/GH111GALRyanair.pdf>

A	It consults interested parties effectively in order to revise its pricing structure for check-in and baggage processing by no later than 1 April 2012 to meet the requirements of Regulation 16(d) so that individual charges are based on objective, relevant, transparent and non-discriminatory criteria.
B	In doing so it ensures that the charge for internet check-in does not in effect, set equivalent terms for dissimilar transactions without an objective justification with respect to those customers requiring the assets and resources of the baggage system and those customers that do not require them.
C	In doing so, it exercises its margin of discretion in how it allocates the common costs of its baggage system to ensure cost recovery in such a way that any such allocation of these costs is based on objective and non-discriminatory criteria.
D	By no later than 1 April 2012, it reviews the information it provides to users and takes such steps as are necessary to ensure that users receive a precise and comprehensible description of the method of calculating the charges and there is a clear explanation of the link between the facilities used, the costs of the services and the charges set. In particular, GAL should make this information available in a transparent manner to all users at once, eg. via its website.
E	By no later than 1 May 2012, it provides the CAA with written evidence sufficient to demonstrate that GAL has complied with the direction in A to D above.

- 1.4 Following the announcement by GAL of its new structure of check-in and baggage charges from 1 April 2012, the CAA asked GAL to report by 1 May 2012 on the steps it had taken to comply with each of Directions A to D and explaining how it had evaluated stakeholders' views during the consultation on the new charges. GAL duly reported on 1 May 2012 describing the actions it had taken to comply with the CAA's May 2011 Directions.
- 1.5 The CAA had intended to conduct a limited review of GAL's compliance with the May 2011 Directions. However, following receipt of Ryanair's second appeal on 30 April 2012, the CAA published a notice on 8 June 2012 that it would not proceed with the review but would examine the compliance of GAL's charging structure within the context of the current appeal process.

1.6 The issue before the CAA in the current appeal was whether GAL had determined its charges for check-in and baggage facilities that were implemented on 1 April 2012 in a manner that complied with the criteria of Regulation 16(d). The CAA has no powers to enforce Directions it issues. That is a matter for the courts on the basis of actions brought by airport users under Regulation 26 of the Regulations for breach of a duty by an airport to comply with a CAA Direction.

1.7 In coming to a decision the CAA must act in accordance with any relevant decisions of the Court of Justice of the European Union (CJEU). It may also take into account other authorities such as opinions of the Advocates General to the CJEU and the decisions of national courts and of other regulators. Accordingly, the CAA has had regard to a number of cases concerning ground handling that were also referred to in submissions from the parties. The relevant cases are:

1. *Flughafen Hannover-Langenhagen GmbH v Deutsche Lufthansa AG* (Case C-363/ 01) of 16 October 2003 and the opinion of the Advocate General;
2. *Deutsche Lufthansa AG v ANA – Aeroportos de Portugal SA* (Case C-181/06) dated 5 July 2007 and the opinion of the Advocate General;
3. Judgment of the Court in Case C-460/02 of 9 December 2004 in relation to Italy;
4. Judgment of the Court in Case C-386/03 of 14 July 2005 in relation to Germany; and
5. *Ryanair v The Commission for Aviation Regulation in Ireland* [2006] IEHC 291.

1.8 These cases were also relevant to Ryanair's 2009 appeal and as in that appeal CAA has treated the following points, drawn from the above sources, as of particular relevance in the present appeal:

- a fee should only be charged in relation to access to airport installations;
- an airport should be able to recover its costs and to make a reasonable profit from the fees charged;
- the fee must constitute consideration for a service, which corresponds to the use of the airport installations;

- the primary definition of objectivity is 'unbiased' – as such the link between the costs to the airport in providing a service and the level of the fee for that service should be based on an unbiased approach and is the key to fulfilling the requirements of relevance and objectivity;
- to meet the transparency requirement a precise definition of the method of calculating the fee should be made available looking at the services, the cost of those services to the airport and the way in which the fee is calculated by reference to those costs; and
- in general terms, to comply with the principle of non-discrimination, comparable situations must not be treated differently and different situations should not be treated in the same way unless there is an objective justification for doing so.

1.9 Furthermore, discriminatory trading conditions can impede effective competition such that consumers fail to benefit from lower prices, increased quality, choice and innovation.²

1.10 On 17 February 2012 GAL published notice of its final decision on the structure and levels of check-in and baggage charges for 2012/13. Annex 1 to the GAL notice is reproduced at Appendix 1 showing the airport's forecast costs and how these were allocated to charges for 2012/13. The structure of charges introduced on 1 April 2012 was as follows:

Per departing passenger using check-in at the airport to complete passenger acceptance	13.4p
Per departing bag	51.1p
Per departing Air Transport Movement (ATM)	£17.68
Per departing passenger	44.4p

² *United Brands v Commission* [1978] ECR 207, *Alpha Flight Services v Aeroports de Paris* [1998] OJ L 230/10.

1.11 The charging structure in place before 1 April 2012 was as follows: ³

Traditional check-in:	Charge per passenger
Gold	£2.76
Silver	£1.89
Bronze	£1.04
New Solutions:	
Common User Self Service	£0.84
Airline bespoke	£0.80
Transfer Pax	£0.80
Internet check-in	£0.71
Day before check-in	£0.60

1.12 Within GAL's new charging structure, charges paid by airlines vary depending both on the method of check-in used by their passengers and on the number of hold bags passengers present at check-in. The previous charges, which were all specified on a per passenger basis, primarily distinguished between different methods of check-in. For example, there was a lower charge for internet check-in than for check-in at the airport. The previous charges made no direct allowance for whether or not a passenger was carrying hold baggage or the amount of hold baggage.

³ These charges were in effect from 1 August 2011 to 31 March 2012. The previous charges ran from 1 April 2010 to 31 July 2011.

SECTION 2

Current appeal finding

Decision

- 2.1 Following the Panel's evaluation of evidence and submissions from the parties before, at and following the Appeal Hearing on 13 and 14 November 2012, the CAA has found that GAL did not fully comply with Regulation 16(d) of the Regulations when it set its structure of check-in and baggage charges from 1 April 2012. In summary, the CAA Panel has upheld Ryanair's appeal in the following respects.
- 2.2 GAL did not use non-discriminatory criteria when it set its charges for check-in and baggage from 1 April 2012. The way GAL allocated certain costs led to a situation where, by effect, similar terms were set for dissimilar transactions without a sufficient objective justification to overcome the fact that its actions meant that those airlines wishing to innovate in a way that made less use of these particular airport facilities could not realise a sufficient share of these gains and pass them on to passengers. Consequently, this undermined one of the stated objectives of the EU Groundhandling Directive, namely that the opening up of access to the groundhandling market should ultimately help to reduce the operating costs of airline companies and improve the quality of service provided to airport users.
- 2.3 For example, Ryanair presented evidence that its share of total check in and baggage charges is less than its share of total passengers, which is expected given its relative low share of airport check in and hold baggage per passenger. However, Ryanair's average charge per passenger has increased following the introduction of the new charging structure and its share of total Gatwick check-in and baggage charges has increased comparing the old and new charging structures. This is despite a background of Ryanair continuing to make less use of Gatwick's check-in and baggage facilities over time. GAL did not dispute these trends but offered possible explanations for them at the Hearing. While the CAA notes these, it is satisfied, on the evidence available, that GAL's revised charging structure had an apparently discriminatory effect on Ryanair.

2.4 In particular, the Panel has upheld that GAL's allocation of two particular items of costs, namely planned maintenance costs and rates, resulted in charges that had a discriminatory effect against Ryanair. While Ryanair mentioned a number of other costs items which it also argued had been allocated by GAL in a way that had a similar effect, the CAA has concentrated on the cost items of greatest materiality as can be seen from the table below. Taken together, planned maintenance and rates account for almost half of all the forecast costs recovered through GAL's check-in and baggage charges.

	Forecast costs 2012/13 £000	% of sub- category costs	% of total costs
DEPARTURE AND ARRIVALS BAGGAGE			
Planned maintenance	5,175	60.1	30.3
Reactive maintenance	1,725	20.0	10.1
Other costs	1,710	19.9	
Sub Total	8,610		
COMMON COSTS			
Rates	3,068	57.2	18.0
Other costs	2,291	42.8	
Sub Total	5,359		
CHECK-IN	3,116		
Total Costs	17,086		

Planned Maintenance Costs

2.5 The allocation of planned maintenance costs for the baggage system was not based on objective criteria and had the effect of discriminating against airlines, like Ryanair, that made comparatively less use of the system than other airlines. As noted above, planned maintenance costs are a material component of the total charges. GAL applied its judgement following consultation to allocate these costs among Air Transport Movements, passengers and hold bags in the proportions 40:40:20 based on these being the appropriate cost drivers and allocations. It was, however, agreed by the parties at the Hearing that these costs could be fairly attributed to cost causation based on the

time the system is in operation. The CAA considers that it was not unreasonable to expect GAL to have procured internal advice on this at the time and to have reflected this in its charging structure. At the Hearing, GAL acknowledged that there was no airline at Gatwick with a smaller check-in window than Ryanair.⁴ By relying on proxies that only related indirectly to time in operation GAL failed to give sufficient weight to this cost driver. In consequence, GAL introduced a potentially significant disconnect between the allocated cost to Ryanair and its share of time in use for the system. This element was not determined according to objective criteria given the actual cost drivers.

Rates

- 2.6 The apportionment of rates, another material item of cost, had the effect of discriminating against Ryanair. The Hearing did not establish that there was a cost causation to rates in relation to variances in the level of use of individual check-in and baggage facilities. In this respect the Panel considers it can be treated in economic terms as a common cost. Thus GAL has a margin of discretion in how it recovers these costs. The Panel recognises that there is not an agreed and unique method for the allocation of common costs. However, the airport's margin of discretion is not unbounded and should not result in a situation that discriminates against a class of airlines by design or effect with the result that the ultimate objectives of the Ground Handling Directive are undermined.
- 2.7 The overall rates bill, as a cost to GAL, does not vary according to use. GAL has indicated that it apportions rates to activity by reference to floor space devoted to that activity. The rationale for apportioning rates by floor space occupied by check-in and baggage facilities would appear to be based on trying to pass costs on by reference to the beneficiary of the use of the facility to which those costs relate. However, this breaks down if the end result is that airlines that do not make substantial use end up paying the same as those that do. On this basis, the CAA is concerned that the flat apportionment of the rates does not appear to be based on non-discriminatory criteria and can be characterised as treating different situations in the same way without an objective justification for doing so. It could also be viewed as arbitrary as it does not follow through the rationale of user/beneficiary pays to its logical conclusion.

4 Transcript page 274

2.8 By applying a flat charge per departing passenger to recover the relevant costs, GAL's charging structure means that straight-to-security (STS) passengers that require no check-in or baggage facilities pick up the same contribution of cost as passengers that use the check-in and bag drop facilities. GAL would have known when it set the charges that some of its airline passenger profiles such as Ryanair require less use of these assets and resources than others. Whilst it may be true that these costs may not vary even over a long period as between STS passengers and passengers who check in (with or without bags), by applying a simple flat per departing passenger charge to an element which was a significant component of this area of charging, GAL dulled the ability of airlines and their passengers to benefit from lower charges as a result of reducing their use of check-in and baggage facilities. Instead GAL placed some reliance on a criterion not found in the Directive, namely consistency with how other charges are set at Gatwick.⁵ While such a criterion is not obviously irrational, it cannot be applied such that it produces a result that would be at odds with the application of the criteria of the Directive.

Reasoning

2.9 As noted in paragraph 2.1, in reaching its decision the CAA has taken into account the written and oral evidence presented by the parties. In the reasoning below, where the CAA draws on specific pieces of oral evidence it references them as appropriate.

The CAA's 2011 appeal decision

2.10 In its assessment of Ryanair's previous appeal under the Regulations the CAA was guided by a number of considerations as set out in its decision of May 2011 relating primarily to the criteria of non-discrimination and transparency:

- The provisions of Regulation 16(d) should apply to individual charges in addition to the totality of all charges (paragraph 3.5);
- Non-discrimination should be considered by intent and/or by effect (paragraph 3.5);
- Discrimination may arise if an airport sets equivalent terms for dissimilar transactions without an objective justification (paragraph 3.6);

⁵ Transcript page 193

- Charges that clearly relate to the costs that are associated with the relevant transactions would provide an objective criterion for the determination of charges (paragraph 3.7);
- Airports have a margin of discretion to allocate costs that cannot be clearly attributed to particular services but this discretion is not unbounded and the airport must use relevant, objective, transparent and non-discriminatory criteria to justify the charges set (paragraph 3.8);
- The more significant the relevant differences in assets or resources consumed by users paying the same fee, the more compelling the airport's justification for the fee may need to be to counter its apparently discriminatory effects (paragraph 3.8);
- The potential benefits of competition, an aim of the Directive, should be realised for consumers. Competition promotes positive developments in the market such as innovation, choice and value (paragraph 3.14);
- To meet the transparency requirement there should be a precise definition of the method of calculating the charges (paragraph 3.15);
- The airport should be open and responsive if airlines have any queries (paragraph 3.16);
- Users should have equality of access to information (paragraph 3.17); and
- Users should be in possession of sufficient information to build up for themselves the relationship between the charge(s) they face and the objective factors, such as costs, that have determined the charge(s) (paragraph 3.17).

2.11 The CAA believes that these considerations are also relevant to its determination in the current appeal.

Impact on Ryanair

2.12 It was an important limb of Ryanair's case that despite the CAA's finding on its first appeal and the fact that its passengers were making even less use of the check-in and baggage facilities at Gatwick, it would face higher charges both in absolute and relative terms under the new charging structure than under the structure previously in place. Ryanair presented data showing that in 2011/12 its average charge per passenger in respect of check-in and baggage charges was 67

pence.⁶ Applying the new charges structure to the same passenger profile in 2011/12 produced an average charge of 73 pence.⁷ Ryanair also produced figures showing that in 2009/10 it accounted for 2.69% of total check-in and baggage charges at Gatwick charges, 2.70% in 2010/11, 2.76% in 2011/12 and under the 2012/13 charges structure this rose to 3.10% of total charges using 2011/12 passenger profiles.⁸ These increases in absolute and relative charges were occurring while the proportion of Ryanair's passengers using airport check-in facilities and carrying hold baggage continued to decline. According to Ryanair figures, in 2010/11 2.0% of its passengers checked-in at Gatwick. This fell to 1.4% in 2011/12 and in the first six months of 2012/13 there was a further reduction to 1.3%. In terms of hold baggage the ratio of bags to passengers was 34% in 2010/11, 29% in 2011/12 and 24% in the first six months of 2012/13. Ryanair also said that in 2010/11 its share of Gatwick passengers was 4.83%, falling to 4.31% in 2011/12 and to 2.67% in the first six months of 2012/13 which it contrasted with the upward movements in its share of charges in the two completed years.

- 2.13 While it queried one or two of Ryanair's specific numbers, GAL did not dispute the general trends described by the airline. GAL offered two reasons that might explain the increase in Ryanair's relative charges. The first that was as the previous structure took no account of the use made by airlines of Gatwick's baggage system Ryanair could have been "undercharged" relative to other airlines. The second was that the business models of other airlines could have changed which would have affected the relativities between airlines. GAL did not offer any evidence to substantiate either of these propositions and the CAA has therefore placed some weight on the comparisons made by Ryanair. The CAA considers that the comparisons drawn by Ryanair suggest that the criteria chosen by GAL were not delivering the correlation between use and charges that might have been expected. This further suggests that there may have been a failure by GAL to apply criteria that were consistent with the requirements of Regulation 16(d), most critically the requirement for non-discrimination. This is examined further below.

User pays

- 2.14 At the Hearing the parties placed different interpretations on "user pays" that GAL had said was one of the principles it had followed in

6 Transcript page 28

7 Transcript page 29

8 Transcript page 30

developing its new charging structure. Ryanair maintained that users for the purposes of applying the criteria in the Regulations were passengers, except in relation to the transparency criterion where airlines were the intended beneficiaries of a transparent process. This meant that charges should be closely tied to the services and facilities that airline passengers actually used. GAL on the other hand argued that users in this context were the airlines as representative of passengers in their totality. Support for this proposition could be found in the Directive and Regulations which defined "airport user" as "any... person responsible for the carriage of passengers, mail or freight by air to or from the airport in question". If users were regarded as individual passengers, who could make widely varying demands on the airport's facilities, this would lead to a highly complicated and consequently impractical structure of charges.

- 2.15 The CAA accepts that the main purpose of the Directive and Regulations was to open up the ground handling market at EU airports with the stated objective of securing lower ground handling charges and improved service quality for airlines. However, in deciding whether the criteria of Regulation 16(d) have been followed the interests of airline passengers and the impact of charges on them, whether directly or indirectly is, in the CAA's view, an important consideration. The goals of the Directive and Regulations relating to supporting effective and fair competition, reducing operator costs and improving quality are ultimately directed towards allowing airlines to serve effectively the interests of their customers.

Non-discrimination

- 2.16 It was common ground between the parties that non-discrimination should be considered 'by design or 'by effect'. GAL expressed the view that discrimination by design would also raise questions of objectivity.⁹
- 2.17 The CAA has previously accepted that discrimination may arise if an airport sets equivalent terms for dissimilar transactions without an objective justification or alternatively sets different terms for equivalent transactions. This is a standard approach to assessing issues of discrimination based on the equivalent potential of both types of behaviour to have a detrimental effect on competition, innovation and consumers.

9 Transcript page 91

- 2.18 This approach suggests that where charges clearly relate to the costs that are associated with the relevant transactions this would provide an objective criterion for the determination of charges. This approach is supported by the relevant cases cited in Section 2.
- 2.19 Ryanair did not dispute that GAL had set its charges overall in order to recover the forecast costs for 2012/13 associated with check-in and baggage facilities. There were, however, two specific aspects of GAL's charging structure from 1 April 2012 that Ryanair alleged had resulted in discrimination against an airline with a relatively low take-up among its passengers of check-in and baggage facilities. Both related to how GAL had allocated its forecast costs for 2012/13 among the categories of charge for check-in and baggage at the airport. The first concerned the treatment of the costs of maintenance of the baggage system and the second, the treatment of costs described by the airport as Common Costs, and in particular rates. Ryanair claimed that the methodology used by GAL to allocate these costs had led to discriminatory charges in that Ryanair's passengers, or a significant proportion of them, either made no use of the facilities to which the charges related or were making increasingly less use of them over time. The CAA notes that maintenance costs and rates are material cost items together accounting for more than half of total forecast costs of check-in and baggage in 2012/13.

Maintenance costs

- 2.20 The costs of maintaining the baggage system at Gatwick make up a significant proportion of the costs being recovered through check-in and baggage charges. At a forecast total of £6.9 million in 2012/13, maintenance costs account for 86% of departure baggage costs and 62% of arriving baggage costs. It is not surprising therefore that much of the evidence produced both in writing and at the Hearing addressed maintenance costs and the operation of the baggage system at Gatwick. Two aspects of GAL's maintenance costs were disputed by Ryanair. The first concerned the split between planned and reactive maintenance and the second, the basis for GAL's decision to treat planned maintenance costs as being driven by Air Transport Movements (ATMs), departing passengers and handled bags split out in the ratio 40:40:20.

Planned v reactive maintenance

- 2.21 Throughout the process of consultation preceding GAL's decision on check-in and baggage charges from 1 April 2012, the airport maintained

that the division between planned and reactive maintenance was 75:25. This was subsequently confirmed by written evidence on behalf of GAL, detailing the actual splits for the period 2007 to 2011. In addition, evidence given on behalf of Ryanair was that the 75:25 split was broadly replicated at a number of airports.¹⁰ Consequently there is no basis to conclude that GAL failed to adopt relevant and non-discriminatory criteria in deciding on the appropriate division between the two categories of maintenance.

Planned maintenance

- 2.22 Early in the process of developing its charges in relation to baggage, GAL identified that the concept of “use” of the baggage system comprised of two elements:
- *availability*, recognising that the baggage system had to be made available for use by every airline for every flight irrespective of the number of bags presented during the check-in process; and
 - *throughput*, recognising that the actual volume of baggage would vary by airline and by flight.
- 2.23 GAL examined a number of measures of availability including departing ATMs, the time required on the baggage system and weighted departure ATMs. For measures of throughput GAL had explored departing passengers with bags and departing bags.
- 2.24 Following consultation with airlines GAL adopted two metrics of availability, namely ATMs and departing passengers as a proxy to reflect the fact that long-haul airlines had longer check-in times than short-haul airlines. The metric GAL had chosen for throughput was departing bags. In its final charges GAL had allocated 40% of the planned maintenance costs as being driven by the number of ATMs, 40% by the number of departing passengers and 20% by the number of departing bags. GAL confirmed at the Hearing that these allocations were based on the airport’s own judgement having taken into account comments made by airlines during the consultation.
- 2.25 Ryanair challenged the concept of availability on the grounds that it was inconsistent with the principle of ‘user pays’; it forced all passengers to pay for the baggage system whether or not they used it. Airlines were already paying for the availability of the system through airport charges. Ryanair also argued that Gatwick was unique among airports in charging

¹⁰ Transcript page 154

for the availability of the baggage system. In Ryanair's submission, charges should only be levied for the actual use of the system.

- 2.26 At the Hearing GAL confirmed that airlines' use of the baggage system was reflected by the time the baggage system was running during check-in.¹¹ GAL acknowledged that different airlines adopted different approaches to check-in resulting in varying periods of time for which check-in was open. It accepted that Ryanair had one of the shortest check-in windows of all airlines at Gatwick¹² while for arriving baggage Ryanair delivered the first bag within 20 minutes and the last bag within 55 minutes most frequently¹³ (although it was the last passenger through border control that dictated when the baggage system could be switched off).¹⁴
- 2.27 There was considerable discussion at the Hearing on the scope that existed for GAL to make cost savings by various means, including switching off the system during off-peak periods and, in the longer term, by reconfiguring the baggage system, for example by reducing the number of lines. GAL explained that the system was already closed down if a bag did not present within 5 minutes and Ryanair's bags were delivered to the system at an average of less than 5 minutes. However the system had to be available across the whole of the operating day in both peak and off-peak periods. GAL accepted that it might be possible to make limited cost savings but any major savings would depend on the willingness of airlines and their handling agents to re-locate within the check-in area. Any change in check-in profiles would also have to be sustained before GAL could consider re-configuring the system. GAL also expressed some concern about possible gaming by airlines and their handling agents in the decisions made on accessing and leaving the system were time to be adopted as the sole metric for charges. In deciding this Appeal the CAA is not called upon to assess whether GAL is running its baggage system in the most cost-efficient way. The CAA has therefore reached no conclusion on this matter.
- 2.28 From the parties' evidence the CAA is satisfied that time in operation of the baggage system is a key cost driver. While it is not the CAA's task to determine whether there is a superior charging method to the

11 Transcript pages 251-252

12 Transcript page 274

13 Transcript page 261

14 At the Hearing GAL said that, in practice, if one or a few passengers were delayed for a long time at Border Control the airport removed their bags from the carousel so it could be used for the bags from another flight.

one adopted by GAL, it has taken this factor into account in assessing whether GAL has adopted relevant and non-discriminatory criteria in deciding its charges. The CAA also notes the evidence from Ryanair that from early in 2013 airlines will be charged for the use of Common User Terminal Equipment or CUTE (which is provided by a third party and not by GAL) on the basis of the time from which the system is switched on to when it is switched off by the airline or its handling agent at check-in.¹⁵

- 2.29 On the use of availability as a dimension of charging the CAA notes the evidence from GAL that this concept features in other regulated sectors such as gas, electricity and water for the recovery of fixed costs. Furthermore, although the evidence was not conclusive it does appear from studies comparing charging systems at other airports that some do charge for baggage on the basis of ATMs and/or passengers in the same way that GAL was charging for the "availability" of the baggage system.
- 2.30 Ryanair relied to some extent on the judgment of the ECJ in *Flughafen Hannover Langenhagen GmbH v Deutsche Lufthansa AG* (Case C-363/01) for its proposition that charging on the basis of "availability" was inconsistent with the Directive and the Regulations. In that case, the airport was levying what amounted to an "access" or a "licence" fee on Lufthansa solely in consideration of the airport operator giving Lufthansa the opportunity of making a profit from providing groundhandling services. The fee was apparently unrelated to any relevant and objective factor such as the costs of the airport. In the CAA's view, the circumstances at Gatwick in the present appeal are not comparable to those at Hannover. The charges in dispute at Gatwick do not equate to a licence fee but rather are designed to contribute to the remuneration of the costs that Gatwick incurs in providing check-in and baggage facilities. Consequently, the CAA does not consider that the judgment in the Hannover case is of assistance in making its determination in the current appeal in relation to the concept of "availability" within GAL's charging arrangements.
- 2.31 Against this background, the CAA does not find charging on the basis of availability, in principle, to be in conflict with the application of the criteria in Regulation 16(d). However, in the present case the question is whether GAL has given excessive weight to this factor in setting its charges which has had a consequential discriminatory effect against Ryanair.

¹⁵ Transcript pages 111-112

2.32 GAL has acknowledged that time in use of the baggage system is a key cost driver. In consequence, in the CAA's view, the less such a cost causation is reflected in charges the more likely it is that those charges could be successfully challenged against the criteria of Regulation 16(d). GAL relied on proxies such as the number of hold bags that only indirectly related to time in operation and then only allocated 20% of the costs of planned maintenance to this metric. This led to a potentially significant disconnect between the costs allocated to Ryanair and its share of time in use of the baggage system noting that its use of the system has continued to decline.

Rates

2.33 Rates account for 57% of the Common Costs and GAL has separately specified them for the baggage hall, the transfer baggage facility and check-in desks. The CAA agrees that it was appropriate for GAL to treat these as common costs as GAL's overall rates bill does not vary depending on the level or kind of activity taking place at the airport. Airports have a margin of discretion to allocate costs that cannot be clearly attributed to particular services. However, this discretion to allocate costs is not unbounded and the airport must have proper regard to the criteria in Regulation 16(d) when setting its charges. In determining its charges, GAL first allocated the rates costs according to the floor area used for particular functions and activities. Second, within that allocation, GAL set charges to recover the resulting costs for the areas used for passenger check-in and baggage on a per departing passenger basis. Consequently 17.9 pence or 40% of the total departing passenger charge of 44.4 pence was accounted for by rates.

2.34 In the CAA's view it was reasonable for GAL to allocate costs on the basis of floor area. However, its subsequent decision to recover the costs so allocated on a per departing passenger basis does raise questions of compliance with the Regulations. Ryanair argued that it faced the same charge for each of its passengers, around three quarters of which made no actual use of the check-in and baggage areas to which the rates related but instead walked straight to security (STS). Ryanair accepted that the main passenger flow from the railway station and car parks was through the check-in area but as the majority of its passengers did not benefit to any material degree from the services in that area it was inappropriate to charge them.

2.35 The CAA has previously noted that the more significant the relevant differences in assets or resources consumed by users paying the same

fee, the more compelling the airport's justification for the fee may need to be in order to counter its apparently discriminatory effects. GAL explained that the main principle it had adopted in charging on a per departing passenger basis was one of consistency with other charges at the airport that were levied per passenger. The CAA accepts that a number of charges at Gatwick are levied on a per passenger basis but in the case of charges for check-in and baggage it is the criteria of the Regulations that must prevail. In the CAA's judgement the flat apportionment of the rates cost does not appear to be based on non-discriminatory criteria and can be characterised as treating different situations in the same way without an objective justification for doing so. It could also be considered arbitrary as it does not follow through the rationale of 'user pays' to its logical conclusion. GAL's charging structure implies that STS passengers that require no check-in or baggage facilities should pay the same as passengers requiring those facilities. Whilst it may be true that these costs may not vary even over a long period by reference to the split between STS passengers and passengers who check-in and/or drop bags, by applying a simple flat departure charge GAL dulled the ability of airlines and their passengers to benefit from lower charges as a result of reducing their use of check-in and baggage facilities.

Transparency

- 2.36 Ryanair claimed that GAL had not been transparent during the consultation process leading up to the airport's decision on check-in and baggage charges from 1 April 2012. Airlines had not had equality of access to information nor were they in possession of sufficient information to examine for themselves the relationship between costs and charges. Two specific instances of a lack of transparency were in relation to explanations from GAL for the 75:25 split of maintenance costs between planned and reactive maintenance and, within the planned maintenance costs, the 40:40:20 split within the baggage charging system. Ryanair observed that it was only during the course of the appeal process that important explanations had come to light that had not been made available during the earlier consultation.
- 2.37 In response GAL pointed to the decision in *Aeroportos de Portugal* which defined transparency in this context as being met by a clear exposition of the services provided and a precise definition of the method of calculating the relevant fee. In GAL's submission there was nothing in case law that said that transparency meant providing as

much disclosure of every piece of information as possible. A process of consultation was an entirely relevant way of satisfying the need for transparency. GAL also argued that there was no requirement in law that information had to be provided prior to setting the charges. It was inevitable in the forensic process of an appeal that more detailed information would be produced than during the consultation with airlines on the proposed charges.

- 2.38 The CAA is satisfied from the evidence that airlines did have equality of access to information in the form of airport presentations and meeting minutes which were widely circulated by GAL. A minute of a meeting is not a verbatim record and cannot be expected to capture every comment made by those attending and airlines not present at a consultation meeting may not therefore get a full flavour of the discussion from the minutes alone. Ryanair elected not to be present at some of the early consultation meetings because of clashes with other meetings. It is for airlines to decide whether a consultation meeting is on a subject of sufficient importance for them to be directly represented.
- 2.39 In the previous appeal decision the CAA said that the airport should be open and responsive if airlines have queries. The CAA attaches importance to transparency and proper consultation. However, this is subject to a reasonableness threshold and cannot extend as far as an obligation on the airport to provide comprehensive and detailed supporting material for every proposition or in response to each question from users. In this case the CAA is satisfied from its review of the evidence and in particular the minutes of consultation meetings and in its final decision of 17 February 2012 that GAL was as open and transparent as might reasonably have been expected of it. On Ryanair's specific allegations of a lack of transparency, GAL had explained to users that the 75:25 split of maintenance costs was its best estimate based on historic data while the 40:40:20 split of planned maintenance costs reflected the airport's judgement.
- 2.40 Unlike in the previous appeal there was no evidence that GAL failed to disclose during the consultation all of the key factors that it took into account in determining its charges or that information was provided during the appeal that was of such significance that it should have been disclosed earlier. Each airline was able to determine from the Annex to GAL's decision of 17 February 2012 precisely how its charges had been built up from GAL's cost forecasts and the various cost allocations the airport had adopted.

- 2.41 The CAA does not uphold Ryanair's appeal in respect of the transparency criterion.

Other Matters

- 2.42 There appears to have been some misunderstanding about the treatment of check-in and baggage charges for the purposes of economic regulation by the CAA under Part IV of the Airports Act 1986. These charges have not been "carved out" of the Single Till as was suggested by GAL in written evidence. They are given special attention because of the finding made by the Competition Commission in 1991 and the subsequent condition imposed on Gatwick that requires the airport to disclose each year cost, revenue and pricing information on a number of Specified Facilities, including check-in and baggage. Under the "single till" approach for the setting of price caps on Gatwick's airport charges the forecasts for the Specified Facilities (as well as commercial revenues) are examined by the CAA and a view taken on their contribution to the assessment of the required revenue allowance for the regulated airport charges. At the beginning of Q5, from 1 April 2008, baggage infrastructure costs were transferred from non-regulated charges to regulated airport charges. Ryanair and other users of Gatwick are therefore contributing to the capital costs of the baggage system through regulated airport charges. The Appeal, however, related to the recovery of the running costs of the baggage system.
- 2.43 The Civil Aviation Act 2012 received Royal Assent in December 2012 and came into force on 6 April 2013. Consequently, in respect of Gatwick (and other designated airports) Part IV of the Airports Act 1986 ceases to have effect after 1 April 2014. The economic regulation of airports will then be conducted under the licensing arrangements of the 2012 Act.
- 2.44 On 30 April 2013 the CAA published for consultation its initial proposals on the economic regulation of Gatwick from 1 April 2014.¹⁶ This included draft conditions for a licence. On the Specified Facilities (which include check-in and baggage) which are currently the subject of transparency conditions imposed under Part IV of the 1986 Act, the CAA has initially proposed that check-in and baggage charges should not be the subject of a licence condition. This is on the grounds that users are given adequate protection by the Regulations which are essentially unchanged by the 2012 Act.

¹⁶ <http://www.caa.co.uk/docs/33/CAP%201029%20Economic%20regulation%20at%20Gatwick%20from%20April%202014%20initial%20proposals.pdf>

SECTION 3**Remedy**

- 3.1 Having found for the reasons set out in section 2 that GAL did not comply fully with the provisions of Regulation 16(d), the CAA is given a discretion by paragraph 7(2)(b) in Part 1 of Schedule 2 to the Regulations to give such direction to GAL in relation to the decision or individual measure as it thinks fit.
- 3.2 On 28 January 2013 the CAA issued to the two parties its assessment of Ryanair's appeal on the basis of the evidence then available. The CAA invited the comments of the two parties on an appropriate remedy by 5 March. Both parties duly submitted representations. The CAA then gave the parties an opportunity to comment by 28 March on each other's submissions. Again both parties did so. The CAA has taken these submissions into account in deciding on the terms of an appropriate remedy. It has also taken account of the further representations from the parties in the assessment in section 2, mainly in order to clarify particular aspects of the CAA's reasoning.
- 3.3 In particular both parties put forward suggestions for alternative methodologies for allocating the costs of those items where the CAA's assessment had found that GAL had not fully complied with the criteria of Regulation 16(d) when it established its check-in and baggage charges from 1 April 2012. Both methodologies placed weight on a metric of "time-in use" of the relevant airport systems although the two parties proposed different measurements for this metric as well as applying it in different ways to different categories of cost.
- 3.4 The CAA has come to no judgement as to whether one methodology is in any way superior to the other. The CAA notes that under either methodology Ryanair could expect to achieve savings in its charges at Gatwick compared to those GAL introduced on 1 April 2012. Under the illustrative charges presented by GAL Ryanair's charges could be up to a third lower while the illustrative charges derived from Ryanair's methodology would represent a reduction of around 50% for the airline against current published levels. Given the nature of Ryanair's operations at Gatwick the CAA would expect it to benefit from a charging structure that is based to a significant extent on the relevant and objective cost driver of time-in-use of the check-in desks and the departing and arriving baggage systems and on the intensity of use

made by passengers of the check-in areas. However, the CAA does not consider that addressing GAL's non-compliance to date requires that the charging system be adjusted so as to offer the greatest possible cost saving to Ryanair and other users with similar passenger profiles. Rather, GAL must put in place a charging system that addresses the key aspects of non-compliance with the Regulations.

- 3.5 Taking all of the above considerations into account, the CAA has decided to exercise its discretion and issue directions to GAL primarily in respect of the treatment of planned maintenance costs and rates. In doing so, the CAA wishes to encourage GAL to enter into discussions with its airline users with a view to agreement being reached on a structure of check-in and baggage charges that both addresses the failings the CAA has identified in this decision and is compliant with Regulation 16(d). The CAA must however recognise that it is possible that agreement cannot be reached. In such circumstances, and to minimise the prospect of future lengthy and costly appeals, the CAA considers that it should prescribe a default position on the allocation of the relevant costs which, in the CAA's view, would be consistent with the criteria in Regulation 16(d). The default position would be closely aligned with that described by GAL in its March 2013 submissions. The CAA is mindful that such directions would be more prescriptive than those issued in its earlier decision and it is not the CAA's normal practice to define how an airport should set its individual charges. However, it has taken into account the fact that this is the second appeal about this area of GAL's charging and a greater degree of precision here would set clear expectations for GAL and users.
- 3.6 The CAA has not made any adverse findings in relation to the methodology used by GAL to allocate costs other than planned maintenance and rates. The Panel notes, however, that GAL has accepted that some costs, specifically electricity and the baggage transfer unit, could also be allocated on the basis of time-in-use. The airport's illustrative proposal for an alternative charging structure allocates these costs in this way.
- 3.7 The CAA also considers that GAL should be placed under an obligation to consult airlines and other interested parties annually on its future check-in and baggage charges and to provide comprehensive information to airlines. The CAA has therefore included a provision to this effect in the draft directions. In due course, and after 1 April 2014, the CAA may wish to consider whether it would be more appropriate for consultation on these charges to be the subject of a licence condition.

- 3.8 The CAA has considered the representations from the parties on the effective date of any remedy. It has decided not to apply any retrospective element as sought by Ryanair. To do so would require GAL to recalculate the charges that would have applied for at period for which all airlines will have already been invoiced and will have mostly paid at the charges specified in Gatwick's "Conditions of Use". While GAL could refund those airlines that had been notionally "over-charged" it is not clear how the airport would be able at the same time to recover the notional "under-charge" from other airlines. Noting that GAL had set its check-in and baggage charges for 2012/13 to cover its overall forecasts costs for that year it would not be reasonable to expect GAL's overall revenue from check-in and baggage charges to decline as a result of any retrospective application of the remedy. Thus in the CAA's view making a retrospective direction that would risk both creating unpredictable distortions between airlines and having an unintentional impact on GAL's overall revenue from check-in and baggage charges would not seem an appropriate exercise of the CAA's discretion.
- 3.9 The CAA has also considered the representations from Ryanair that the CAA should award it costs against GAL not just for the current appeal but for the earlier appeal and for its complaint made under section 48 of the Airports Act 1986 that GAL had breached the transparency condition in respect of check-in and baggage facilities.¹⁷ The CAA's current view is that neither the Regulations nor the Airports Act 1986 are expressed in terms that confer on it the requisite powers to order one party to pay the costs of another and to enforce such payment. Both the Regulations and section 48 of the Airports Act are directed towards bringing the airport back into compliance with the relevant rules.
- 3.10 The directions the CAA is accordingly minded to issue to GAL are set out in section 4 of this document. The CAA invites interested parties to submit representations on these by **Friday 21 June 2013**. Representations should be sent by email to Paul Taylor at paul.taylor@caa.co.uk. The CAA will publish responses on its website shortly after the close of the consultation period. If there are parts of your response that you consider commercially confidential, please mark them clearly as such. Please note that while the Regulations are silent on the disclosure of information in connection with an appeal the CAA is subject to the Freedom of Information Act 2000.

¹⁷ <http://www.caa.co.uk/docs/5/TransparencyDecision.pdf>

SECTION 4**CAA 'minded to' directions to GAL**

- 4.1 The CAA has found for the reasons set out above that in establishing charges for check-in and baggage services at Gatwick from 1 April 2012 GAL did not comply fully with the provisions of Regulation 16(d) of the Airports (Groundhandling) Regulations 1997 (the Regulations). It follows therefore that GAL did not comply fully with the Directions issued by CAA in May 2011 following an earlier appeal brought by Ryanair under Regulation 20 of the Regulations.
- 4.2 In accordance with paragraph 7(2)(b) in Part 1 of Schedule 2 to the Regulations the CAA may give GAL such direction in relation to the decision or individual measure as it thinks fit.
- 4.3 The "minded to" directions below are aimed at ensuring that the defects identified by the CAA are remedied and GAL brings itself back into full compliance with Regulation 16(d).

The CAA directs GAL to ensure that the following provisions are met:**A Charges relating to the cost of providing of check in and baggage facilities shall reflect relevant differences in intensity of use by airport users and shall comply with Regulation 16(d). In particular:**

1. GAL's charges attributable to planned maintenance costs of the baggage system shall be calculated so as to reflect the time in use required by individual airlines.
 - a) For the departing baggage system, time in use shall be calculated by reference to an objective, transparent, relevant and non-discriminatory measure to be agreed with airport users following an appropriate period of consultation to commence within [28 days] of the issuing of these Directions.

If agreement cannot be reached by [30 September 2013], the allocation of planned maintenance costs of the departing baggage system shall from [1 December 2013] be as set out below in compliance with Regulation 16(d).

- i) Time in use shall be calculated by using Timeslice Data to estimate the period during which the baggage system is in use per Air Transport Movement (ATM). The cost of planned maintenance of departing baggage shall be allocated to individual airlines as set out below based on the periods in use identified for their flights by reference to that Timeslice Data.
 - ii) This allocation would be done by calculating an Airport Average Timeslice per ATM and an Average Timeslice per ATM for individual airlines. This would be used to produce a Departure Baggage Weighting Factor for each airline.
 - iii) The Airline Departing Baggage Weighting Factor would be applied to the overall Airport Average Departing Baggage Charge per ATM (calculated by dividing the departing baggage share of Planned Maintenance Costs based on Timeslice Data by the overall number of forecast departing ATMs over the relevant period).
 - iv) The application of the Airline Departing Baggage Weighting factor as described above would produce a Departing Baggage Charge per ATM for individual airlines.
 - v) The relevant period shall be as agreed between GAL and airport users. In the absence of agreement, the relevant period shall be 12 months.
- b) For the arrival baggage system, time in use shall be calculated by reference to an objective, transparent, relevant and non-discriminatory measure to be agreed with airlines using Gatwick following an appropriate period of consultation to commence within [28 days] of the issuing of these Directions.

If agreement cannot be reached by [30 September 2013], the cost of planned maintenance of the arrivals baggage system shall from [1 December 2013] be allocated as set out below in compliance with Regulation 16(d).

- i) Time in use shall be determined by reference to Last Bag data on the time between the time of arrival of the aircraft on stand and the time the last bag on a flight is delivered to the carousel gathered over the relevant period.

- ii) The relevant period shall be as agreed between GAL and airport users. In the absence of agreement the relevant period shall be 12 months.
- iii) This data would be used to calculate an Airport Average Last Bag Time and an Airline Average Last Bag Time for each airline using Gatwick.
- iv) A weighting factor for each airline would be calculated by dividing the Airline Average Last Bag Time by the Airport Average Last Bag Time.
- v) The planned maintenance costs for the relevant period attributable to arrivals baggage overall would correlate to the total time in use calculated by reference to the Last Bag data as described above. This would then be divided by the total forecast number of arriving ATMs to produce an Airport Average Arrivals Baggage Charge per ATM.
- vi) The weighting factor described above would be applied to the Airport Arrival Baggage Charge per ATM to produce an Airline Arrival Baggage charge per ATM for individual airlines.

B Charges to airlines relating to Rates

1. Charges which reflect the cost of rates payable by GAL shall be calculated by reference to an objective, transparent, relevant and non-discriminatory measure to be agreed with airport users following an appropriate period of consultation to commence within [28 days] of the issuing of these Directions.
2. If agreement cannot be reached by [30 September 2013], the allocation of costs attributable to rates shall from [1 December 2013] be as set out below in compliance with Regulation 16(d).
3. GAL shall continue to allocate costs attributable to rates based on floor space occupied by distinct activities. In relation to the allocation of costs attributable to rates for the check-in area, these will be apportioned among individual airlines by reference to criteria which reflect to a reasonable degree any material differences in the intensity of use of the check-in area by their passengers.

C Information and Consultation

1. GAL shall:
 - a) consult users each year on its annual forecasts of costs of and the anticipated use of check-in and baggage facilities at Gatwick airport for the forthcoming year commencing on 1 April; and
 - b) provide users by [28 February] each year with a comprehensive explanation of the cost forecasts, the use made of the check-in and baggage facilities and the charges levied in relation to those facilities. GAL shall make this information available to all users at once in a transparent manner, for example via its website.

D Reporting requirements

1. GAL shall report [monthly] to the CAA on progress made towards compliance with the direction in A and B above. This obligation to report shall cease on the date that a charging structure that satisfies A and B comes into effect.

E Entry into force

1. This direction shall have effect from the date of issuing and shall remain in force until it is revoked by the CAA.
- 4.4 This decision was made by Mr Iain Osborne and Mr David Gray, members of the Civil Aviation Authority.

Paul Taylor, for the Civil Aviation Authority
23 May 2013

APPENDIX A

Summary of revised forecast 2012/2013 C&B costs and the attribution of these costs to metrics of use

<u>Check in & Baggage 2012-13</u>	Original	Revised	Total Cost Allocation to Metrics				Allocation of Cost per Unit			
	Forecast 2012/ 13 £000's	Forecast 2012/ 13 £000's	Departing PAX £000's	On-Airport Check in pax £000's	Departing Bags £000's	Departing ATMs £000's	Departing PAX £p	On-Airport Check in pax £p	Departing Bags £p	Departing ATMs £
Common Airport costs										
Rates (Baggage Hall)	1,109	1,109	1,109				6.5			
Rates (TBF)	288	288	288				1.7			
Rates (Desks)	1,168	1,168	1,168				6.8			
Rates - Arrivals Baggage System	277	277	277				1.6			
Rates - Arrivals Baggage Reclaim	226	226	226				1.3			
Police	1,006	1,006	1,006				5.9			
Corporate Charge/ Overhead	243	243	243				1.4			
Terminal management	1,042	1,042	1,042				6.1			
Total	5,359	5,359	5,359	0	0	0	31.4	0.0	0.0	0.0
			100.0%	0.0%	0.0%	0.0%				
Check-In costs										
Capital Charge	1,001	822		411	411			3.5	3.7	
Ste Rental (Desks/CJSS)	1,225	1,262		631	631			5.4	5.6	
Cleaning (Desks)	31	31		16	16			0.1	0.1	
Network Costs (Internet Check-In)	72	72		36	36			0.3	0.3	
Portering	45	45		22	22			0.2	0.2	
Electricity (Including Desks)	758	709		354	354			3.1	3.2	
Maintenance (CJSS)	175	175		88	88			0.8	0.8	
Total	3,308	3,116	0	1,558	1,558	0	0.0	13.4	13.9	0.0
			0.0%	50.0%	50.0%	0.0%				
Departing Baggage costs										
Baggage Transfer Unit	380	230			230				2.1	
Cleaning & Refuse	302	302			302				2.7	
Maintenance (Contractors & Stores)	593	593	178		237	178	1.0		2.1	1.42
Maintenance (Staff)	2,564	2,564	769		1,026	769	4.5		9.2	6.12
Maintenance (TBF)	2,441	2,398	719		959	719	4.2		8.6	5.73
Electricity (TBF Baggage)	393	368			368				3.3	
Total	6,674	6,455	1,667	0	3,122	1,667	9.8	0.0	27.9	13.27
			25.8%	0.0%	48.4%	25.8%				
Arriving Baggage costs										
Maintenance (Contractors & Stores)	275	275	83		110	83	0.5		1.0	0.66
Maintenance (Staff)	1,070	1,070	321		428	321	1.9		3.8	2.56
Electricity	17	16			16				0.1	
Cleaning	286	286			286				2.6	
Baggage Flow Controllers	379	379	152		76	152	0.9		0.7	1.21
Heat and Ventilation - Baggage Reclaim	129	129			129				1.2	
Total	2,156	2,155	555	0	1,044	555	3.3	0.0	9.3	4.42
			25.8%	0.0%	48.5%	25.8%				
Total Direct Expenditure	17,498	17,086	7,581	1,558	5,725	2,222	44.4 p	13.4 p	51.2 p	£17.69
							Total cost per unit			
Volumes 2012/ 13										
Departing PAX (000's)	17,064									
On Airport Check in PAX	11,597									
Departing bags (000's)	11,186									
Departing ATMs	125,626									