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4 **IN THE COMPETITION**

Case No. 1110/6/8/09

5 **APPEAL TRIBUNAL**

6  
7 Victoria House  
8 Bloomsbury Place  
9 London WC1A.2EB

10  
11 Monday, 21 December 2009  
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14  
15 Before:

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17 THE HON. MR. JUSTICE GERALD BARLING  
18 (President)

19  
20 Sitting as a Tribunal in England and Wales

21  
22 BETWEEN:

23  
24 **BAA LIMITED**

Applicant

25  
26  
27 -v-

28  
29 **COMPETITION COMMISSION**

Respondent

30  
31  
32 - supported by -

33  
34 **RYANAIR LIMITED**

Intervener

35  
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37 \_\_\_\_\_  
38  
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47 **HANDING DOWN**

1 THE PRESIDENT: Good morning. For the reasons set out in the Tribunal's judgment now  
2 handed down, it is the Tribunal's unanimous decision that BAA's application for review of  
3 the Commission's Report in this matter succeeds on Ground 1, namely apparent bias.  
4 We have reached this conclusion with the greatest reluctance. We have throughout been  
5 very conscious of the implications of this finding for the Commission's Report, which has  
6 followed a detailed inquiry into the supply of airport services in the UK, lasting about 2  
7 years.  
8 As we have explained in the Judgment, our conclusion is not that Professor Moizer or any  
9 other member of the Group carrying out the investigation on behalf of the Commission was  
10 actually biased. Nor was that alleged by BAA.  
11 The contention which we have upheld is that on the material facts the notional fair-minded  
12 and informed observer, by whose objective standards the question of apparent bias is  
13 required to be tested, would have concluded that there was a real possibility of bias. This  
14 concept of apparent bias is an important aspect of the fundamental principle that justice  
15 must not only be done but must also be seen to be done.  
16 On the question of relief, BAA's position at the hearing was that if there were a ruling in  
17 BAA's favour, then further submissions would be necessary as to the scope of the relief to  
18 be granted by the Tribunal. Accordingly we proposed to allow further argument on that  
19 question, unless the parties reach agreement beforehand.  
20 As far as Ground 2 is concerned, which is based on an allegation that the Commission has  
21 failed properly to apply the proportionality principles when fixing the timetable for the  
22 divestment of the three BAA airports in question, the Tribunal's unanimous decision is that  
23 BAA's challenge on that ground fails.