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Advisory Letter on the provision of surface access at UK airports
To airport operators and surface access operators

Introduction

1. The CAA recently conducted a review of surface access at UK airports (the journey that passengers make to get to and from the airport).¹
2. The objective of the surface access sector review was to review market conditions in this sector and to understand how it operates and how that affects consumers, focussing primarily on road-based access to airports, including transport-providers' access to the airport forecourt.²
3. The two main topics we reviewed were:
 - the market structure for surface access; and
 - the information available to ensure consumers are well informed about the options and charges they face to access UK airports.
4. From the wide range of evidence gathered, the review found that overall the sector appears to have a variety of businesses active in providing surface access services of different types to passengers.

¹ We published a final report of this review, which summarises what we heard and our conclusions in December 2016. This report is available at www.caa.co.uk/CAP1473.

² We conducted this review under section 64 of the Civil Aviation Act 2012, which requires us to keep under review the provision of airport operation services.

5. The review also concluded that the range of choice available to passengers varies considerably by airport. Passengers travelling to and from large urban airports generally benefit from greater choice compared with those using smaller airports or airports with poorer transport links.
6. In addition, the review identified a number of areas regarding business practices that may have the potential to infringe the competition law prohibitions against anti-competitive agreements and abuse of dominance³ and/or certain aspects of consumer law.⁴ Further details on these are set out in our report. The relevant section of the report is noted as a footnote in each section of this letter.
7. This Advisory Letter to UK airport operators, surface access operators and relevant trade associations sets out these areas of concern. We encourage all market participants to review their practices and ensure they are compliant with competition and consumer law now and in the future.
8. Most of our competition and consumer powers are held concurrently with the Competition and Markets Authority (CMA).⁵ Concurrency means that either the CAA or the CMA may take action on a particular issue. Further details on concurrency and our powers can be found in the relevant competition and consumer law guidance.⁶ Details on our competition and consumer law powers are set out in Chapter 3 and Appendix A of the review's Report.

³ The CAA, concurrently with the CMA, has the power to apply and enforce the competition prohibitions – that is Chapters I and II of the Competition Act 1998 (CA98) and the equivalent EU law prohibitions in Articles 101 and 102 of the Treaty on the Functioning of the EU (the EU competition prohibitions).

⁴ The CAA, concurrently with the Competition and Markets Authority (CMA), has the power to enforce: access to air travel for disabled and reduced mobility passengers; informing passengers of the identity of their airline; rights to compensation and assistance for denied boarding, cancellation and long delays; transparent pricing; and consumer protection from unfair trading terms.

⁵ The arrangements for cooperation between the CMA and the CAA are set out in our memorandums of understanding with respect to [competition law](#) and [consumer law](#) (PDFs).

⁶ CAA Guidance - www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Competition-powers/ and www.caa.co.uk/Our-work/About-us/Enforcement-of-consumer-law/.

CMA Guidance - www.gov.uk/topic/competition/competition-act-cartels and www.gov.uk/topic/competition/consumer-protection.

9. The CAA recommended that each airport operator develop a set of principles on how they approach providing access to their surface access facilities that reflects competition and consumer law. We welcome the approach that airport operators have taken so far in developing principles and encourage them to continue the development process following this Advisory Letter.

Status of this Advisory Letter

10. The CAA, as a concurrent competition authority, can issue this Advisory Letters to:
- contact businesses that we're concerned might be breaking competition law; and
 - encourage them to comply with competition law.
11. The CMA prepared some guidance on the nature and status of Advisory Letters focussed on competition issues, including on steps that businesses can take in response.⁷ We consider that airport operators and surface access operators should in particular:
- raise this letter as a critical issue with their senior managers; and
 - consider getting legal advice and/or carry out a self-assessment.

Ensuring compliance with competition law

Dominance test⁸

12. In an investigation of abuse of dominance, the CAA would be required to define the market under investigation and assess the market power of businesses being investigated. As stated in our competition guidance⁹, such an investigation would be carried out from first principles and each assessment would be case specific. The market definition in any future case could therefore be different than the wide bundle of airport operation

⁷ See <https://www.gov.uk/guidance/warning-and-advisory-letters-essential-information-for-businesses>.

⁸ See also section in Chapter 4 on 'Competitive position of airport operators' of the review's [final report](#).

⁹ See paragraph 2.7 of www.caa.co.uk/CAP1235.

services (AOS) that we used for the Market Power Determinations (MPDs) we undertook in 2014.¹⁰

13. We could find dominance at airports that have not been the subject of an MPD or where the relevant MPDs did not have a finding of substantial market power across a bundle of aeronautical AOS. We note that having dominance in a market is not, in itself, an infringement of competition law. An infringement only occurs when such dominance is abused.

Exclusivity and tendering¹¹

14. A tendering process can be a good way to select a provider or providers of a service where the number of operators needs to be restricted for a reason that can be objectively justified (e.g. congestion, health and safety, security). Tendering processes, if conducted in a fair, transparent and objective way, can create competition for the (downstream) market. However, it may also affect competition in that market.
15. For example, by granting exclusive rights to one firm or a limited number of firms, on a long-term basis, an airport operator may be limiting competitive entry in the market, and thus potentially adversely affecting competition, by leveraging its ability to grant access to facilities at or near the airport terminal.
16. Case-law in this sector tells us that such behaviour can be an infringement of the Competition Act 1998 (CA98) Chapter II prohibition on abuse of a dominant position.¹²

Discrimination¹³

17. Airport operators may be able to discriminate between competing independent operators or between their own operations and competing independent operators by favouring their own operations. While there may be an objectively justifiable reason for treating competing providers differently, airport operators should ensure that they do not apply

¹⁰ These market power determinations are available at <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Airport-Market-Power-Assessment/>.

¹¹ See also section Chapter 4 on 'Exclusivity and discrimination' of the review's [final report](#).

¹² See for example [2014] EWHC 64 (Ch) at 16, www.bailii.org/ew/cases/EWHC/Ch/2014/64.html.

¹³ See also section Chapter 4 on 'Exclusivity and discrimination' of the review's [final report](#).

"dissimilar conditions to equivalent transactions" to surface access operators without objective justification.

18. Case-law in this sector tells us that such behaviour can be an infringement of the CA98 Chapter II prohibition on abuse of a dominant position.¹⁴

Anti-competitive agreements between providers¹⁵

19. A particular feature in the surface access sector is that online distributors are often also providers of car-parking products in competition with other providers whose services they also distribute. This means that having real time access to each other's inventories and (published) prices and service levels risks coordination rather than competition between providers.
20. There is also a risk that trade associations may act as a conduit facilitating the sharing between competitors of sensitive and confidential information such as on pricing, market share and service levels.
21. Such arrangements can be an infringement of the CA98 Chapter I prohibition on anti-competitive agreements.
22. Where an airport has independent car-park operator(s) as well as the airport operator's own car-parks, this can give rise to concerns if there is an agreement between the airport operator and the independent car-park operator(s) about price and/or services. In this regard, the CAA has recently found that East Midlands International Airport, and its parent company Manchester Airport Group, and Prestige Parking Ltd infringed the Chapter I prohibition of the Competition Act 1998 by participating in an agreement between (at the latest) October 2007 and September 2012 to fix the minimum prices that Prestige charged its customers for car parking services at the airport. To facilitate adherence to the price fixing agreement, the parties also exchanged sensitive pricing information between November 2010 and September 2012 and East Midlands

¹⁴ See for example [2011] EWHC 987 (Ch) at 109, www.bailii.org/ew/cases/EWHC/Ch/2011/987.html.

¹⁵ See also section Chapter 4 on 'Competition in downstream provision of car-parking' of the review's [final report](#).

International Airport also monitored Prestige's prices to ensure that it was complying with the terms of the agreement.¹⁶

Retail price maintenance / Distribution channels¹⁷

23. An airport operator's car-parking can be distributed through the airport's own website; however, a large proportion of bookings are also made through third-party channels in return for a commission. We understand that, in some circumstances, distributors of car-parking products are not allowed to offer discounts online from rates set by the car-parking operators, except to members of closed groups (e.g. Groupon or previous customers of a distributor).
24. In June 2016, the CMA published an open letter¹⁸ about Retail Price Maintenance (RPM) or similar practices. RPM occurs where a supplier and retailer agree that the retailer will sell the supplier's product at or above a particular price. In the majority of cases, RPM is illegal because it constitutes a form of vertical price-fixing, preventing retailers from offering lower prices or setting their prices independently to attract more customers.
25. Online distributors, surface access providers, and airport operators and relevant trade associations should review their practices and contractual arrangements to ensure they are not infringing the prohibition on anti-competitive agreements.

Ensuring compliance with consumer law

Consumer information¹⁹

26. Consumer detriment may arise in the case of certain categories of passenger, such as to those passengers that use the airport infrequently (including inbound (foreign) passengers), as well as some frequent travellers, as these passengers are unlikely to be aware of the range of

¹⁶ See <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Notice-of-investigation-under-the-Competition-Act-1998/>.

¹⁷ See also section in Chapter 5 on 'Distribution of car-parking' of the review's [final report](#).

¹⁸ <https://www.gov.uk/government/publications/restricting-online-resale-prices-cma-letter-to-suppliers-and-retailers>.

¹⁹ See also section in Chapter 5 on 'Consumer information' of the review's [final report](#).

available surface access options. Such detriment may arise as a result of passengers not being fully aware of their options (the "unknown unknowns") or from "behavioural" (rather than totally rational) decisions made by passengers.

27. The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), require that consumers are not misled, treated aggressively, or otherwise acted unfairly towards. Airport and surface access operators should ensure that they comply with the CPRs.²⁰

Marketing and distribution²¹

28. Airport operators tend to provide surface access information on their websites and on their onward travel information areas in passenger terminals. However, that information is not always complete and, as a result of commercial arrangements made with some surface access operators, some surface access products may feature more prominently than others, possibly leading consumers to make sub-optimal decisions.
29. Price comparison websites or specialised online distributors can allow consumers to easily compare services and can increase transparency, leading to greater competition between providers of surface access services and air transport services. However, they may also provide incomplete information which can lead consumers to make sub-optimal choices.²²
30. If marketing and advertising by airport operators, surface access operators and other distributors misleads consumers and causes them, or is likely to cause them, to take a worse surface access decision than they may otherwise have taken, this may breach the CPRs.
31. Airport and surface access operators should ensure that their practices comply with the CPRs.

²⁰ For further information on this please see the CMA guidance on unfair contract terms, available at <https://www.gov.uk/government/publications/unfair-contract-terms-cma37>.

²¹ See also sections in Chapter 5 on 'Consumer information' and 'Distribution of car-parking' of the review's [final report](#).

²² We note that the CMA has also recently launched a new market study on digital comparison tools. For further information, see <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study>.

Information about operation of car-parks at or near to airports²³

32. Airport operators' websites in general do not refer to competing car-park operators. Airport operators may have concerns over the standards of some independent parking operators in terms of security, safety and service quality provided to passengers. However, one example where the airport operator has been more active in communicating the availability of competing car-parking providers is the Gatwick Approved Operators Scheme.²⁴
33. We suggest that airport operators consider a form of accreditation for independent parking operators, similar to that offered by Gatwick Airport. While there is no legal requirement to accredit independent parking operators, doing so would allow for increased competition in the provision of car-parking services for consumers while reducing the risk of passengers experiencing a poor service. It would also allow airport operators to deal with reputational damage from off-site parking providers which operate without planning permission or which provide an inadequate service in terms of, for example, security. However, such accreditation must not determine how independent parking operators set their prices or compete more generally. In particular, there should be publicly available objective criteria for entry to the scheme and the scheme should not exclude operators on the grounds that they are more competitive than incumbents.

Services for disabled passengers and those with reduced mobility²⁵

34. People with disabilities, whether physical or non-physical, and those with mobility restrictions may find accessing airports difficult. Regulation EC1107/2006²⁶ ensures that disabled people and those with reduced mobility (PRM passengers) have the same opportunities for air travel as all other citizens. Although this Regulation does not lay down specific

²³ See also section in Chapter 5 on 'Distribution of car-parking' of the review's [final report](#).

²⁴ More information on Gatwick Approved Operators Scheme is available from: www.gatwickairport.com/parking/other-parking-options/operator-scheme/.

²⁵ See also section in Chapter 5 on 'Services for passengers with disabilities and those with reduced mobility' of the review's [final report](#).

²⁶ <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32006R1107>.

rules in relation to surface access, it does require that airport operators provide this group of consumers with mobility assistance within the airport boundary in order for them to be able to access the airport and board their flights. Further, the Equality Act 2010 (EA2010)²⁷ imposes a duty on service providers, which in this case includes airport and surface access operators, to make reasonable adjustments.²⁸ Airport operators are also required to publish information on their websites on getting to the airport, including the arrangements for disabled parking at the airport (within the terminal boundary), and any specific rules for, or charges applied to, PRM passengers for using a drop-off zone at the airport.

35. Surface access operators such as train, bus, and taxi companies should be familiar with requirements of EA2010 and the duty to make reasonable adjustments for disabled people and those with reduced mobility. For their part, airport operators should be familiar with the requirements of Regulation EC1107/2006 as well as EA2010 in so far as it relates to the design of airport building(s). However, in relation to surface access, and especially access to the forecourt by car (i.e. pick up and drop off areas), airport operators may not be aware that their duty to make reasonable adjustments under EA2010 extends to this area.²⁹

36. For obvious reasons, access to the forecourt by car is especially important for disabled people and those with reduced mobility. We therefore recommend that airport operators review:

- how they take into account the needs of disabled people and those with reduced mobility in relation to access to the forecourt by car and whether any further adjustments could be made;
- the level of any applicable charges that this group of consumers are required to pay, whether there are any restrictions in place³⁰ and

²⁷ <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

²⁸ As defined in section 20 of EA2010.

²⁹ We have recently published a report comparing the quality of assistance provided to disabled persons and those with reduced mobility between airports. That is available at <https://www.caa.co.uk/News/New-CAA-report-rates-airports-on-quality-of-assistance-for-passengers-with-a-disability-or-reduced-mobility/>. We intend to update this report annually.

³⁰ For example, whether only a limited range of disabled people (e.g. Blue Badge holders) can access the forecourt by car without charge.

whether these are reasonable, and the level of any penalty charges for overstaying³¹; and

- the information they publish on their websites in relation to this issue and in relation to car-parking and surface access more generally.

Concluding remarks

37. Most businesses and trade associations want to comply with the law. Not only because it is the right thing to do, but also because it is in their commercial interests to do so. That is why it is important to ensure that everyone in your organisation understands what they need to do to stay on the right side of the law. There can be serious consequences for businesses that break competition law, including fines of up to 10% of their worldwide turnover.
38. We advise airport operators, surface access operators and relevant trade associations to review their behaviours and agreements and to take whatever action is needed to ensure that they are compliant with competition and consumer law. You can also report anti-competitive concerns you may have in this sector to us and/or the CMA.
39. There is a range of guidance on the CAA's and the CMA's website to help businesses.³²

The Civil Aviation Authority

³¹ Bearing in mind that it may take substantially longer for a disabled person to get into or out of their car, especially if they require the use of mobility equipment.

³² CMA Competition Law Protection www.gov.uk/government/collections/competition-and-consumer-law-compliance-guidance-for-businesses.
CMA Consumer Protection www.gov.uk/topic/competition/consumer-protection.
CAA Competition Law www.caa.co.uk/CAP1235.
CAA Consumer Protection www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/Consumer-protection-law/.