

Aviation, Maritime, Freight & Canals

Victoria Quay, Edinburgh EH6 6QQ

T: [REDACTED]

[REDACTED]



[REDACTED]

Date:
24 October 2018

Dear Sirs,

THE SCOTTISH MINSTERS ACTING THROUGH TRANSPORT SCOTLAND ("TS")

[REDACTED]

PRESTWICK INTERNATIONAL AIRPORT (the "Airport")

1. TS refers to the proposed involvement by [REDACTED] in the strategic development of Prestwick International Airport, including the involvement or investment in, or the potential full or partial acquisition of, assets or companies in the group of companies of which TS Prestwick Holdco Ltd (company number SC462050) forms part (the "Proposed Transaction").
2. Subject to the terms of this letter, TS and [REDACTED] each acknowledge that interest in and any discussions and negotiations in relation to the Proposed Transaction are received under a duty of confidentiality by each party to the other party.
3. TS and [REDACTED] each hereby undertakes to the other that it will not disclose in any way that the other party has any interest in the Proposed Transaction, and/or the content of any discussions and negotiations in relation to it (the "Information"). Each party will ensure that its officers, employees, advisers, agents and representatives are subject to a substantially similar undertaking.
4. That undertaking shall not apply:
 - a. if each party expressly consents to the contrary;
 - b. to disclosures (on a strict "need to know" basis) to either party's officers, employees, advisers, agents and representatives who need access to that information for the purposes of or in connection with evaluating or negotiating the Proposed Transaction;

- c. to the extent the information is or subsequently enters into the public domain, except through breach of the undertakings set out in this letter;
- d. to the extent the information was in the receiving party's possession without obligation of confidentiality prior to its disclosure by the disclosing party;
- e. the receiving party obtained the information on a non-confidential basis from a third party who is not, to the receiving party's knowledge or belief, bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- f. if the information is required to be disclosed by law, regulation or any governmental or competent regulatory authority.

5. [REDACTED] acknowledges and agrees that TS is subject to the requirements of the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004 and any other applicable legislation for disclosure of any information (the "Disclosure Laws"). [REDACTED] further acknowledges and agrees that TS may be required under the Disclosure Laws to disclose Information without consulting or obtaining the consent of [REDACTED].

6. TS shall use its reasonable endeavours to inform [REDACTED] within three (3) working days of receiving a valid request under the Disclosure Laws relating to the Proposed Transaction (an "Information Request") in accordance with the Scottish Minister's Code of Practice on the Discharge of Functions of Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 to the extent that it is permissible and reasonably practical to do so.

7. [REDACTED] will be entitled to make, within 3 working days of notification, representations to TS about the response to such an Information Request, including representations about applicable exemptions or exceptions. TS shall have regard to those representations consistent with its legal obligations. TS will use its reasonable endeavours to give [REDACTED] at least 1 working day of notice of the content of any proposed disclosure in response to an Information Request.

8. TS acknowledges that [REDACTED] is of the view that in principle disclosing Information in response to an Information Request would, or would be likely to, prejudice the commercial interests of:

a. TS, because it would undermine its bargaining position during present and future disposal negotiations or investment decisions, which may in turn result in the less efficient use of public money;

b. [REDACTED]

c. both of TS and [REDACTED], because disclosure of sensitive [REDACTED]

that the public interest in withholding such information outweighs the public interest in disclosing it because there is an inherent public interest in the maintenance of the exemption, and of upholding private companies' expectations that commercially confidential information will be

protected from disclosure when they engage in transactions or proposed transactions of all types with public authorities or enterprises owned by them, to avoid any discouragement of such activity for fear of disclosure of their commercially sensitive information.

Each Information Request must, however, be considered individually and any applicable exemptions applied on a case by case basis.

9. Notwithstanding any other provision of this letter, TS shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the Disclosure Laws.

10. This letter shall be governed by and construed in accordance with the laws of Scotland.

This letter is executed as follows:-

For and on behalf of the **Scottish Ministers acting through Transport Scotland**

[REDACTED]	[REDACTED]
signature of authorised representative	signature of witness
FRANCES PAVITTI	[REDACTED]
full name of above (print)	full name of above (print)
BUCHANAN HOUSE	24/10/2018
GLASGOW	date of signing
G4 OHF	GLASGOW
address of witness	place of signing

For and on behalf of **[REDACTED]**

signature of director	signature of witness
full name of above (print)	full name of above (print)
	date of signing
address of witness	place of signing

