

**UNITED KINGDOM
CIVIL AVIATION AUTHORITY**

**DECISIONS ON APPLICATIONS TO LIMIT THE NUMBER OF
SUPPLIERS OF AIRSIDE GROUND HANDLING SERVICES**

**Decision of the Authority under Regulation 10(1) of
The Airports (Groundhandling) Regulations 1997 on an
application by Gatwick Airport Ltd for a determination to limit
the number of suppliers authorised to provide airside services
to third parties**

GH1/98

Panel: Mr D Andrew (Chair)
Mr B P Austin
Mr P K Taylor (Adviser)

Mr T P Metson (Secretary)

Applicant: Gatwick Airport Ltd represented by Mr R Herga, Head of
Legal Services, BAA plc

Witnesses: Mr D Cumming, Operations Director, Gatwick Airport Ltd
Mr I Taylor, Head of Group Airside Operations, BAA plc

Objector: BOC Cargo Services, represented by Mr P Rodwell,
Commercial Director and Mr I Robertson, Business
Development Director

Objector: Servisair (UK) Ltd represented by Ms S Hankey, Cameron
McKenna

Witnesses: Mr P Field, Director UK South, Servisair (UK) Ltd
Mr J Major, Financial Controller, Servisair (UK) Ltd
Mr T Lewis, Director Major Projects, Servisair (UK) Ltd
Mr G Thompson, Director IT, Servisair (UK) Ltd
Mr J Owen, Operations Director, Gatwick Handling Ltd

SUMMARY

1. This hearing was convened to decide on the application from Gatwick Airport Ltd to limit to four the number of third-party handlers providing airside services at Gatwick. Objections to the application were made by BOC Cargo Services Ltd, who wanted no restriction in the number of freight and mail handlers and from Servisair Ltd who wanted the number of airside handlers to

remain at the current three. The Authority has concluded that its decision, having regard to the underlying objectives of the EC Groundhandling Directive and the criteria contained therein, should be based primarily on arguments related to space and capacity at the airport. On the basis of the evidence put to it, and in particular that of Gatwick Airport, the Authority has decided that there should be a limit of four airside handlers in each of the categories of airside handling.

THE APPLICATION

2. Gatwick Airport Ltd (“GAL”) applied to limit the number of third-party handlers at the airport to four in respect of ramp, baggage, and freight and mail handling. The limitation would not apply to item 5.7 of the annex to Council Directive 96/67/EC (“the transport, loading on to and unloading from the aircraft of food and beverages”). GAL applied for the determination to be effective from 1 January 1999 and to last for seven years.

OBJECTIONS AND REPRESENTATIONS

3. BOC Cargo Services and Servisair objected to the application and exercised their rights to be heard.

OPENING STATEMENT FROM THE CHAIR

4. This was the first application to restrict the number of ground handlers at a UK airport under the Airports (Groundhandling) Regulations of 1997 (“the Regulations”). The purpose of the Regulations was to ensure that the UK complied with Council Directive 96/67/EC on access to the ground handling market at Community airports (“the Directive”). The Authority interpreted the thrust of the Directive as aiming to remove anti-competitive barriers to entry to the ground handling market where this could be achieved.

GATWICK AIRPORT’S CASE

5. The application was to limit to four the number of handlers for airside services in respect of ramp, baggage, and freight and mail handling as defined in article 6 and in the annex to the Directive but excluding catering loading where no limit was sought. Catering loading was already supplied by a number of specialist companies. GAL confirmed that it was not seeking by its application in respect of freight and mail handling to limit the number of transit shed operators. No limit was sought with respect to non-airside activities or self-handling. However, the tender for the provision of ground handling services, which would be issued once the Authority’s decision was known, would include both airside and non-airside activities so continuing the “composite” approach which had worked well in the past. The limit of four handlers would apply for seven years (the maximum length of ground

handling contracts permitted by the Directive) in order to give those submitting tenders reasonable security. GAL would however reconsider this policy if there were particularly strong representations from airlines for a further increase in handlers or for a specialist rather than a “composite” handler.

6. The Directive had been drawn up primarily with the purpose of opening up the handling market at those airports in Europe with highly restrictive handling regimes. It was not aimed at airports such as Gatwick. The Regulations obliged GAL to ensure free access to the ground handling market while allowing it to apply for a limit in the number of suppliers of certain services. The Regulations were however silent on the basis for such a limit. In the Directive itself, recital 11 referred to safety, security, capacity and available-space constraints and to the criteria for limitation being relevant, objective, transparent and non-discriminatory, although these criteria appeared to relate to self-handling. GAL had therefore framed its application with this in mind, as well as recital 10, which referred to a gradual approach. GAL also had to balance the interests of self-handling airlines and third-party handlers. An increase in the number of suppliers from three to four was consistent with giving airport users a choice of handling agents which provided appropriate levels of service at competitive prices and which operated safely and efficiently within the confined space and facilities available at the airport. Any increase beyond one was likely to have a detrimental effect.

7. At present third-party handling was carried out by British Airways and Gatwick Handling in North Terminal, and by Servisair and Gatwick Handling in South Terminal (all three had freight handling rights between aircraft and the transit shed). In addition British Airways handled its own flights and those of its subsidiary airlines on a self-handling basis. GAL itself did not provide a handling service. Current market shares for third-party handling, measured by air transport movements (ATMs), were Gatwick Handling 54% (41% in South Terminal and 13% in North Terminal), Servisair 36% and BA 10%.

8. GAL’s ground handling policy before the Directive and Regulations had already been one of managed competition, with limits on the number of ground handlers in the interests of operational efficiency and safety, cost efficiency and service. Before North Terminal opened there had been three handlers - British Airways, British Caledonian and Gatwick Handling. Subsequently, BA had moved to North Terminal and Servisair had tendered successfully to replace BA as the third handler in South Terminal. After acquiring British Caledonian, BA gave up the handling rights in South Terminal and in 1990 Ogden replaced it as the third handler. There had, therefore, been a reasonable experience of three handlers in South Terminal and four at the airport as a whole. However, four handlers had operated at a time of static or declining traffic during the late 1980s and early 1990s. Airlines had been cutting costs and handlers had been engaged in fierce price competition leading to reductions in service levels, a deterioration in training and maintenance, and poor financial results. Servisair had taken over Ogden’s business in 1994.

9. Since 1993 the third-party handling market had grown by around 32% in terms of both passenger numbers and ATMs. GAL did not agree with Servisair's suggestion that the substantial business of CityFlyer, a BA franchisee, should be excluded from the available market, given that the airline was handled by Gatwick Handling in South Terminal. Passenger numbers and ATMs at South Terminal were forecast to grow by 65% and 47% respectively by 2006 when the seven-year ground handling contracts would expire. The forecast was based on a fuller utilisation of the airport in "shoulder" periods and continued growth in average aircraft size. Overall passengers numbers at Gatwick could grow to 40 million by around 2008/9.

10. A survey of airlines in 1997 had shown a significant number of airlines as being in favour of an additional handler. The Airport Users' Committee, established under the Directive, had however recommended that the number of handlers be kept at three with a review after a year. GAL could not accept this recommendation as it would have created uncertainty for those companies tendering as handling agents and also because a significant number of airlines had not registered their views. A more comprehensive survey of the top 54 airlines at Gatwick in 1998 had shown that at South Terminal 63% of votes (weighted according to each airline's traffic at the airport) supported an additional handler. These had included the three largest airlines in South Terminal, CityFlyer, Monarch and Britannia.

11. GAL was satisfied that it could arrange for four handlers to operate without an adverse impact on safety. However it was difficult to provide a meaningful analysis because of the many unknowns that existed until the actual identity of the handlers was decided. The level of safety would depend upon factors such as each company's approach to training and safety, the scale of its operation and the level of its management experience. There was nothing to suggest that the addition of a fourth handler would prevent safety standards from being maintained, although the airport would need to work closely with new handlers. Handlers would also be subject to tighter contractual obligations with regular audits, the setting of minimum service levels and reviews. Training and equipment servicing had also improved. GAL itself was subject to review by its parent company as well as by safety regulators, and airlines were now obliged to take a greater interest in the safety standards of their total operation and not just the safety of their flights.

12. Stands were already very busy areas with a number of different companies having to achieve a great deal in a short space of time, requiring considerable co-operation. More than 200 companies had ramp access for the airport as a whole. Incidents, usually involving the movement of vehicles, tended to occur where there was an interface between companies, usually caused by a difference in priorities and a lack of appreciation of the other's needs. This was one advantage of the "composite" approach to handling, where a single handler provided a range of services. A high proportion of incidents were on the stand itself and were not related to the number of handlers. As well as the improved training, maintenance standards and auditing schemes in conjunction with handlers, the problem was being addressed by a new airside licensing system for all companies.

13. Since 1993, when Ogden left the market, there had been extensions to South Terminal and to the baggage sortation area. A third handler would be relatively easy to accommodate. Depending on the amount of business which this attracted the new handler could be allocated a row of desks with associated spurs. Alternatively, existing zones could be sub-divided.

14. Servisair, an existing handler, was able to make an objection only because GAL had applied to limit the number of handlers. Had GAL made no application, so allowing complete freedom of access, Servisair could not have legally objected. In GAL's view the Directive and Regulations were intended to deal with a situation where a market was being restricted rather than being opened up. In objecting, Servisair was seeking to preserve its own market share. Even if the number of suppliers were to be limited to three, it was not certain that the existing handlers would be successful in the tender process, in which case the entry of any new handler to the market would encounter many of the same alleged problems as a new fourth handler. Many of the concerns expressed by Servisair seemed to be equally applicable to three handlers as to four, although GAL believed the existing infrastructure would support four, as it had previously been shown capable of doing. If, as was being suggested, safety bodies had any serious reservations on safety grounds, they would have approached GAL directly. GAL was unaware of any such concerns.

15. It was open to BOC to tender as a "composite" handler as part of a consortium but GAL would not want to see a fourth handler and have an exemption allowing a specialist cargo handler on the ramp as it believed this would make it more difficult to maintain safety standards. An increased number of companies operating in the same vicinity led to co-ordination problems. While the amount of equipment would probably not increase in proportion to the number of handlers, different ways of storing, parking or utilising that equipment would be likely to lead to more problems. BOC had clarified in evidence that it was not seeking to carry out the actual loading of the aircraft. If BOC were allowed to handle on the ramp this would create an interface between it and the handler with loading rights who could also be a direct competitor for the movement of cargo on the ramp. If, despite GAL's representations, the Authority was minded to allow an exemption in respect of freight and mail handling, GAL suggested that it might be framed so as to give those rights only to transit shed operators at the airport, and only between that operator's shed and the aircraft stand.

BOC CARGO SERVICES' CASE

16. BOC was a provider of cargo handling services to a large number of airlines at Heathrow, Manchester, Birmingham and Melbourne, and in addition carried out ramp handling at some airports. BOC opposed GAL's application as a matter of principle because in seeking to limit the number of third-party handlers the airport had failed to take into consideration the interests of handlers that wished to provide a partial service to airlines, for

example a freight and mail handling service only. GAL had concentrated solely on the need to increase the number of third-party handlers with each providing a comprehensive service of ramp, baggage, and freight and mail handling. BOC believed that GAL's arguments were insufficiently strong to prevent it from excluding a specialist handling service for freight and mail from the limit on the number of handlers, in the same way that it had excluded catering services, which were not subject to any limit. Some airlines required the option of a specialist in cargo handling and the lack of such an option could result in operational inefficiencies and higher charges which could be hidden in the rate for the "composite" service.

17. Were BOC to gain such rights, for which it would also want access to a transit shed, it would not carry out the actual loading of the aircraft and there would not, therefore, be an increase in the amount of equipment at the stand. There would also be no increase in the number of interfaces with other companies: the interface presently occurring at the transit shed or airport perimeter would take place instead at the aircraft side. Such interfaces took place every day at Heathrow with significantly greater traffic levels.

SERVISAIR'S CASE

18. Servisair had operated a ground handling business at Gatwick for 10 years and was wholly independent of airports or airlines. Its views were supported by Gatwick Handling, which had been established at Gatwick since 1972. Gatwick Handling had links to two airlines serving Gatwick, Delta and Northwest.

19. The objectives of the Directive were set out in the recitals. They included:

- Opening up access to the ground handling market should reduce the operating costs of airline companies and improve the quality of service provided to airport users (recital 5).
- Account should be taken of the impact on employment capacity and safety conditions at Community airports (recital 8).
- Free access to the ground handling market is consistent with the efficient operation of Community airports (recital 9).
- Access to the market may come up against safety, security, capacity and available space constraints, whereas it is therefore necessary to be able to limit the number of authorised suppliers (recital 11).

20. Servisair agreed in principle with a completely free market for ground handling but each airport had to be treated as a separate case. Neither Stansted nor Manchester, where it also provided handling services, had applied to restrict the market. The current physical structure at Gatwick however could support only three handling agents, with a maximum of two operating in South Terminal. The satisfactory integration of an additional third-party handling agent would be frustrated not only by insufficient infrastructure but also by the limited available market, with the result that

airline costs would increase and service levels, including safety standards, would deteriorate.

21. Insufficient infrastructure had been provided by GAL to ensure that operational efficiency, safety and quality would be unaffected. GAL's investment programme showed that the majority of projects related to handling would not be completed before the year 2000 or later, whereas GAL proposed to introduce a fourth handler in spring 1999. Any acceleration of the programme would increase costs for airport users. The building and infrastructure of South Terminal in particular was already insufficient to meet current demand at peak times. Airline demand for additional check-in facilities had been increasing faster than the rise in passenger numbers. As a result some baggage had to be moved manually through the terminal so giving rise to safety concerns. Sharing of check-in desks by handling agents or by airlines doing their own check-in was inefficient and caused problems with IT. A Common User Terminal Equipment (CUTE) system, already installed at other major UK airports, would take 18 months to implement at Gatwick. This would enable access to airline systems from any desk or gate and the need for CUTE was accepted by all parties. The system to be adopted had yet to be chosen. There were other essential IT and systems integration issues which had not been addressed in the context of accommodating an additional handler. Although GAL was not seeking a limit in respect of landside passenger handling, there was an inseparable link between check-in and baggage sortation, and the issues could not be ignored: handlers had to offer the complete package to meet the demands of airlines.

22. Problems in the baggage sortation area were of particular concern. It was already extremely congested and stretched to its limit in the peak. Since the area last accommodated an additional agent there had been various physical changes that precluded the operation of an additional agent. Servisair had observed an incident-reporting rate at Gatwick three times greater than that at its Manchester or Stansted operations where employee levels were similar. The area provided a poor working environment with fixed and moving equipment and personnel all operating in confined spaces with little room to manoeuvre. During a recent visit the Health and Safety Executive (HSE) had expressed concerns about the layout in the baggage sortation and inbound delivery area. The baggage transfer area could also become very congested and the further sharing of facilities would reduce efficiency. Servisair subsequently provided the Authority with information on manual handling related injuries suffered by its own staff in baggage areas at Gatwick between January and May 1998 and with a copy of a letter to the company from HSE following its visit.

23. An additional agent would reduce pier-stand efficiency resulting in more remote parking, coaching and vehicle movements. There would be an increase in the amount of equipment so exacerbating parking limitations. A new handler would introduce at least 100 pieces of equipment, and since a minimum amount would be needed by all agents there would not be a comparable reduction by existing agents, with more equipment lying unused

in off-peak periods. The amount of equipment had also increased over time with the greater use of wide-bodied aircraft and charter aircraft carrying bellyhold cargo. There would be more movement of equipment between stands and remote equipment parks or other stands with no evidence that this would not lead to a higher accident rate. Safety issues should be addressed before appointing an additional agent. While GAL recognised the primacy of safety it had not provided sufficient detail to show how proposed developments would be implemented, and still seemed to be planning them. Servisair invited the Panel to take independent advice on the operational impact on safety of another handler, which Servisair was confident would confirm that a fourth handler should not be introduced for a period of 12 to 18 months.

24. Servisair questioned the basis for BAA's growth forecasts in respect of third-party handling. Servisair was concerned that the level of expansion was insufficient to sustain the business of an additional handling agent. The available market for third-party handling was becoming more limited in terms of location, in that it was effectively restricted to South Terminal, and in size, as carriers formed alliances which impacted on their ability to change handling agent. Most of the recent growth at Gatwick had been at North Terminal where BA was predominant. For Gatwick as a whole, BA's market share of ground handling in terms of ATMs had increased from 33% in 1995 to 39% in 1997. This percentage rose to 52% if adjusted to include Finnair, which had recently moved to North Terminal following its alliance with BA, and BA franchisee CityFlyer, the business of which, although handled by Gatwick Handling, did not in Servisair's view form part of the available market. Further reductions in the available market would result from BA's developing commercial arrangements with other airlines. After making adjustments Servisair calculated that the available market for third-party handlers was reduced to 46.3% of the total Gatwick market.

25. Servisair did not believe that, in the current circumstances, airlines would benefit in practice from the appointment of an additional handler. Gatwick already had among the lowest ground handling and airport costs in Europe. With local unemployment effectively zero the existing upward pressure on labour costs would intensify. Comparisons with Manchester were inappropriate. Manchester covered a larger area and was expanding its infrastructure, including a second runway. The airport also had lower labour costs than at Gatwick.

PANEL'S VISIT TO GATWICK

26. At the suggestion of GAL and with Servisair's support the Panel visited South Terminal on 13 July where it observed the operation of the baggage sortation area and of adjacent areas, including the transfer baggage facility. While the visit was not at the busiest time of the day it did allow the Panel the opportunity to see those parts of the baggage hall which Servisair regarded as the real constraints. These included the facilities for handling out-of-gauge

baggage and points on the one way system used for the movement of baggage tugs and trailers.

ANALYSIS AND REASONS

Introduction

27. The application from GAL to limit the number of ground handlers is the first of its kind to be considered by the Authority under the Regulations. Regulation 2(3) explains that the purpose of the Regulations is to give effect in the UK to the Directive on access to the ground handling market at Community airports. Under article 6 of the Directive Member States must take the necessary measures to ensure free access to the market by suppliers of ground handling services to third parties from 1 January 1999 at airports with more than 3 million passengers a year. For certain categories of handling, however, Member States may, without further reference to the European Commission, limit the number of handlers to no fewer than two. The categories for which it is possible to limit the number of handlers in this way are:

- Baggage handling
- Ramp handling
- Fuel and oil handling
- Freight and mail handling between the air terminal and the aircraft

The annex to the Directive describes the individual services that fall within the first three of these categories of handling.

28. Article 6 has been implemented through Regulations 8 and 10. Regulation 8 obliges the managing body of an airport, save as otherwise provided in the Regulations, to take the necessary measures to ensure free access to the third-party handling market. Regulation 10 allows the CAA, on application from an airport, to make a determination specifying the number of suppliers for each category of airside service provided the number is no fewer than two for each category. Airside services are defined as the four categories of handling mentioned above.

29. The procedures for making a determination are set out in Schedule 1 to the Regulations. These are closely modelled on the procedures for the grant of air transport licences in the CAA Regulations 1991 and provide for the publication by the CAA of applications, the making of objections and representations and for the hearing of applications. For ground handling applications the Regulations give a right to be heard to the airport, to providers of air transport services and to both actual and potential suppliers of ground handling services.

30. GAL's application covered all or part of three of the four categories of airside handling. It excluded fuel and oil handling and, in respect of ramp handling, excluded the transport, loading on to and unloading from the aircraft of food and beverages. For the categories of handling in its application GAL wanted a limit of four third-party suppliers at the airport. There are currently three third-party suppliers of these services. The hearing arose because of objections to GAL's application from two suppliers of ground handling services, Servisair an existing handling company at Gatwick and BOC Cargo Services which expressed a desire to provide a specialised cargo handling service at the airport.

The Authority's Duties and Objectives

31. The Authority's general objectives are found in section 4 of the Civil Aviation Act 1982. However by virtue of Regulation 21(2) these objectives do not apply when the Authority decides applications made under the Regulations. In the absence of any specific objectives to replace those of the 1982 Act, and given the terms of Regulation 2(3) referred to earlier, the Authority believes it has to be guided both by the underlying objectives of the Directive and also by the criteria contained in the Directive when deciding on applications for restrictions. As is apparent from the recitals to the Directive and from the terms of articles 6(1) and 7(1) the primary object of the Directive is to open up the ground handling market at airports within the European Union both for self-handling and for third-party handling. For those categories of handling where the Directive allows for restrictions in the number of third-party handlers operating in airside areas, certain criteria are found in the opening recitals. GAL and Servisair each drew attention to the recitals which they thought were relevant to the Authority's consideration of the application. GAL referred in particular to recitals 10 and 11. Servisair also referred to recital 11 and to recitals 5, 8 and 9. For ease of reference these recitals are set out in the attachment to this decision.

32. Each of the recitals are, of course, relevant to the implementation of the Directive but it is recital 11 which lays down in clearest terms the circumstances in which a limitation in the number of handlers might be justified. The Authority regards the first two clauses as being directly relevant in this case rather than recital 11 in its entirety. The second two clauses appear to apply to self-handling alone, a view reinforced by the wording of article 7(2) of the Directive.

The Case for a Restriction

33. The first issue the Authority has to decide is whether it should refuse to agree to any limitation in the number of handlers and so allow free access to the airside handling market at Gatwick. It is a major airport by UK and European standards whether measured by passengers, cargo or aircraft movements. GAL has taken steps following the Directive and the Regulations to remove previous restrictions on handling where it believes it can do so. It has withdrawn the previous threshold of 200,000 passengers below which airlines were prevented from self-handling at check-in and in other landside

areas at Gatwick. It has also not applied for any restriction in the number of airlines that may self-handle airside (only British Airways has so far expressed a wish to self-handle). However for airside third-party handling in the categories covered by its application GAL maintained that unrestricted access would prejudice the efficient and safe operation of the airport. This general view was not disputed by the other two parties: BOC's objection was in respect of only one of the four categories of airside handling. There were no objections or representations from any airline or from any handling company asking for complete freedom of access to the market for third-party handling.

34. The Directive accepts that for reasons of safety, security, capacity and available space constraints it should be possible to limit the number of handlers and on the evidence the Authority is satisfied that some limitation is, in principle, justified. To decide otherwise would require the Authority to substitute the professional judgement of those having an intimate knowledge of the operation of the airport with its own.

The Number of Handlers

35. The application was for a limit of four on the number of airside handlers at Gatwick, which would in effect allow the present number of handlers to be increased by one. In objecting to the application, Servisair argued that there should be no increase in the number of handlers, at least for the time being. It therefore asked the CAA to set the limit at three for the airport as a whole, with no more than two handlers at South Terminal, where Servisair currently operates. BOC's case was in respect only of the handling of freight and mail, one of the categories of airside handling covered by Regulation 10, where the CAA was asked to impose no restriction on the number of suppliers. Freight and mail handling is discussed in paragraphs 50 to 53 below.

36. Having accepted that there should be a limit on the number of handlers supplying airside services at Gatwick, the Authority has to decide what that limit should be. A basic objective of the Directive is to open up the ground handling market at airports and this would point to the limit being established at the most economically efficient level taking account of the constraints recognised by the Directive. The Authority's decisions have to be sound and be supported by the facts and arguments presented in a particular case. There was no objection or representation that called for the number of handlers providing airside services generally to be greater than four nor was any evidence produced to this effect. There is no basis for the Authority to arrive at a decision in this case that there should be a number of airside handlers at Gatwick greater than the number for which GAL has applied, i.e. four. The Directive and the Regulations simply demand there should be at least two. In reaching this view the Authority also has in mind the principle in the recitals of a gradual approach to the opening up of the market. The effective choice therefore is between a limit of four as applied for by GAL and a limit of three in Servisair's submission. The parties raised a variety of issues covering commercial and operational matters in support of their respective positions.

The Market for Third-Party Handling

37. GAL and Servisair each produced an amount of evidence on the size of the third-party handling market at Gatwick although they measured the market in different ways. GAL produced figures of the absolute size of the market in terms of passengers and ATMs after allowing for self-handling by British Airways of its own services and those of its subsidiary airlines. It compared the figures for 1993 and 1998 to demonstrate the extent of traffic growth since four handlers last operated at Gatwick and provided a forecast of further traffic growth in South Terminal over the period to 2006, when the new handling contracts would expire. Servisair did not dispute GAL's figures of historic traffic but questioned whether the forecast traffic was realistic for a single runway. GAL expected much of the growth to be achieved through a combination of greater use of slots outside the peak and increasing aircraft size. Servisair's own figures were based on the market share of ATMs available to third-party handlers which excluded the traffic of British Airways, British Airways subsidiaries and franchise partners and Delta and Northwest, the shareholding airlines in Gatwick Handling. On Servisair's calculations the available market for competing third-party handlers was less than half (46.3%) of total ATMs at Gatwick in 1997.

38. In considering evidence about the market the Authority notes that Gatwick is the second largest airport in the UK with over 26 million passengers and 230,000 ATMs. GAL's figures of growth in the third-party handling market since 1993 were not challenged and its forecasts of future growth in the market are not out of line with the Authority's own forecasts which also allow for the more intensive use of off-peak slots and for increasing average aircraft size. The figures provided by Servisair are open to two criticisms. The first is Servisair's assertion that the business of CityFlyer, a BA franchisee and the largest airline operating in South Terminal, should not be counted towards the third-party handling market. British Airways' handling operation is currently confined to North Terminal: CityFlyer is handled by Gatwick Handling in South Terminal. The second is the exclusion of the traffic of Delta and Northwest, the shareholders in Gatwick Handling. Both of the adjustments that Servisair made were based on the presumption that the existing third-party handlers would bid and be successful in the subsequent tender process. However even with the adjustments made by Servisair the third-party handling market would still remain a substantial one given the absolute size of Gatwick's traffic base.

The Demand for Additional Handlers

39. GAL produced evidence of demand in the form of surveys it carried out in 1995, 1997 and in 1998. The most recent sought the views of airline senior managers on whether they wanted to maintain the present number of handlers or increase it by one. Of the airlines operating in South Terminal, weighted by scale of operation, 63% of those who voted favoured an additional handler. While the use of Voting Power Percentages in calculating the figures did cause some confusion and the results are open to some

interpretation they do show the existence of a substantial preference for another handler. The three largest airlines in South Terminal each voted for this outcome.

The Costs of Handling

40. Evidence about the costs of handling are relevant because of the Directive's expectation that opening up the market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users. It was mainly concerns about the high levels of handling charges at some airports in Europe that led the Commission to propose a Directive in the first place. Servisair maintained that an additional handler at Gatwick would simply increase the costs of handling: GAL would pass on to users the additional infrastructure costs, including the cost of CUTE, and staff costs would rise given the low level of unemployment in the locality around Gatwick.

41. GAL may face additional costs which it will seek to recover from users but this does not, in the Authority's view, mean that the average handling charges will necessarily be higher than otherwise. In a competitive market the suppliers who are likely to succeed will be those who, overall, are the most cost efficient and are able to pass on these efficiencies through lower charges. The experience of introducing more competition in handling at other airports in the UK has demonstrated that charges to users can be reduced even where the airport faces additional capital costs. Servisair produced evidence from the Cranfield University study of February 1998 which showed that Gatwick was already among the cheapest airports in Europe for handling. The same study also reveals that handling charges at Manchester, where more than four handlers are authorised to carry out airside handling, are lower than those at Gatwick. While there may be particular reasons for this (Servisair mentioned lower labour costs) the Authority, having been closely involved in several investigations into ground handling at Manchester, cannot discount the influence that a significant opening up of the market has had at that airport. It also notes that this is consistent with the evidence that market liberalisation has had on service quality and price in the UK and internationally.

Capacity, Space and Safety

42. Servisair and GAL presented differing evidence about the ability of South Terminal to accommodate another handler. Servisair mentioned the lack of any allowance in Gatwick's capital programme for expenditure on projects associated with handling before 2001, the inadequacy of the already congested baggage sortation area, congestion in the terminal with problems of queuing at check-in, lack of space in ramp areas to park the extra units of equipment which a new handler would need, and general congestion on the airport's road system. The fact that Gatwick does not have a CUTE system was seen as a major deficiency. Servisair also raised concerns about safety, especially in South Terminal baggage hall. GAL did not respond to Servisair's comprehensive presentation of its case point by point but

observed that some of the areas of concern would be equally valid whether there were three handlers or four at the airport. GAL was confident that it could move to four handlers without CUTE (although it would be considering bringing forward its introduction) and pointed out that the size of South Terminal baggage hall was not out of line with baggage halls at other BAA airports where more than two handlers operated. South Terminal has been able to function with three handlers before and the facilities there have been extended since the terminal last accommodated three handlers. As described earlier in the summary of its case GAL has put in place or is in the process of bringing in a number of measures to ensure that safety in airside areas of the airport is maintained. During the summer GAL will also be reviewing the system for the allocation of stands.

43. GAL's application was to limit the number of airside handlers rather than those providing the full range of services both landside and airside. Part of Servisair's evidence was concerned with facilities provided for landside handling, for example the degree of congestion in the passenger area of the terminal and the availability of check-in desks. While the Authority accepts that there is a link between landside and airside handling, GAL has made no application to limit the number of suppliers of passenger handling services. In these circumstances arguments about the adequacy of Gatwick's landside facilities are largely irrelevant to the decision as to the number of airside handlers.

44. On matters of safety Gatwick is subject to continuing oversight both by HSE and by the Safety Regulation Group of the CAA (SRG). The HSE has a general role in respect of the safety of people outside the aircraft at the airport while SRG has to be satisfied that GAL, as a holder of an aerodrome licence, is competent to secure that the aerodrome is safe for use by aircraft. SRG's principal interest is therefore with operations airside.

45. The Authority does not believe it can or should take a decision as part of this application that a particular number of handlers operating in airside areas at the airport constitutes a safe environment while another number does not. The onus has to be on the licensee to be able to demonstrate that it has the necessary safety management systems and other policies and procedures in place to ensure that safety levels are not degraded. At present, the Authority sees no reason to question GAL's commitment to safety either now or in the future. In this connection no specific evidence was produced to suggest that either HSE or SRG had concerns about safety when three handlers last operated in the baggage hall and on the ramp at South Terminal. The letter to Servisair from HSE referred to in paragraph 22 raised a number of safety related issues but the number of handlers did not appear on the Authority's reading to be an obvious influencing factor. Equally, the Authority was unable to form a view from the incident data provided by Servisair (also referred to in paragraph 22) about the extent to which the number of handlers may be expected to influence the rate of incidents.

Conclusions on Baggage and Ramp Handling

46. In the Authority's opinion the terms of the Directive compel it not to set a limit in the number of airside handlers below a figure which the airport management is confident can be supported by Gatwick's infrastructure and available space and allow efficient and safe operation. There would have to be compelling arguments in relation to other matters to lead the Authority to determine a lower limit. There were no such compelling arguments in this case. Indeed the evidence both of the size of the available market for third-party handling and of demand from airlines together with the thrust of liberalisation policies lent weight to the case for endorsing GAL's proposal to increase the number of handlers. The Authority's decision must therefore turn on the evidence presented to it about space, capacity and safety. Servisair confirmed that its concerns about lack of infrastructure that lay at the heart of its objection to an increase in the number of handlers. It presented its case forcefully and appeared to have genuinely held views about the ability of South Terminal, in its present configuration, to accept another handler. However Servisair was also arguing from its position as an incumbent handler whose commercial business would be directly affected if there were more competition in handling services. In balancing the evidence of the airport and an existing supplier the Authority must inevitably place greater weight on the former. GAL does not have a commercial interest in any handler and its prime concern will be the running of a successful, efficient airport business. It is therefore best placed to make the trade-off between efficient and safe airport business. It is therefore best placed to make the trade-off between efficient airport operation and the competitive provision of ancillary services at the airport.

47. Servisair welcomed the liberalisation of the ground handling market brought about by the Directive. It was not opposed to a fourth handler at Gatwick in principle but rather to the timing of its introduction, believing a delay of perhaps 12-18 months would allow what it considered as necessary improvements in Gatwick's infrastructure to be carried out. However given GAL's unequivocal statements at the hearing that it can introduce a fourth handler at the airport within existing infrastructure and can do so safely, the Authority considers that the potential benefits from a wider choice of handler should be available to users as soon as possible.

48. There was no evidence that an additional handler in South Terminal would result in congestion that was acute by industry standards or that competing handlers would be unable to take effective steps either among themselves or in conjunction with GAL to minimise it. The airlines who use the baggage handling services are sophisticated and knowledgeable customers who would have much to lose if greater competition were to lead to a deterioration in service standards and a number have voted in favour of an additional handler.

49. Therefore the Authority concludes that against the objectives of the ground handling Directive and based on the evidence in this case there

should be a limit of four in the number of suppliers authorised to provide baggage handling and ramp handling (other than catering loading) at Gatwick Airport with effect from 1 January 1999. GAL did not apply for the two terminals to be subject to individual limits and the Authority does not believe such limits would be appropriate. Where the number of suppliers has been limited Regulation 10(10) requires the Secretary of State, the CAA and the airport operator not to prevent an airline user from having an effective choice of at least two suppliers, wherever that user is located at the airport.

Freight and Mail Handling

50. BOC clarified at the hearing that the service it wanted to provide at Gatwick was the transfer of cargo between the transit shed and the aircraft but not the loading of cargo onto the aircraft. As a specialist cargo handler it was not in a position to offer a comprehensive handling service and by tendering for seven-year composite handling contracts, GAL failed to recognise the individual needs of cargo operators.

51. The handling of passengers and their baggage on the one hand and the handling of cargo on the other have different requirements for facilities at an airport, for handling equipment and for vehicles. The Directive recognises this distinction and treats freight and mail handling as a discrete category of handling. The Authority could therefore consider the arguments in relation to this category of handling to a large extent separately from those made about other aspects of airside handling involving passengers and baggage. These arguments cannot however be wholly divorced as cargo handlers have to operate on the ramp alongside other suppliers of handling services and so questions of space and safety do apply as much to cargo handlers as to others. GAL's concern with BOC's request for unrestricted access by suppliers of freight and mail handling was that it would increase both the number of operators in an already congested area and the number of interfaces between different companies so heightening potential problems of safety.

52. The Authority has some sympathy with BOC's position since to allow wider access by freight and mail handlers would be consistent with the objectives of the Directive. At the same time it has to recognise GAL's concerns about the implications if access to those wishing to supply freight and mail handling services were opened up as suggested by BOC. In paragraph 46 above the Authority expressed its view that an airport, where it has no direct interest in a handling company, is best placed to make the necessary judgements. The Authority would be ready to reach a different judgement only if there were compelling evidence in a particular case. There was no such evidence which would lead the Authority to come to a different decision on freight and mail handling from its decision on other categories of airside handling.

53. BOC indicated that it would be difficult to establish a business as an airside cargo handler without at the same time also being the operator of a transit shed. BOC does not currently have a transit shed at Gatwick. Should

it acquire access to a transit shed in the future, that could provide grounds for a further approach to the Authority for a review of the arrangements for freight and mail handling. The attitude of GAL would however be an important factor. More immediately, BOC indicated its willingness to consider becoming part of a consortium that could apply for handling rights.

Composite Handling

54. GAL explained that it favoured composite handling where each authorised handler provides the full range of handling services including passenger handling at check-in as well as all the airside services in its application. BOC on the other hand argued that such an arrangement prevented specialist handlers who wished to supply individual categories of handling from entering the market. It pointed out that other airports, including Heathrow, allow specialist handlers to offer their services to airlines. The Authority has dealt specifically with freight and mail handling at Gatwick in paragraphs 50 to 53 above. On the more general issue of composite handling the Authority notes that GAL has published in the Official Journal its intention, subject to the Authority's decision, to tender for licences to provide a wide range of handling services. GAL has not applied to limit the number of handlers providing services other than airside services and, in the absence of a determination from the Authority, would be obliged by the Regulations to allow access to suppliers wishing to provide such services.

55. As far as airside services are concerned, there can be benefits for safety and capacity management in minimising the number of interfaces between different companies involved in the handling process and composite handling is a means of achieving this. Neither the Directive nor the Regulations appear to the Authority to prevent an airport from packaging different handling services together. The Authority's decision in this case however can relate solely to the number of handlers supplying each category of handling service. Once a limit has been established whether the same or different companies should be able to provide each of the services concerned is primarily a matter for the airport as part of the tender process which must then follow under Regulation 12. Since GAL has no direct involvement in handling the CAA has no part to play in the tender process itself although it does have an appellate role under Regulation 20.

Duration of the Determination

56. In its application GAL specified a period of seven years for the duration of the Authority's determination. This is a standard period for a ground handling contract and is recognised in both the Directive and the Regulations. The Regulations establish seven years as the maximum period for any selection of ground handler following a determination by the CAA and the subsequent process of competitive tendering. GAL said that it would not expect to review the number of handlers again before the expiry of the contracts for which it would be tendering. The terms of Regulation 10(2) prevent the Authority from specifying a termination date in its determination in this case. However a determination may be subsequently revoked or varied

in accordance with Regulation 10(8) either following a proposal by the Authority or on application. It would therefore be possible for the Authority to review its determination should circumstances change significantly from those now prevailing at Gatwick.

Procedural Matters

57. During the hearing GAL raised the procedural issue of whether one objector may cross-examine another. Paragraph 13(2) of Schedule 1 to the Regulations is clear on this point. Every party to the case may examine any other party to the case, any person whom the CAA hears pursuant to paragraph 12(3) and any witnesses produced by any such party or person.

DECISION

58. The Authority makes a determination in respect of Gatwick Airport:
- a) that there shall be a limit at the airport of four suppliers of baggage handling;
 - b) that there shall be a limit at the airport of four suppliers of ramp handling, excluding the transport, loading onto and unloading from the aircraft of food and beverages;
 - c) that there shall be a limit at the airport of four suppliers of freight and mail handling, as defined under "airside services" in Regulation 2.

The determination shall take effect on 1 January 1999.

T P Metson
For the Civil Aviation Authority
24 July 1998

ATTACHMENT

Recitals from the Directive (referred to in paragraph 31)

Recital 5

Whereas the opening up of access to the ground-handling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users.

Recital 8

Whereas in its Resolution of 14 February 1995 on European civil aviation the European Parliament repeated its concern that account should be taken of the impact of access to the groundhandling market on employment and safety conditions at Community airports.

Recital 9

Whereas free access to the groundhandling market is consistent with the efficient operation of Community airports.

Recital 10

Whereas free access to the market must be introduced gradually and be adapted to the needs of the market.

Recital 11

Whereas for certain categories of groundhandling services access to the market and self-handling may come up against safety, security, capacity and available space constraints; whereas it is therefore necessary to be able to limit the number of authorised suppliers of such categories of groundhandling services; whereas it should also be possible to limit self-handling; whereas in that case, the criteria for limitation must be relevant, objective, transparent and non-discriminatory.