

Case Name: *Heathrow Hub Ltd & Anor, R (On the Application Of) v The Secretary of State for Transport* [2020] EWCA Civ 213 (27 February 2020)

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Commentary: The Court of Appeal dismissed Heathrow Hub's appeal against the Divisional Court's dismissal of its judicial review of the Government's decision to designate the ANPS and specifically the decision to prefer the North West Runway scheme over Heathrow Hub's rival proposal.

The grounds of the appeal concerned breach of EU competition law and legitimate expectation.

In terms of the legitimate expectation ground, the Appellant argued that a legitimate expectation existed that the Secretary of State would not regard it as a material matter for his decision whether or not a non-airport owner or operator had reached agreement with the owner or operator of the airport to implement their scheme. The Court of Appeal upheld the Divisional Court's findings that there was no evidential basis for the alleged legitimate expectation.

The Appellant also challenged the decision on the basis that the Secretary of State took into account an immaterial and therefore unlawful reason, namely the promoter-specific risk of the failure of HUB to obtain an Assurance from the airport operator to implement the ENR scheme if chosen. The Court of Appeal upheld the Divisional Court's findings and this ground was dismissed.

The Speaker of the House of Commons had also intervened in the Divisional Court to object to statements made by the Secretary of State in Parliament and before the House of Commons Transport Committee being relied on by the Appellant on the ground that they were inadmissible by virtue of Article 9 of the Bill of Rights 1689. The Court agreed that there will be circumstances in which the proper assertion of Parliamentary privilege has the consequence that a piece of evidence must be excluded from court proceedings and the result – serious though that may be – is that the case must be decided in the absence of that evidence and therefore rejected the submissions which had been made on behalf of the Appellant.

The competition law grounds were also dismissed.

Case summary prepared by Susannah Herbert