

Gatwick Airport Limited operator determination



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**NOTICE OF DETERMINATION UNDER SECTION 11 THE CIVIL AVIATION
ACT 2012**

GATWICK AIRPORT LIMITED (“GAL”)

The Civil Aviation Authority has made the following operator determination for the purposes of section 10 of the Civil Aviation Act (“the Act”).

GAL is the operator of the airport area consisting of London Gatwick Airport (“Gatwick Airport”) as it has overall responsibility for the management of all of that area, excluding the aircraft maintenance facilities as described below.

GAL is not the operator of the airport area which comprises of Hangar 6 Maintenance Area 1 and Hangar 7 Maintenance Area 2 (together, the “aircraft maintenance facilities”) as it does not have overall responsibility for the management of all of that area.

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CHAPTER 1

Purpose of this document

- 1.1 The purpose of this document is to set out the CAA's reasons for the operator determination for the purposes of section 10 of the Act. The CAA has determined that GAL is the operator of the airport area comprising Gatwick Airport as it has overall responsibility for the management of that area. The CAA has also determined that GAL is not the operator of discrete areas (including but not limited to the whole or part of any area of land, buildings or other structure) as it does not have overall responsibility for the management of those areas.
- 1.2 The operator determination is relevant where more than one person controls or may control the matters listed in section 9(4) of the Act to some extent.¹ It can also have a bearing on determining the "airport area" and the "relevant operator" for the purpose of conducting a market power determination (MPD) under sections 6 and 7 of the Act and, where appropriate, granting any licence that is required pursuant to sections 15 to 18 of the Act.
- 1.3 The operator determination is made for the purposes of the Civil Aviation Act 2012 only and does not have any bearing on GAL's aerodrome licence issued pursuant to Article 211 of the Air Navigation Order 2009.
- 1.4 Under sections 11(1) and (2) of the Act, as soon as practicable after making an operator determination, the CAA is required to send a copy of this notice to the following persons:
- the person in respect of whom the determination was made; and
 - such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

¹ Section 9(3) of the Act

CHAPTER 2**Background and Chronology**

- 2.1 In May 2013, the CAA published its consultation² (the Consultation) on its 'minded to' consideration of the market power test (MPT)³ in relation to Gatwick Airport, pursuant to its duties under the Act. That Consultation stated that the CAA was 'minded to' find that the MPT was met in relation to the core area, as defined in section 5(4) of the Act⁴, of the airport area comprising Gatwick Airport⁵, on the basis that Tests A, B and C under section 6 of the Act were met in relation to GAL as the relevant operator.
- 2.2 In January 2014, the CAA published its MPD⁶ which found that the MPT was met in relation to part of the core area of the airport area comprising Gatwick Airport, excluding the cargo processing areas, in relation to GAL as the relevant operator. Therefore this part of the core area is a dominant area for the purposes of section 5 of the Act and consequently, Gatwick Airport is also considered to be a dominant airport. Accordingly, under section 3 of the Act, GAL must have a licence in respect of that area in order to be able to charge for airport operation services provided in that area and any other area that forms part of Gatwick Airport in respect of which GAL is the operator. This does not include any discrete area in respect of which the CAA concludes that GAL is not the operator as part of an operator determination under section 10 of the Act.
- 2.3 In the course of the consultation process following the CAA's Initial

² See <http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5574>

³ Section 6 of the Act.

⁴ The core area in relation to an airport is defined in section 5(4) of the Act as the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport, passenger terminals and the cargo processing areas.

⁵ Under section 5(3) of the Act, "airport area" can consist of an airport in its entirety.

⁶ See CAP 1134

Proposals for Economic Regulation at Gatwick⁷ (Initial Proposals), and letter to stakeholders in May 2013⁸, GAL submitted that it could not be considered the operator of the area for servicing aircraft or the cargo processing area and that these areas should not be included in the airport area covered by the licence⁹.

- 2.4 In the course of the consultation process following the CAA's Final Proposals for Economic Regulation at Gatwick¹⁰ (Final Proposals), the CAA proposed the airport area considered in the Consultation as the basis for the airport area in the proposed licence. This is because the Act envisages a link between the airport area that will be the subject of the MPD and the relevant market for the purposes of Test A.¹¹ The MPD found that, under Test A of the MPT, GAL has substantial market power (SMP) in the market for airport operation services for passenger airlines and that such services were provided from part of the core area of the airport, excluding the cargo processing area. Therefore this cargo processing area has not been included in the licensed airport area and the CAA has not carried out an operator determination.¹²
- 2.5 Accordingly, the airport area for which the licence is granted covers all those parts of the core area of Gatwick Airport where airport operation services are provided for passenger airlines, except for any specific areas within that, where the CAA has concluded that GAL is not the operator as part of an operator determination. The CAA regards GAL's submission that it is not the operator of the area for servicing

⁷ Published in April 2013:
<http://www.caa.co.uk/docs/33/CAP%201029%20Economic%20regulation%20at%20Gatwick%20from%20April%202014%20initial%20proposals.pdf>.

⁸ <http://www.caa.co.uk/docs/78/20130531LetterToGatwickStakeholders.pdf>.

⁹ See Page 77 of <http://www.caa.co.uk/docs/78/GALApr13.pdf>

¹⁰ Published in October 2013 :
<http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5782>

¹¹ In particular, under section 7(7) of the Act, when choosing an airport area that is to be the subject of a MPD, the CAA must have regard to the relevant market or markets. Sections 6(6)(a) and (b) of the Act also tie the definition of 'relevant market' to the airport area.

¹² See Annex D D155-D157 of the CAA's MPD for GAL for further information.

aircraft, as a request for an operator determination pursuant to section 10(5) of the Act to the effect that it is not the operator of the aircraft maintenance facilities.

- 2.6 In light of this, the CAA sought information from GAL, and the relevant lessees of the aircraft maintenance facilities, to confirm to what extent GAL has ‘overall responsibility for the management’ of those facilities having regard to the extent to which GAL controls or may control the matters listed in section 9(4) of the Act. The extent to which GAL controls those matters is relevant to determining whether the aircraft maintenance facilities should, or should not, be included in the airport area covered by the licence.
- 2.7 After reviewing the terms of the leases for the aircraft maintenance facilities and further information provided by the relevant parties, the CAA considered that GAL does not have overall responsibility for the management of the aircraft maintenance facilities, and has made an operator determination to this effect. The CAA notes that there were no stakeholder responses to the Final Proposals on this issue.

CHAPTER 3

Operator of core area

- 3.1 Gatwick Airport was a designated airport for the purposes of section 40 of the Airport Act 1986 (the 1986 Act). Under the 1986 Act, GAL was considered to be the operator of the airport and as such was given the necessary permission by the Secretary of State to levy airport charges. Furthermore, GAL is the holder of Gatwick's aerodrome licence.
- 3.2 In its responses to the Initial Proposals and the Final Proposals, GAL has only contested that it is not the operator of the aircraft maintenance facilities and the cargo processing areas. Accordingly, save for any particular areas where the CAA has made an operator determination to the contrary, the CAA considers that GAL is the operator of Gatwick Airport for the purpose of the Act.¹³

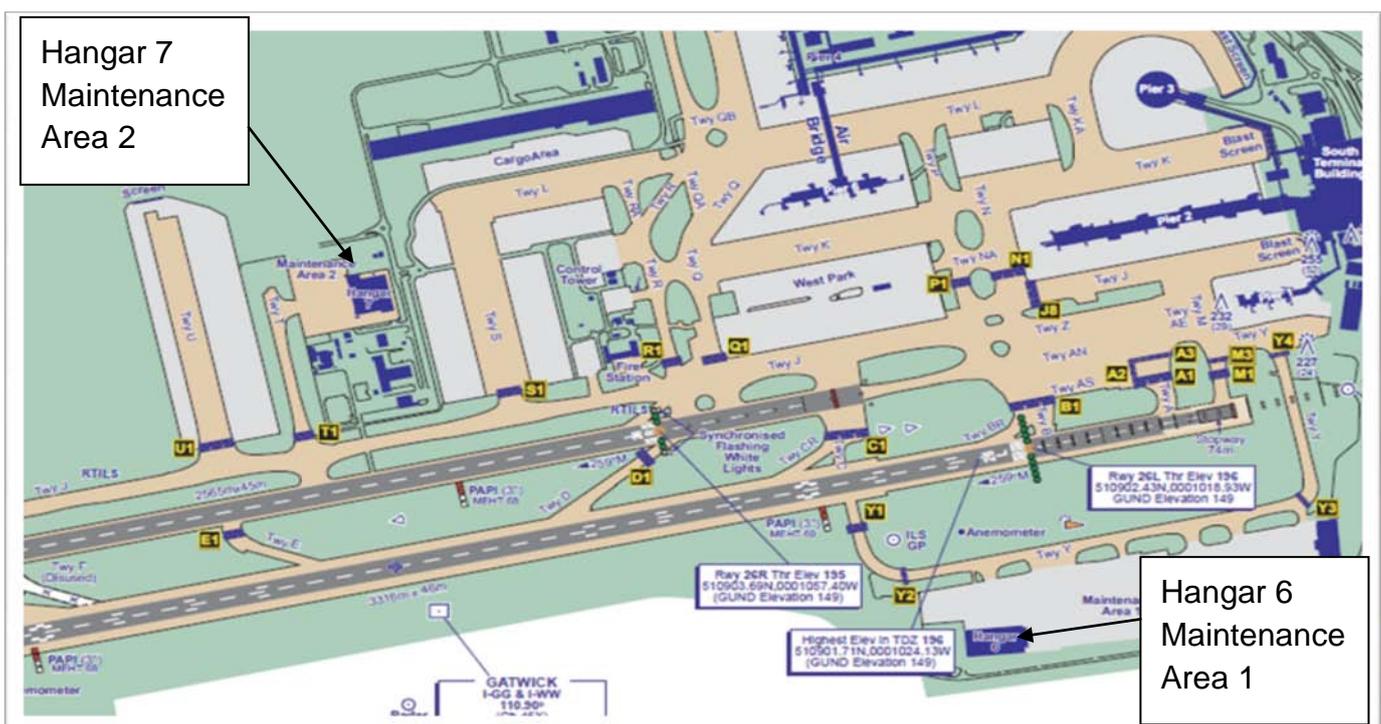
¹³ The cargo processing area is not included in the area covered in the MPD so will not be included in the airport area covered by the licence. The CAA has therefore not carried out an operator determination. See paragraph 2.4 above for further information

CHAPTER 4

Aircraft maintenance at Gatwick Airport

- 4.1 This section provides an overview of the aircraft maintenance services provided at Hangar 6 Maintenance Area 1 and Hangar 7 Maintenance Area 2.
- 4.2 GAL retains freehold title over the land and aircraft maintenance facilities. There are two leasing arrangements in place between GAL and BA¹⁴, relating to Hangar 6 Maintenance Area 1, and GAL and Virgin, relating to Hangar 7 Maintenance Area 2.

Figure 1: Gatwick Airport Aerodrome Chart



Source: Gatwick Airport Aerodrome Chart - ICAO¹⁵

¹⁴ British Airways

¹⁵ <http://www.vfrguide.com/visual-flight-rules/united-kingdom/aerodromes/EGKK>

Hangar 6 Maintenance Area 1

- 4.3 BA's base engineering operates from Hangar 6 on the south side of the airport, between the runway and the Southern Perimeter Road. The hangar is a multiple bay facility that enables it to manage complex casualty inputs and deliver scheduled maintenance activities. There is capacity for one wide-bodied and three short-haul aircraft, with specialist services for fuel tank entry and engine change certification. Hangar 6 also contains training facilities and offices. The Gatwick engineering team provide a range of Ramp and Hangar integrated engineering solutions. The team also holds EASA B and C Licence certification on specified aircraft types.¹⁶ BA is also an EASA 147 approved training organisation.¹⁷
- 4.4 Hangar 6 primarily services BA aircraft and also provides some work for other airlines operating into Gatwick, largely on a marginal cost basis, with reciprocal arrangements at the operating bases of those airlines. Its products and services range from total support packages for entire fleet to component overhaul and aircraft painting.

Hangar 7 Maintenance Area 2

- 4.5 Virgin's maintenance operations are split into two distinct areas, Line Maintenance and Hangar Maintenance. Regarding line maintenance, Virgin has a team of engineers carrying out all aspects of in-service routine line maintenance activities and defect rectification. During aircraft turnaround, its team of qualified engineers carry out items of planned maintenance and rectify any defects. As part of this, its specialised cabin/IFE¹⁸ team focus on maintenance of Virgin's cabin interior and products therein. Its line maintenance team also provides contracted and ad hoc third party support to other carriers that operate within the scope of its EASA 145 approval. Virgin is also an EASA 147 approved training organisation.¹⁹

¹⁶ Further information can be found at:

<http://www.bamro.com/baemro/boeingLineManagement.shtml>.

¹⁷ Further information can be found at <http://www.ba-mro.com/baemro/training.shtml>.

¹⁸ In-flight entertainment

¹⁹ Further information can be found at:

<http://www.virginatlantic.com/gb/en/global/engineering/engineering-training.html>.

- 4.6 For hangar maintenance, Virgin's hangar facility accommodates scheduled maintenance inputs from A-check²⁰ interval, and other maintenance inputs that specifically require controlled hangar conditions; such as engine changes and structural repairs. Given the deployment of Gatwick aircraft there is an average of one Virgin A-check per week and 3-4 targeted maintenance clear up inputs for more specific out of phase tasks on other aircraft throughout the remaining weekdays. Its team is positioned on permanent night shifts to cover service provision to easyJet P-checks (similar to Virgin A-checks) and ad hoc inputs overnight. easyJet is its main contracted customer but there are occasions where hangar space is let to ad hoc operators.

²⁰ An A-check is a more in-depth scheduled maintenance input that is made up of routine servicing tasks, inspections and component replacements. These require aircraft to be taken out of service and are called by flight hours; given Virgin's utilisation they occur roughly every 7-8 weeks for each aircraft and typical elapsed input times are 24 hours.

CHAPTER 5**Reasons for the determination**

- 5.1 In making an operator determination, section 10(4) of the Act requires the CAA to determine whether a person has overall responsibility for the management of an airport area by having particular regard to the extent to which the person controls or may control the matters listed in section 9(4) of the Act.
- 5.2 The terms 'overall responsibility' and 'control' are not defined in the Act and therefore assume their ordinary meaning. The CAA has an element of discretion in determining the relative importance of the matters listed in section 9(4) of the Act and the weight that it gives to the extent of such 'control' in determining 'overall responsibility'. The CAA has therefore sought to exercise this discretion reasonably and in a proportionate and targeted manner in line with its statutory duties under section 1 of the Act.
- 5.3 The CAA considers that whether there is or may be control depends on the amount and type of decision-making power or influence the person holds over the type, quality and price of services provided in the area and the access and development of the facilities concerned. In determining to what extent 'control' is sufficient to constitute 'overall responsibility', the CAA has balanced various factors and considers that operational management and decision-making is a particularly relevant factor. The CAA has also considered the extent of control exercised within a commercial leasing arrangement by a landlord/lessor and its impact on the tenant/lessee's day to day operational management of the facilities for the purpose of repair, maintenance and overhaul of aircraft that land at the aerodrome.
- 5.4 The CAA sets out below how it has had regard to the matters under section 9(4) of the Act. It then concludes by considering whether GAL has overall responsibility for the management of the aircraft maintenance facilities.

Extent of GAL's control over matters in section 9(4) of the Act

5.5 In assessing the extent of control GAL has over the matters set out in section 9(4) of the Act in the area comprising the aircraft maintenance facilities, the CAA must have particular regard to:

- (a) the types of services that are or may be provided in the area;
- (b) the prices that are or may be charged for services provided in the area;
- (c) the quality of services provided in the area;
- (d) access to the area; and
- (e) the development of the area.

5.6 The CAA considers that in the absence of a specific definition of 'services'²¹ under section 9(4) of the Act, that this is synonymous with airport operation services (AOS) as defined under section 68 of the Act.

5.7 The CAA considers the following AOS to be of particular relevance in making an operator determination in relation to the aircraft maintenance facilities at Gatwick Airport:

- The servicing of aircraft which includes the repair, maintenance and overhaul of aircraft that land at the aerodrome (as defined as AOS in section 67(8)(b) and 68(2) of the Act).
- The grant of permission to have access to or use the land and facilities that forms part of an airport, or its facilities, for the purpose of servicing aircraft (as defined in section 68(5)(a) of the Act)²² including the provision of facilities.

²¹ Other than section 72(2) of the Act which specifies that reference to providing a services however expressed, includes providing a facility (and related expressions are to be interpreted accordingly).

²² Section 68(5)(b) of the Act states that a person who permits others to access or use land for the purpose of aircraft maintenance is to be treated as providing AOS in that area.

(a) Types of services provided

- 5.8 The extent of GAL's control over the types of services provided in the area, comprising the aircraft maintenance facilities, is limited to that which it exercises as the landlord under a commercial lease, in so far as it has granted the lessees permission to access the land to operate the aircraft maintenance facilities for the purpose of 'servicing aircraft' which includes the 'repair, maintenance and overhaul of aircraft that land at the aerodrome. The leases also set out the lessee's rights and obligations.
- 5.9 Whilst GAL has restricted in the leases the type of services/activities that can be provided by the lessees to those which are required for, and connected to the maintenance, repair, parking, overhaul and servicing of aircraft, it has no control or involvement in the day to day operational management of the types of services provided, other than permitting airside access to the land and facilities. Furthermore the relevant permissions required to carry out specific types of services relating to the repair, maintenance and overhaul of aircraft are granted to CAA approved organisations²³, pursuant to the relevant EASA regulations. GAL is not one of the relevant approved organisations.

Conclusion

- 5.10 While GAL has permitted others to occupy the land and facilities and has restricted the class of services/activities that can be provided under the leases, it does not provide the actual maintenance services, and is not involved in the day to day operational management of the aircraft maintenance facilities. Therefore, GAL has very limited control over the types of aircraft maintenance services provided.

²³ CAA approved organisations must comply with the relevant requirements and are subject to periodic audit by the CAA. <http://www.caa.co.uk/default.aspx?pageid=8381>.

(b) Prices charged for services provided

- 5.11 Whilst GAL charges rent to the lessees for the use of its land and facilities, which are subject to relevant commercial negotiations, it has no control or involvement in the actual prices charged for the services provided in the area, comprising the aircraft maintenance facilities.
- 5.12 The lessees have separate arrangements in place for the services provided in the aircraft maintenance facilities; GAL has no control over these arrangements. Both lessees primarily serve their own fleets but also serve other airlines operating into Gatwick. For instance, Virgin provides contracted and ad hoc third party support to other carriers that operate types within the scope of its EASA 145 approval. Virgin's hangar maintenance operations also have contracted customers like easyJet and also let hangar space to ad hoc operators.

Conclusion

- 5.13 GAL only determines the rent charged for the aircraft maintenance facilities as set out in the leases, and has no direct control over the prices its lessees charge for aircraft maintenance services provided in the aircraft maintenance facilities.

(c) Quality of services provided

- 5.14 GAL has no involvement in the day to day operational activities carried out by the lessees relating to the quality of services provided in the aircraft maintenance facilities. The standard and quality of such services are determined by external independently mandated safety regulations.²⁴
- 5.15 However, under the leases, there are some contractual standards in the leases for the facilities to be maintained and kept in good repair and GAL does provide some support services as the operator of the airport, for example providing a fire station which is located on the airfield. GAL also has a key role in the Control of Major Hazards Regulations (COMAH) emergency response planning and obtaining relevant permissions.²⁵

²⁴ As an example, the lessees are both EASA Part 145 approved organisations.

²⁵ See <http://www.hse.gov.uk/comah/index.htm>.

Conclusion

5.16 GAL has no direct control over the quality of services provided in the area comprising the aircraft maintenance facilities other than providing access to the land and facilities, in its role as operator of the airport and landlord of the facilities.

(d) Access to the area

5.17 GAL's control over access to the aircraft maintenance facilities extends to the extent that they are part of the airport and personnel must first pass through GAL's airside security²⁶ to access those facilities. GAL also controls access for aircraft to the facilities as it controls the access to the airfield for landing, taking off and manoeuvring. Under the leases, both BA and Virgin are also granted rights of passage by GAL across areas such as service roads and taxiways so as to facilitate access to the facilities.

5.18 It should also be noted that the Airports (Groundhandling) Regulations 1997 (the Regulations) require GAL to ensure "free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties".²⁷ All organisations must be in possession of a valid Airside Operators Licence (AOL) or Ground Handling Agreement issued by GAL before starting business or operations on the airfield.²⁸

5.19 Whilst GAL controls airside access, it has limited rights of entry to the facilities themselves. The limited circumstances in which it can enter

²⁶ This requires airlines to join the Gatwick ID Scheme members of which are automatically registered to receive Gatwick Airport Directives, of which a number relate to airport security and ID passes which must be obtained and brought to the attention of any staff employed or contracted by the airline who will be working at Gatwick Airport. Further information can be found at http://www.gatwickairport.com/PublicationFiles/business_and_community/all_public_publications/id_centre/Gatwick_ID_Regulations-March_2013.pdf.

²⁷ Regulation 8(a) of the Airports (Groundhandling) Regulations 1997.

²⁸ See <https://www.airdat.org/files/downloads/194/GADF2711.pdf>.

the facilities are specified in the leases, which require reasonable notice to the lessees except in emergencies.

- 5.20 GAL also cannot control wider access by other parties to the facilities, other than through airside security, as the facilities have their own security arrangements in place. For instance, access to Hangar 7 Maintenance Area 2 is via a contracted security provider controlled gatepost at the perimeter fence.

Conclusion

- 5.21 GAL has some control over access to the aircraft maintenance facilities as they are located at the airport, and personnel must first pass through GAL's airside security in order to access the facilities themselves. Also aircraft can only enter the facilities through Gatwick controlled taxiways. Furthermore, section 68(5)(b) of the Act states that a person who permits others to access or use land for the purpose of aircraft maintenance is treated as providing AOS in that area. GAL is therefore providing an AOS in one sense as it permits the lessees to access and use its land for the purpose of aircraft maintenance. However, it has limited control over access to the aircraft maintenance facilities themselves, and GAL personnel can only enter the facilities in specified circumstances, on reasonable notice to the lessees or in emergencies.
- 5.22 Therefore GAL controls airside access, which is already within the scope of the licence under the Act, and has a limited degree of control over the access to the aircraft maintenance facilities themselves.

(e) Development of the area

- 5.23 GAL is not responsible for the day to day maintenance and development of the aircraft maintenance facilities and services provided therein, although the leases require that the relevant statutory permissions are sought as well as GAL's prior consent in specific circumstances.
- 5.24 However, the CAA considers that GAL has a greater degree of control in respect of future development of the airport as a whole, which in turn could impact the particular facilities that are the subject of this operator determination. For instance, BA has noted that as less than

20 years remain on lease, it is not economically viable for it to develop the land or buildings without a new long-term agreement with GAL. Furthermore, with GAL's aspirations to build a second runway, with a preference for locating this south of the existing runway, it is possible that all of the favoured southern options would require Hangar 6 to be demolished either because the land would be required for the runway itself, or for aircraft stands, piers, taxiways or other operational facilities.

- 5.25 BA considered that if GAL proceeds to build the second runway, it would be able to terminate the current lease before the term ends by recourse to Compulsory Purchase Orders process (CPOs). The government is expected to take a decision on the location of a new runway after they receive the report of the Airports Commission in 2015. If the government supports a new runway at Gatwick, GAL could start development from 2019²⁹ subject to receiving planning permission. The CAA notes that there do not appear to be any options in the relevant lease agreement to renew the lease for Hangar 6 Maintenance Area 1.
- 5.26 In light of this, the CAA considers that GAL has a greater degree of control over the future development of Hangar 6 Maintenance Area 1, but also notes a degree of uncertainty in relation to the unknown outcome of the Airports Commission recommendation and the statutory process necessary to secure CPOs.
- 5.27 The future development of Hangar 7 Maintenance Area 2 is also uncertain, as there are less than four years remaining on the lease. Virgin has noted that if GAL were to develop the area and it impacted on Virgin's hangar arrangements, then GAL would have to find a replacement facility of equal or better standard. The CAA also notes that under the lease, Virgin has the right to request a renewal of the current lease, but this would be subject to any plans by GAL to develop the demised premises. In that case GAL can offer a renewed lease of replacement facilities.

²⁹ The current expansion moratorium expires in 2019.

Conclusion

- 5.28 GAL is not responsible for the day to day maintenance and development of the aircraft maintenance facilities and services provided therein, although the leases require that the relevant statutory permissions are sought as well as GAL's prior consent in specific circumstances.
- 5.29 GAL has a degree of control for future development of the airport as a whole and such developments can affect the aircraft maintenance facilities. However, in the light of the above uncertainties relating to the Airports Commission, the process to secure CPOs and the continuation of current leasing arrangements, the CAA considers that GAL does not currently have overall responsibility or control of the future development of the facilities. Given the uncertainties noted above, if there are developments in the future which bear on the overall responsibility or control of the facilities, the CAA would consider whether it should carry out a further operator determination, in accordance with its statutory duties under section 1 of the Act, to assess whether the facilities should be included in the licence area.

CHAPTER 6

Conclusion on overall responsibility for the management of the aircraft maintenance facilities

- 6.1 Having regard to the extent to which GAL controls or may control the matters listed above, as set out in section 9(4) of the Act, the CAA considers that GAL has very limited day to day operational control over the types, prices and quality of services provided in the aircraft maintenance facilities. It has some control over access as the facilities are located at the airport, although it has a limited degree of control to the facilities themselves. GAL is responsible for the overall development of the airport but is not responsible for the day to day development of the facilities, and subject to the above uncertainties, does have some control over the future development of the airport as a whole which can in turn affect the aircraft maintenance facilities.
- 6.2 Therefore, the CAA considers that for the purposes of section 10 of the Act, GAL does not have overall responsibility for the management of the airport area comprising the aircraft maintenance facilities.
- 6.3 It should be noted that under section 18 of the Act, the CAA can include in the licence such conditions as it considers necessary or expedient having regard to its duties under section 1 of the Act, as well as conditions it considers necessary or expedient to guard against the risk of abuse of the substantial market power. These can include licence conditions relating to activities carried on outside the airport area for which the licence is granted.³⁰ Therefore even though GAL is not the operator of the airport area occupied by the aircraft maintenance facilities for the purpose of this operator determination, it is open to the CAA to impose licence conditions on GAL that relate to any activities carried on there if this is consistent with its duty under section 1 of the Act to further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services.

³⁰ Section 21 (1) of the Act