

Summary of British Airways' position on Commitments following GAL's best and final offer of 20th August 2013

1. British Airways continues to support RAB based regulation

BA agrees with the CAA that GAL has SMP. They have made clear their desire to increase charges and the CAA needs to constrain their market power in the interests of passengers.

RAB based regulation is a proven, proportionate method of constraining SMP. The approach could be made more efficient by reducing over-generous investment incentives and replacing procedural (bureaucratic) requirements with a presumption of CAA support for projects agreed by airlines.

BA has seen no evidence that RAB based regulation prevents competition developing. GAL is free to structure prices and can do commercial deals. It is not clear how Commitments help.

We think that Commitments with a licence wouldn't provide any real benefits, but would give the airport opportunities to exploit its market power.

2. Comments on the proposed licence framework

GAL oppose key aspects of the CAA's proposed licence framework, including enforcement via the licence and the power for the CAA to freeze charges. These are essential elements without which the licence framework is toothless and ineffective.

GAL believe they do not need a licence because they don't have market power. That is a fundamental difference.

GAL refer to enforcement via the courts, under contract law. That would be adequate for bilateral contracts, but Commitments are a one sided part of Conditions of Use that no airline supports. In any case, the Courts do not owe any duty to passengers but would look merely at the precise wording of the terms, which can be difficult to interpret.

A new owner could tear up the Commitments unless embedded and enforced via a licence.

BA and the ACC have made detailed submissions explaining the need for a strong licence backing for the Commitments. If the CAA proposals are watered down, it would be unworkable.

3. GAL's changes on 20th August

GAL submitted its best and final version of the Commitments on 20th August

This contained some changes, but they are relatively small and insufficient to change BA's views.

The price reduction is not a real concession because prices would reduce further in any case, given the increased traffic forecasts. The Commitments price of RPI+1.5% cannot therefore be compared with RPI+1% or even with RPI+0% (the CAA's 5 and 7 year fair prices).

GAL is wrong to say that the airport and airlines are now agreed on service quality. The airlines believe a much stronger regime would be required under Commitments and have argued for 14% of airport charges to be at risk even under a RAB based approach (vs GAL's 7%). GAL also propose to halve the rebate payments by paying 1/12 rather than 1/6 for a failure.

Nevertheless, we welcome GAL's offer to drop compulsory bonuses, which we think should feature only if and when agreed bilaterally under a contract.

We also welcome GAL's acknowledgement that greater airline support would be needed to change the Commitments, although 67% is still too low and there is great ambiguity about how this would be calculated (given that some airlines may be partially covered by contracts).

4. Major objections to Commitments

GAL still makes no commitments on capex outputs, meaning that essential facilities might not be provided at all, or might be delayed unless airlines agreed to pay increased prices.

GAL would have many opportunities to increase prices by levying premium service charges even for facilities that have already been paid for:

[Two examples redacted]

Any premium charges should be freely agreed under a bilateral contract for and not imposed unilaterally by the airport.

GAL's second runway costs would be uncapped and could be excessive. They have not agreed even to follow CAA guidance.

GAL's proposed price is excessive and highly inefficient. This is designed to benefit GAL's shareholders, rather than passengers.

The SQR regime is insufficient to incentivise GAL to make necessary and desirable investments needed by airlines and passengers and is weaker than the current scheme due to rebates being halved. It may be cheaper for GAL to pay a rebate than to pay the costs of meeting the standards, especially as the RAB incentive would be lost.

The Cumulative Revenue Difference adds complexity that will reduce transparency and further undermines price certainty for airlines.

This is not intended to be a complete list. Reference should be made to previous BA and ACC submissions.