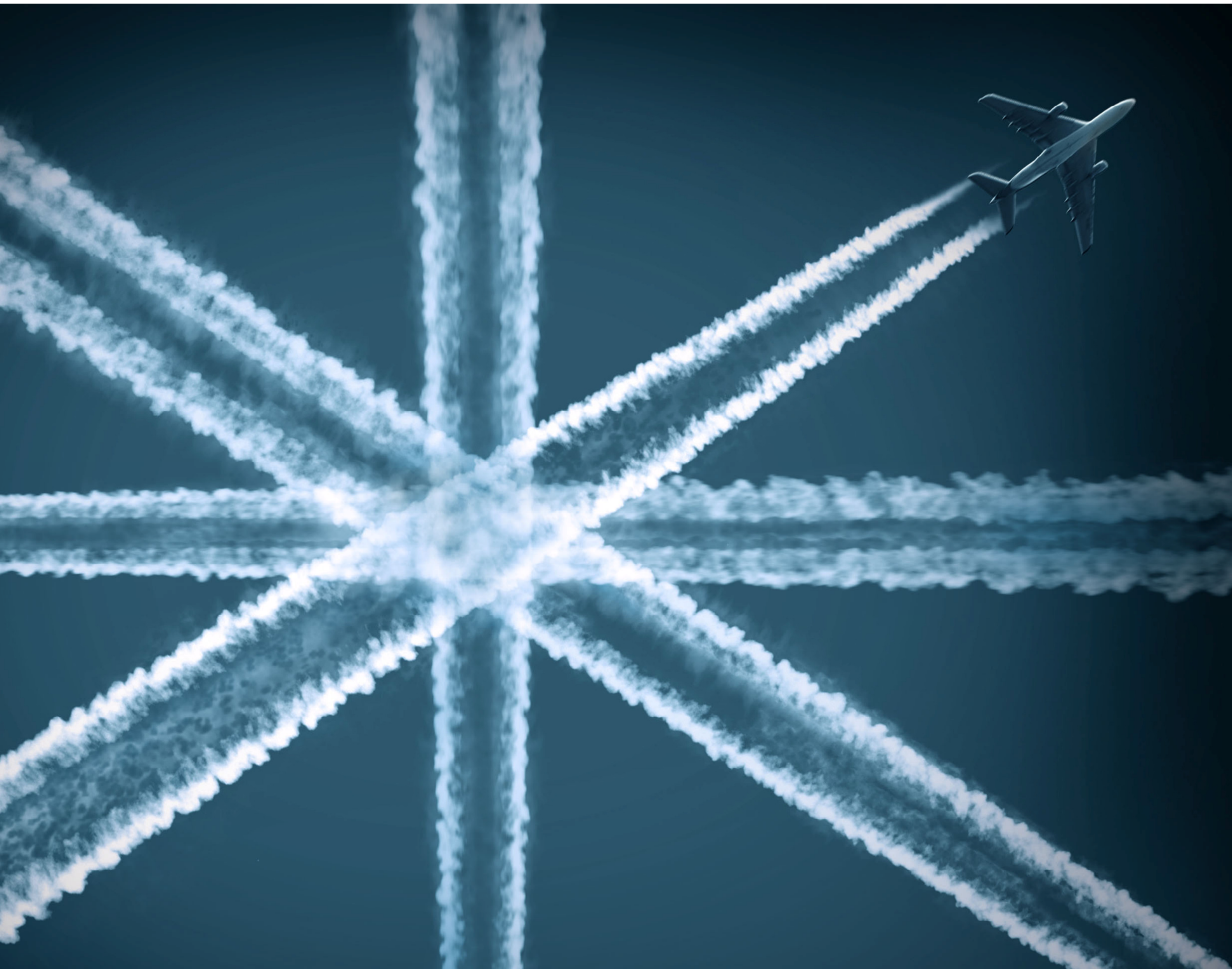
Non-confidential version

Stansted Market Power Assessment: Cargo

M.A.G's response to the CAA's letter of 20 December 2013

20 January 2014



Section 1: Introduction and Summary

1. This document is the response of Manchester Airports Group plc (**M.A.G**), the owner of Stansted airport (**Stansted**), to the CAA's invitation to parties to submit further representations and/or new evidence on the cargo market at Stansted. That invitation was contained in the CAA's letter of 20 December 2013 in which it announced its intention to issue two market power determinations (one for the passenger segment, the other for the cargo segment) in its market power assessment (**MPA**) of Stansted under the Civil Aviation Act 2012 (**CA Act**).

2. This response does not seek to repeat in full the various submissions we have made in relation to the MPA of the cargo segment at Stansted. In particular, the cargo segment was considered in detail in Section 11 of our response to the CAA's 'minded to' document in May 2013 (the **MPA Response**), and in our response of 11 November 2013 to the CAA's additional consultation of 17 October 2013 (the **November Submission**). We also provided a detailed update of cargo developments at Stansted on 11 December 2013. However, this response should be read in conjunction with all previous submissions made by M.A.G in relation to cargo, which conclusively demonstrate that Stansted does not have substantial market power in relation to cargo customers (and also that Tests B and C are not met).

3. Since the MPA Response was submitted, we have not been afforded the opportunity to engage with the CAA on its analysis of Stansted's cargo business. The MPA Response identified a wide range of concerns about the reasoning in the 'minded to' document, and the lack of evidence in many areas to support the conclusions set out. There have been two further consultations since that time, but neither of these has set out additional evidence or analysis on these substantive issues, nor have they shown whether or how the analysis has evolved in response to consultation responses. We are therefore not in a position to understand what the CAA's current position is in relation to the substantive analysis.

4. Following the CAA's market power determination on 10 January 2014, the CAA has already decided that the passenger side of Stansted's business (the **Passenger Determination**) will not be price regulated from 1 April 2014. The remaining market power assessment is therefore limited to the cargo side of Stansted's business, which in 2012 represented only around [ ]% of Stansted's total revenues, and [ ]% of its aeronautical revenues.

5. The CAA's additional consultation in October 2013 considered the cargo market and the impact of the changes in the competitive environment generally at Stansted on the appropriate approach to the cargo market. The consultation document made clear that the CAA's approach to cargo would depend in part on its approach to the passenger market. This was particularly the case in balancing the costs and benefits of regulation under Test C, but it was also said to be relevant to Tests A and B. We therefore believe that the Passenger Determination has a significant impact on any decision in relation to cargo.

6. One of the key factors in the CAA's decision that Stansted does not have market power in relation to its passenger business is the new commercial approach adopted by M.A.G at Stansted following the company's acquisition of Stansted in February 2013, as evidenced by the long-term commercial

deals agreed since February 2013. For example, paragraphs 5.80, 5.82 and 5.84 of the Passenger Determination state:

> "*The evidence from the recent signing of the long term growth deals between Stansted and its main airline customers, including Ryanair and easyJet, suggests closer and more constructive engagement and commercial negotiation between [Stansted] and its airlines customers than under BAA's ownership. The bilateral deals have been welcome and were advertised as a success story with public statements and declarations about their significance and value by all sides.*
>
> …
>
> *The CAA considers that these deals should be considered as a product of the combined effect of the constraints on [Stansted] as well as the new owners' changed behaviour and commercial strategy, including its interest in growing passenger numbers and its non-aeronautical income.*
>
> …
>
> *Overall, the CAA considers that it has seen a significant change in behaviour from the new owners, which is underlined by deals covering the great majority of passengers using Stansted.*"

7. Further, as stated at paragraph 2.14 of the Passenger Determination:

> "*In reaching this conclusion, the CAA has taken into account the need to promote competition in the provision of airport operation services, economy and efficiency on the part of the airport operator. This Determination meets these needs by removing [Stansted] from economic regulation, allowing it to compete (free from price regulation) by pursuing its own commercial strategy.*"

8. M.A.G's new commercial strategy at Stansted, and the importance of allowing Stansted to compete freely, applies equally to both the passenger and the cargo sides of the business. There would be no commercial logic to adopting contradictory strategies for passenger and cargo airlines whereby growth is incentivised for passenger airlines but not for cargo airlines.

9. We believe there is a significant opportunity to grow the cargo business at Stansted by adopting a different commercial approach, and we have committed considerable resources to engaging with existing and potential customers. We have provided the CAA with evidence to demonstrate how we are working hard to attract new cargo services, including attracting new cargo airlines from airports such as Heathrow, Manston, Luton and Schiphol. This contrasts starkly with BAA's historic approach to engaging with cargo customers at Stansted.

10. The CAA's forward-looking analysis in the Passenger Determination therefore applies equally to the cargo segment. Indeed, the passenger and cargo (both belly-hold and pure freight) segments are regarded as belonging to the same relevant product market in both the Heathrow and Gatwick MPA

determinations and there appears to be no objective justification for adopting a different approach in relation to Stansted.

11. We have also recently made public commitments to cargo customers to replicate the existing Q5 pricing conditions applied to Stansted. These commitments, which will be made enforceable by their inclusion in Stansted's Conditions of Use from 1 April 2014, provide assurance to existing and potential cargo customers about M.A.G's approach to setting tariffs and building long term commercial relationships to support cargo development at Stansted.

12. This response:

    a. Summarises the significant developments in the cargo segment that have occurred at Stansted since the CAA's 'minded to' document was published in January 2013 (Section 2), including the recent commitments made by Stansted (Section 3).

    b. Explains our view that none of the three limbs of the MPA are met in relation to cargo:

        i. Test A: The CAA has not presented any quantitative analysis showing that Stansted has substantial market power. However, we have presented clear evidence that shows that Stansted does not have substantial market power, which is further supported by the fact that Stansted is demonstrably not behaving like an airport with substantial market power (Section 4).

        ii. Test B: Given the pricing commitments recently given to cargo airlines, it is clear that competition law provides sufficient protection against the (already negligible) risks of abusive conduct by Stansted (Section 5).

        iii. Test C: The balancing exercise between the adverse effects and benefits of regulation is fundamentally different now that the passenger side of Stansted's business will not be regulated and now that the pricing commitments have been made. Any possible benefits of regulation would be significantly outweighed by the direct and indirect costs of regulating such a small part of Stansted's business (Section 6), particularly in the presence of the commitments that have recently been given to cargo operators.

Section 2: Summary of cargo developments since January 2013

13. Updates setting out developments in relation to the cargo market at Stansted were provided to the CAA in various correspondence including our November Submission[1] and our letter to the CAA of 11 December 2013. A summary of those developments, including developments that have occurred since our letter of 11 December 2013, is set out in Annex A to this document.

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[1] November Submission, Section 2.

14. In the short time since M.A.G acquired Stansted, deals have been agreed with passenger airlines representing [ ]% of Stansted's business. However, as the CAA will have seen, M.A.G has also been focussed on securing agreements with cargo airlines, and is working hard to attract new cargo airlines from airports such as Heathrow, Manston, Luton and Schiphol. In particular:

    a. [ ].

    b. [ ].

    c. [ ].

15. If this activity is contrasted with the position when Heathrow, Gatwick and Stansted were under common ownership, it is clear that M.A.G's acquisition of Stansted has had a fundamental effect on the commercial environment at Stansted, both in terms of engagement with airlines and resulting commercial agreements. This point was recognised by the CAA in its Passenger Determination.[2]

16. Other developments which demonstrate M.A.G's new commercial approach at Stansted include the following:

    a. We have appointed a new Commercial Director for cargo - Graeme Ferguson. As the CAA will have seen, Graeme is working hard to build stronger relationships with our cargo airlines, with a view to replicating the successes we have achieved in relation to passenger airlines.

    b. We have established a dedicated cargo team which is committed to developing the cargo business at Stansted and ensuring our cargo customers receive a first class service from the airport. This contrasts with the position under Stansted's previous owners.

17. The above developments provide tangible evidence of how the commercial environment has changed at Stansted since M.A.G completed the acquisition of the airport in February 2013. M.A.G's wider commercial strategy, for both cargo and passenger airlines, at Stansted is clear, and represents a significant change of direction from that taken while Stansted was owned by BAA. The new commercial strategy at Stansted that the CAA recognised in its Passenger Determination applies equally to both the passenger and the cargo side of the business, and the CAA's forward-looking analysis in the Passenger Determination applies equally to the cargo segment. Indeed, the evidence of the new commercial approach that the CAA has accepted in relation to Stansted's passenger business provides clear and direct evidence of M.A.G's approach across the board, including in relation to cargo.

18. As the CAA is aware, the situation continues to move quickly as we continue to build strong relationships with cargo airlines. M.A.G will continue to keep the CAA up to date with developments as they happen.

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2 Passenger Determination, paragraphs 5.80 to 5.84, quoted at paragraph 3 above.

Section 3: Stansted's pricing commitments to cargo customers

19. For the reasons set out in previous submissions and this response, none of Tests A, B and C are met in relation to the cargo business at Stansted. As a result, we believe that no further steps to address the "*concerns of cargo customers around future pricing levels*"[3] are necessary.

20. Nevertheless, at Section 4 of our November Submission, we stated our willingness to make commitments to cargo customers, to replicate both the existing Condition 2 of the current Stansted price controls, and the Public Interest Condition imposed under the Airports Act 1986 following the recommendations of the Competition Commission in 2008. These are the price controls that the Competition Commission and the CAA considered necessary at that time for the Q5 regulatory period, at a time when Heathrow, Gatwick and Stansted were under common ownership.

21. In order to demonstrate our commitment to building commercial relationships with cargo airlines, and in order to address any remaining concerns, we wrote to air cargo customers on 16 January 2014 to make following commitments (see copies of the letters at Annex B to this document):

> "*For a period of two years beginning on 1 April 2014, M.A.G (on behalf of itself and its subsidiaries including Stansted Airport Limited) commits to the following:*
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> *(a) The schedule of published airport tariff charges at Stansted airport shall not contain higher tariffs in respect of cargo air services than in respect of equivalent passenger air services. For these purposes, "passenger air services" means air services carrying passengers that join or leave an aircraft at Stansted airport, including air services operated for the purpose of business or general aviation, and "cargo air services" means air services carrying cargo, which do not fit within the definition of passenger air services.*
>
> *(b) For so long as the charges for landing aircraft at Stansted airport are fixed so that the charge levied for landing an aircraft in excess of 50 metric tonnes but below 250 metric tonnes during a peak period is higher than the charge levied for landing at other times, the charges levied for landing aircraft in excess of 250 metric tonnes shall, at all times, bear the same relationship to the equivalent charges levied on aircraft in excess of 50 metric tonnes but below 250 metric tonnes.*"

22. These are freestanding commitments. In order to make the commitments legally binding, they will be included in the next iteration of Stansted's Conditions of Use, which airlines will be consulted on in the near future, and which will come into force on 1st April 2014. As a result, these commitments will be in force at Stansted irrespective of the outcome of the MPA.

23. The commitments will apply to Stansted's current tariff structure, and will apply to any tariff structure over the next two years. By giving these commitments, Stansted is undertaking not to charge current or future cargo airline customers more than its published tariff price, and provides

3 The CAA's additional consultation of 17 October 2013, paragraph 3.66.

further assurance to cargo operators as to Stansted's approach to setting tariffs over the next two years.

24. In reaching a final decision in relation to cargo, the CAA will be able to take into account these commitments, which when taken together with the Airport Charges Regulations 2011 and competition law provide an effective and proportionate way to address any concerns the CAA may have as to Stansted's future conduct.

Section 4: Test A

25. The CAA has presented no quantitative or detailed analysis showing Stansted has substantial market power in relation to cargo, either in the 'minded to' document or since. The provisional views set out in the 'minded to' document are out of line with the MPAs for Heathrow and Gatwick, published on 10 January 2014, which do not find a separate relevant market for cargo.[4] In reality, Stansted operates in a well-functioning and competitive cargo sector. As a result, the CAA is not in a position to make a finding that Stansted has substantial market power in relation to cargo.

26. The evidence available to the CAA shows Stansted does not have substantial market power in relation to cargo, and therefore that Test A is not met. In particular, Section 11 of our MPA Response explained that Stansted does not have substantial market power by reference to evidence that *inter alia*:

    a. Air cargo is a small part of the cargo sector (less than 1% of all cargo volumes) and it faces direct competition from road, rail and sea.

    b. Most air cargo goods are carried in belly-hold (2.5 million tonnes), which competes directly with cargo-only flights (800,000 tonnes).[5]

    c. Even in the time-sensitive cargo-only segment, customers are sophisticated logistics companies who have plenty of choice.[6]

27. At paragraphs 47 to 63 of our November Submission, we also highlighted that:

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[4] See e.g. paragraph 4.18 of the Heathrow MPA, which notes the CAA's provisional view that the relevant product market at Heathrow was "*aeronautical services supplied to full service long-haul carriers and associated feeder airlines*". In the preceding paragraph, "*aeronautical services*" is said to include "*the provision of facilities for the processing of cargo (in the case of an aircraft carrying cargo, either in bellyhold or as a cargo-only flight) (cargo processing facilities)*". Paragraphs 4.29 and 7.3 confirm that "*cargo processing facilities*" are indeed part of the relevant product market in the CAA's final decision, which also includes passenger airline services, amongst other things. The same conclusion seems to have been found in the Gatwick MPA published also on 10 January 2014 – see e.g. paragraphs 4.16, 4.34 and 4.36. There is no explanation in the CAA's various publications in relation to the Stansted MPA as to why the analysis is different in the case of Stansted.

[5] See also PwC's report entitled "The Air Freight Industry in the UK", dated 16 December 2013, prepared for the Airports Commission (the **PwC Report**), page 28.

[6] This view is supported by the PwC Report. It is notable how seldom Stansted is even mentioned in the document, which is a detailed report on the cargo industry in the UK.

a. The fact that Stansted is now owned by M.A.G rather than BAA removes any suggestion that Stansted does not compete with Heathrow and Gatwick for cargo destined for London.

b. If the CAA were to conduct a market definition exercise, it would show that Stansted operates in a wide market which includes other airports in the UK, airports in Northern Europe, and road, rail and shipping.

c. M.A.G's position that the air cargo market is geographically wide and competitively constrained by other modes of transport, particularly road and rail is consistent with the position of the European Commission.[7]

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

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

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

g. Around one-fifth of cargo from China bound for the UK is landed in continental European hubs and brought across the Channel to the UK by truck.

h. Customers' ever increasing cost preference towards belly-hold (at the expense of pure freight) is another strong indication that Stansted does not have substantial market power.[8] Less than 0.27% of UK belly-hold cargo passes through Stansted. On this issue, it is not relevant whether or not the CAA believes belly-hold cargo belongs to the same relevant product market as pure freight. As explained in paragraph 4.5 of the Passenger Determination, the CAA "*should seek to analyse all the competitive constraints faced by [Stansted], regardless of whether they arise from within or outside the relevant market or markets*".[9]

i. As a result of the Airport Charges Regulations 2011, Stansted "*must not discriminate between airport users*" unless it can show that "*the reason for the differentiation is relevant, objective and transparent*".[10] As a result, even if there were not strong competition in the cargo market, strong competition in the passenger airline market (as found by the CAA in its

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7 See paragraph 11.22(b) of the MPA Response.
8 See also the PwC Report, pages 29-31.
9 See also the CAA's Guidance on the assessment of airport market power, April 2011, paragraphs 2.48 to 2.49.
10 The Airport Charges Regulations 2011 (SI 2491/2001), paragraph 14.

Passenger Determination) protects all of Stansted's cargo customers from any potential exercise of market power. This point is recognised in the Gatwick MPA decision, paragraph 3.6, where the CAA discusses the current Q5 price cap at Gatwick, which covers only passenger airlines. The CAA suggests that cargo customers are sufficiently protected when it states: "*[r]evenues from all-freighter aircraft are not taken into account in the price cap although the airport operator may not charge more for such aircraft than it would for an equivalent passenger aircraft.*"

28. Furthermore, in paragraph 5.36 of the Passenger Determination, the CAA recognised that Stansted's incentives in responding to the competitive constraints it faces may be different to those under Stansted's previous owner because it is able to take a longer term view. The same analysis applies equally to the cargo market. We have provided the CAA with evidence of the new commercial environment at Stansted (including cargo) and, as noted in our November Submission:

    a. It would not be optimal for Stansted to adopt contradictory strategies for passenger and cargo airlines whereby growth is incentivised for passenger airlines but not for cargo airlines. The same incentive – to utilise a higher proportion of Stansted's capacity by moderating its prices – applies to both the passenger and cargo sides of Stansted's business.[11] As explained in the Passenger Determination, paragraph 5.54, the spare capacity at Stansted increases the buyer power of airline customers because "*promises of additional traffic or threats or actual withdrawal of capacity could have a material effect on the [Stansted's] profitability (as it may not be easily replaced)*".

    b. M.A.G's commercial strategy for Stansted is clear. It is not necessary for deals to be in place with all, or even a majority, of cargo airlines for the impact of the new deals on the MPA analysis to be significant. The MPA is concerned with forward-looking competitive conduct. An airport with substantial market power would have little incentive to act as Stansted has been acting, and Stansted's direction of travel is clear to see, as evidenced by its approach to deals and discussions with cargo airlines and (more recently) the commitments it has made.

29. We face strong competition in attracting airlines to Stansted, partly as a result of "*the concentration of the air cargo community around Heathrow*" (paragraph 5.25 of the Heathrow MPA determination). The CAA's findings on this issue are consistent with what many cargo airlines have told Stansted in recent months. They have said that any relocation of cargo capacity away from Heathrow will incur trucking costs for the airline. The majority of the major UK air freight forwarders are headquartered at or around Heathrow. The forwarders all feed their main Heathrow office with their own truck services from various points across the UK in order to focus the volumes at Heathrow, where the majority of UK cargo capacity is situated. Should an airline wish to operate away from Heathrow, it is responsible for feeding the flight from their Heathrow transit shed.[12]

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[11] See e.g. paragraph 5.65 of the Passenger Determination.

[12] A full B747 freighter can accommodate in excess of 40 pallet positions, with one articulated vehicle capable of carrying 4 pallet positions. A truck between Heathrow and Stansted costs in the region of £350. Therefore, to empty a

30. The strength of Heathrow as a competitive constraint on Stansted is illustrated very clearly by [ ].

31. The strong competition in the cargo sector, and the flexibility available to cargo operators, was starkly shown again last week, for example, when it was announced that [ ].[13] [ ].

32. In the Passenger Determination, paragraph 5.1, the CAA defined market power as "*the ability, profitably, to sustain prices above the competitive level or restrict output or quality below competitive levels*". Given the factors listed above, in conjunction with the commitments given to cargo customers, and the other evidence available to the CAA, the only reasonable conclusion available to the CAA is that Stansted does not have substantial market power in relation to cargo, and therefore that Test A is not met. We do not believe the CAA has evidence to sustain a finding that Stansted has substantial market power in the Stansted cargo market.

Section 5: Test B

33. As we have made clear in previous submissions, Test B is not met in relation to the cargo side of Stansted's business, as competition law clearly provides "*sufficient protection*" against the risk that Stansted may engage in conduct that "*amounts to an abuse of market power*" (section 6(4) CA Act) – see Section 12 of the MPA Response and paragraphs 64 to 66 of the November Submission.

34. We do not repeat our previous submissions here, however we make the following additional points:

    a. The need for Stansted to incentivise new and existing airlines to use its spare capacity by moderating its prices (as recognised, for example, in paragraph 5.65 of the Passenger Determination) applies equally to passenger and cargo airlines.

    b. The deterrence effect of regulation (referred to in paragraph 3.41 of the CAA's October 2013 consultation document) logically applies to both the passenger and cargo sides of the business.

    c. M.A.G has already built a track record that clearly shows our commercial strategy is a long way removed from any risk of an abuse of market power (as recognised, for example, in paragraphs 5.80 to 5.84 of the Passenger Determination).

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full B747 at Stansted and truck the cargo from Stansted to Heathrow will add in the region of £3,500 per flight compared with a flight operating direct into Heathrow.

13 [ ].

35. Furthermore:

  a. The fact that all current and future cargo airlines are now protected against abusive pricing by the commitments given by Stansted significantly affects any assessment of Test B in relation to cargo. Competition law provides more than "*sufficient protection*" against any residual, theoretical risk that Stansted would abuse its market power (assuming such market power exists) in some other way.[14]

  a. In addition to the clear evidence of Stansted's commercial approach, all cargo airlines are protected by the Airport Charges Regulations 2011, which prevent discriminatory pricing. In short, this means that cargo airlines that do not have a deal in place with Stansted by April 2014 will benefit from tariffs that are the equivalent to other passenger and cargo airlines, unless there is a justification for a difference that is relevant, objective and transparent. The type of discriminatory pricing described at (for example) paragraphs 3.62 to 3.63 of the October 2013 consultation document would therefore not be possible to the extent that the Airport Charges Regulations 2011 applied.

36. It is therefore clear that, even if Test A were considered to be met, competition law provides "*sufficient protection*" against the risk that Stansted may engage in conduct that "*amounts to an abuse of market power*". As a result, Test B is not met in relation to cargo.

Section 6: Test C

37. For the reasons given in previous submissions, and in particular Section 13 of the MPA Response and paragraphs 67 to 69 of the November Submission, Test C is not met in the case of Stansted.

38. As we explained in the November Submission, the balance between the potential benefits and adverse effects of licence regulation in relation to cargo has changed materially since the publication of the CAA's 'minded to' position in January 2013. The adverse effects of <u>any</u> regulation would significantly outweigh any residual potential benefits of regulating the cargo side of Stansted's business.

39. The following developments have a decisive impact on exercise that the CAA must conduct to balance the costs and adverse effects of regulation, by further demonstrating that there would be little (if any) benefits arising from regulation of cargo at Stansted, and even to the extent that benefits exist they would be outweighed by the significant adverse effects of regulation:

  a. <u>Commitments</u>: The commitments given by M.A.G (see Section 3 above) have a profound impact on any Test C analysis.

     In particular, as a result of the commitments, any benefits of regulation could in practice only apply to non-price conduct. However, the only concerns that the CAA has raised in

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14 In this context, we reiterate the fact that the test is strictly whether competition law provides "*sufficient protection*", not whether competition law will produce a better or more convenient outcome.

relation to Stansted's future conduct relate to pricing. The CAA has not raised any concerns that Stansted may engage in harmful non-price conduct. As a result, the only potential marginal benefit of regulation would be to impose further restrictions to prevent conduct that the CAA has not identified as being conduct that Stansted is at risk of engaging in. As the CAA has not identified a risk of harmful non-price conduct, such a marginal benefit would be wholly outweighed by the significant adverse effects of regulation.

b. Passenger Determination: As a result of the Passenger Determination, there will not be licence to regulate the passenger side of Stansted's business.

Cargo represents only around [ ]% (in 2012) of Stansted's total revenues (and [ ]% of its aeronautical revenues). However, many of the direct financial costs and adverse effects of regulation (that would otherwise be common to regulation of both passenger and cargo would) still be incurred if any future regulation was limited to cargo.

As noted in the CAA's October 2013 consultation document, the proportional financial costs and adverse effects of only regulating the cargo segment will increase significantly, irrespective of the form of regulation. As a result, it is clear that the financial costs and adverse effects of regulating only cargo would significantly outweigh any marginal benefits that such regulation might bring.

c. "*Crowding out*" M.A.G's commercial approach: The CAA has correctly recognised that an adverse effect of regulation is that it risks the "*crowding out of a more commercial approach*" at Stansted (paragraph 28 of the Summary in the 'minded to' document).

Regulation at Stansted would inevitably inhibit the commercial approach adopted by M.A.G. This point is particularly pertinent in the context of the cargo segment, where Stansted continues to actively pursue long terms deals. Any regulatory intervention at this time would risk 'crowding out' precisely the positive competitive behaviour that the CAA should promote in accordance with its duty under section 1(2) of the CA Act, and would hamper the development of a freely-competitive airport business competing against airports in across the UK and Northern Europe. This point is recognised by the CAA in paragraph 2.14 of the Passenger Determination, which applies equally to the cargo segment.

40. We also take this opportunity to make the following comments:

a. As we have made clear in previous submissions, the adverse effects of regulation can only be identified when the details of the regulation are known. As it is not currently clear what precisely what would be contained in a cargo-only licence, it is not possible to identify exactly what costs a specific form of regulation will give rise to. However, for the reasons given above, it is clear that the adverse effects of any regulation in relation to cargo would outweigh any residual potential benefits.

b. There would also be additional procedural costs in regulating only the cargo side of Stansted's business. For example, as there have been no specific licence proposals published for cargo, the CAA would incur, and would cause stakeholders to incur, additional costs in relation to a further consultation on the licence proposals.

41. It is therefore clear that, even if Tests A and B were considered to be met, the adverse effects of <u>any</u> regulation would significantly outweigh any residual potential benefits of regulating the cargo side of Stansted's business. As a result, Test C is not met in relation to cargo.

Section 7: Conclusion

42. M.A.G's consistent view is that Tests A, B or C are not met in relation to the cargo side of Stansted’s business. Stansted operates in a highly competitive environment in relation to cargo, and is working hard to forge strong commercial relationships with cargo airlines. There is no market failure, and therefore no need for the CAA to act, in relation to Stansted's cargo businesses.

43. Developments since the 'minded to' document was published in January 2013 reinforce that view, as do the analysis contained in the Passenger Determination and the commitments made by Stansted. We recognise that, at the time of the 'minded to' document, the CAA could not reasonably foresee how M.A.G would operate Stansted. However, that has now been demonstrated, and all of the available evidence shows that Stansted operates in a well-functioning market and does not have market power in relation to cargo customers.

44. We therefore continue to urge the CAA to conclude, at the earliest opportunity, that that market power test is not met in relation to cargo, and allow Stansted to continue on the healthy pro-competitive course that it has established. As we have stated in previous submissions, in these circumstances competition, rather than regulation, will be of greatest benefit to consumers.

Annex A – Recent Engagement with Cargo Airlines

Annex B – Copies of commitments given to all Stansted's cargo airlines on 16 January 2014