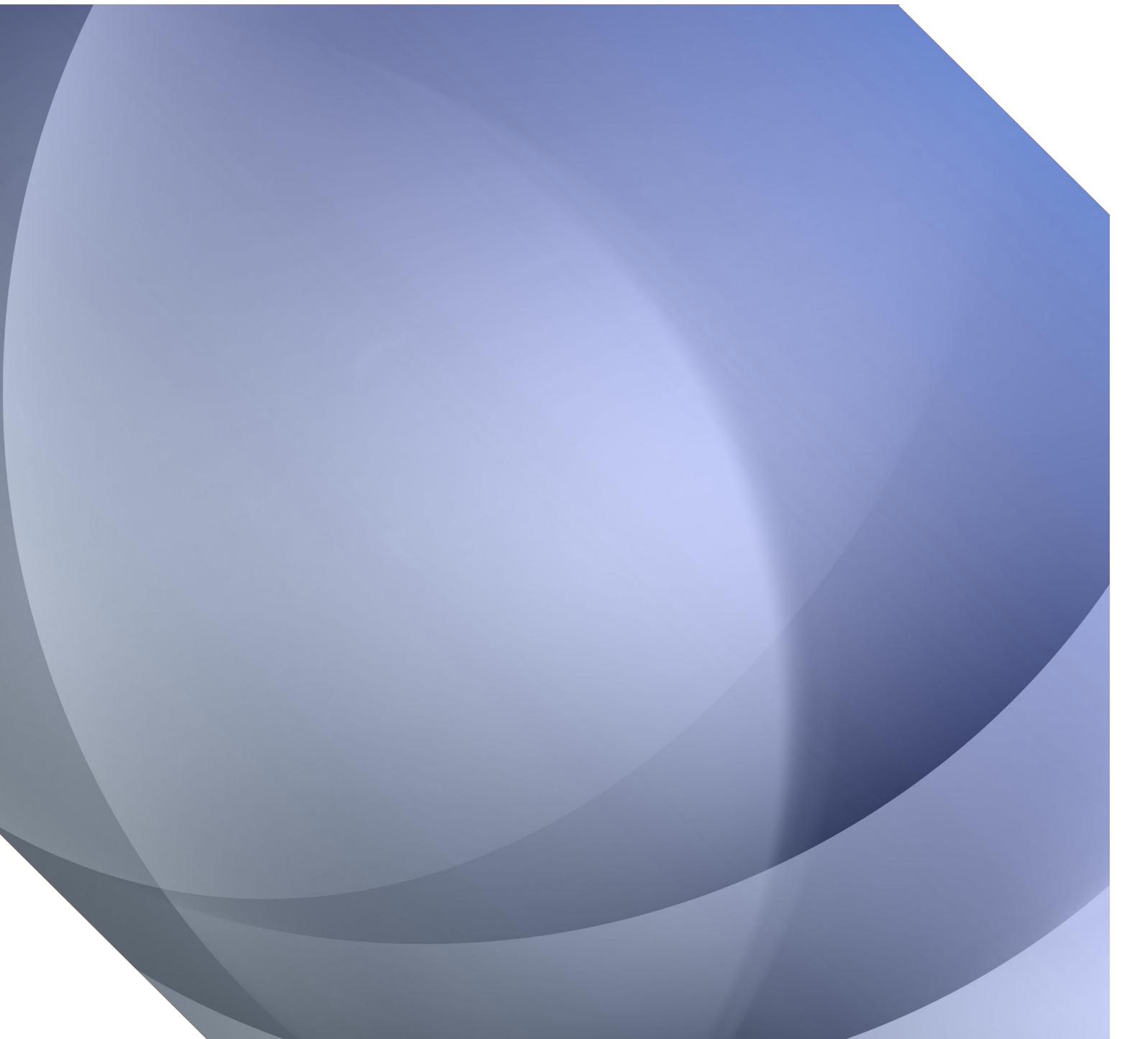


Guidance on the Application of the CAA's Competition Powers

CAP 1235



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Enquiries regarding the content of this publication should be addressed to:

Markets and Consumers Group
Civil Aviation Authority
CAA House
45-59 Kingsway
London
WC2B 6TE

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Foreword

Competition law: a key element of the CAA framework

1. The Civil Aviation Authority exists to protect the public and, in particular, consumers of aviation services. We do that by making sure that the aviation sector meets the highest standards of safety; upholding consumers' legal rights; and protecting them if travel companies cease trading.
2. We act to encourage choice and value to consumers. In doing this, our approach is guided by our statutory duty to promote competition as far as appropriate. Experience has demonstrated that with only a few exceptions¹, a market based approach, where providers compete with each other on the merits of their offering, across the aviation value chain, has delivered major benefits to consumers.
3. This means that we now only regulate directly, via a licence, two airports and the NATS en-route air traffic service. We are also currently implementing direct economic regulation of terminal air navigation services as a result of EU legislation. For the rest of the sector, competition law is one of the main ways in which we fulfil our objective to promote consumer choice and value.
4. Therefore, a key element of our approach is using our powers to take action when companies do not comply with competition law or where there may be particular barriers to the functioning of competition and delivery of the benefits expected.
5. From 6 April 2013, we were given powers to apply competition law provisions in respect of airport operation services, to add to our existing competition law powers over air traffic services.² This means that we now enforce the UK and EU competition law prohibitions on anti-competitive agreements and abuses of dominant market positions

¹ En-route air traffic control being one particular example, as a natural monopoly.

² We received concurrent competition powers for air traffic services under the Transport Act 2000. We received concurrent competition powers for airport operation services under the Civil Aviation Act 2012.

in these areas. We can also conduct market studies and refer a market for a full investigation by the Competition and Markets Authority (CMA).

6. Our competition powers are held concurrently with the CMA. Concurrency means that either we or the CMA will take on a particular case or conduct a market study. The way we work together with the CMA has also recently been revised by the Enterprise and Regulatory Reform Act 2013 (ERRA13) and associated secondary legislation. We have also agreed a Memorandum of Understanding with the CMA about how we interact at working level.
7. We are required to consider in individual cases whether using competition law, to deal with particular issues, is more appropriate than using economic licence enforcement powers.
8. The CAA and the CMA are members of the UK Competition Network (UKCN), a forum consisting of the CMA and all sectoral regulators which have concurrent competition law powers. The UKCN was established in December 2013 with a mission to promote competition for the benefit of consumers and to prevent anti-competitive behaviour both through facilitating use of competition powers and development of pro-competitive regulatory frameworks, as appropriate.

Purpose of this guidance

9. This Guidance contains general information designed to inform stakeholders about how we apply our competition powers and duties in relation to airport operation services and air traffic services.
10. Guidance on our powers and how we apply those powers is important for all our stakeholders. This is particularly important as market participants are responsible for assessing their own compliance with the law. In particular, companies should not expect the CAA to pre-approve particular agreements or business practices. It is for companies to assure themselves that they comply.
11. Guidance is also important to help potential complainants prepare submissions to us and inform them how we will deal with them. It sets out what businesses should expect if they are subject to investigation or enforcement action and what routes are available to challenge our decisions.

12. Likewise, the Guidance seeks to clarify the relationship between sectoral regulation and competition law and to promote awareness of how competition law applies to the aviation industry and the importance of compliance with the latter.
13. Finally, we identify other relevant documents that we will refer to in enforcing competition law in respect of airport operation and air traffic services. In particular, we refer to relevant guidance issued by the CMA and the European Commission on individual aspects of competition law.
14. This Guidance replaces CAP1016 (The CAA's Concurrent Competition Powers for Airport Operation Services and Air Traffic Services)³ which was published in March 2013 as well as all other existing guidance on our competition powers.⁴

What to do if you want to contact the CAA about a competition issue

15. The CAA welcomes information from businesses and their representatives, as well as consumers relating to our competition and regulatory work (including complaints). You can contact us to share information with us and discuss any concerns you may have. If you want to raise any issues with us please email economicregulation@caa.co.uk.
16. Once you have contacted us, we may ask you to send us supporting information or invite you to submit a formal complaint as explained in the relevant chapters of this Guidance.

³ This document is available from:
<http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=5467>

⁴ Air traffic services and competition law – a CAA policy document (April 2006) http://www.caa.co.uk/docs/5/ats&complaw_policy_april06.pdf and Concurrent powers for air traffic services (March 2001) <http://www.caa.co.uk/docs/5/ergdocs/sectorguidelines0301.pdf>

CHAPTER 1

Introduction

Introduction

This Guidance is designed to inform our stakeholders – businesses and their advisers, consumers, consumer groups, and other interested parties about how we apply our competition powers and duties.

Taken together, our competition powers mean that we can take one or more of the following actions:

- Consider complaints about anti-competitive behaviour and where necessary, take action to stop it. Where we find a business is acting anti-competitively, we can impose financial penalties of up to 10% of the business' relevant turnover and apply other penalties on the individuals involved.
- Carry out sector reviews of the market in order to maintain our expertise and facilitate future action.
- Conduct market studies where we identify some aspect of a market that may potentially impede competition, such as creating barriers to entry, or harming consumers.
- Make market investigation references (MIRs) to the CMA to carry out an in-depth market investigation over a period of up to 18 months which may lead to the CMA imposing remedies to rectify any adverse effects on competition (AECs) that it finds.
- Investigate super-complaints submitted to us by designated consumer bodies and publish a reasoned response stating what action, if any, we intend to take within 90 days of receiving a complaint.
- Communicate with stakeholders about how the market is functioning, and how to comply with competition law. This includes issuing guidance on our powers.

Purpose

- 1.1 This Guidance is designed to inform our stakeholders – businesses and their advisers, consumers, consumer groups, and other interested parties - about how we apply our competition powers and duties. In doing so, this document also seeks to give some guidance on the interface between generally applicable competition law and aviation sector-specific legislation.
- 1.2 Specifically, it sets out how we will apply our concurrent competition powers in relation to airport operation services (AOS) and air traffic services (ATS).
- AOS are generally those services provided at an airport, other than air traffic services or services provided in shops or other retail businesses.
 - ATS generally consist of air traffic control while the aircraft is cruising as well as when aircraft take off and land at airports.⁵
- 1.3 The CMA publishes on its webpages a range of guidance on the application of competition law and, where appropriate, we refer to these publications elsewhere in this document. This Guidance should be read in conjunction with the CMA's documents and the relevant legal instruments.⁶
- 1.4 This Guidance is not intended to be comprehensive in that it cannot cover every possible set of circumstances. Instead, it aims to set out the general framework we use so that businesses that have an interest in these matters, and other stakeholders including consumer bodies and the Government, will be aware of the processes and principles to which we will have regard when dealing with suspected competition law infringements and using our other competition powers.
- 1.5 We will apply this Guidance flexibly. However, we may depart from it if the particular facts of an individual case reasonably justify it.
- 1.6 We will apply the guidance in accordance with the better regulation principles, which are: proportionality, accountability, consistency,

⁵ These terms are explained more fully in chapter 2.

⁶ The CMA guidance is available from: <https://www.gov.uk/cma>

transparency, and targeted action.⁷

- 1.7 We may, in the future, revise and reissue this Guidance in the light of our ongoing experience and other developments in law and practice. Please visit our website to ensure that you have the latest version of this Guidance.
- 1.8 This Guidance is not a definitive statement of, nor is it a substitute for, the law itself. It should be read in conjunction with the appropriate legal instruments, EU case law and United Kingdom case law.⁸ As stated above, it is advisable to read this Guidance alongside other competition law publications and, in particular, those of the CMA.
- 1.9 Anyone in doubt about how they may be affected by the UK and European legislation referred to in this Guidance should seek independent legal advice.

The CAA: a sector regulator and a competition authority

- 1.10 The CAA is the UK's specialist aviation regulator. Our activities include making sure that the aviation industry meets the highest technical and operational safety standards and securing choice, quality and value for consumers. We are the economic regulator for airports and ATS, and provide advice on aviation policy to the Government.
- 1.11 Our competition powers largely stem from the Civil Aviation Act 2012 (CAA12) and the Transport Act 2000 (TA00). These give us the power to undertake sector reviews to consider the functioning of the markets for which we have responsibility, where we want to gain a more in depth understanding of the industry or a particular market.
- 1.12 In addition, this legislation means we are a national competition authority (NCA) with concurrent powers with the CMA in relation to the application and enforcement of UK and EU competition law to the

⁷ The Better Regulation Principles are available from:
<https://www.gov.uk/government/organisations/better-regulation-delivery-office>

⁸ This case law is available from: <http://curia.europa.eu/>,
<http://ec.europa.eu/competition/court/index.html>, <http://www.catribunal.org.uk/> and
<http://ec.europa.eu/competition/elojade/antitrust/nationalcourts/>

provision of AOS and the supply of ATS. This means that 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) - which prohibit anti-competitive agreements and an abuse of a dominant position respectively (the UK competition prohibitions) and the equivalent EU law prohibitions in Articles 101 and 102 of the Treaty on the Functioning of the EU (the EU competition prohibitions).

- 1.13 The legislation also gives us powers under the Enterprise Act 2002 (EA02), in relation to the provision of AOS and the supply of ATS, to undertake market studies and make market investigation references to the CMA ('the market provisions'). The CAA also has power to investigate super-complaints in relation to the provision of AOS and the supply of ATS.
- 1.14 The competition law powers described in paragraphs 1.12 and 1.13 are held concurrently with the CMA. This means that, in respect of the provision of AOS and the supply of ATS, either the CAA or the CMA may exercise these powers. There is, since April 2013, a legal procedure for allocating cases under the competition prohibitions as between the CAA and the CMA: this is to be achieved by agreement between the two authorities, but if agreement cannot be reached, the CMA determines which authority should exercise the power. The CMA has published guidance on concurrent application of competition law to regulated industries.⁹
- 1.15 Taken together, our competition powers mean that we can take one or more of the following actions:
1. Consider *complaints about anti-competitive behaviour* and where necessary, take action to stop it. Where we find a business is acting anti-competitively, we can impose financial penalties of up to 10% of the business' relevant turnover and apply other penalties on the individuals involved.
 2. Carry out sector *reviews* of the market in order to maintain our expertise and facilitate future action.

⁹ 'Regulated industries: 'Concurrent application of competition law to regulated industries' (CMA10), This is available from: <https://www.gov.uk/government/publications/guidance-on-concurrent-application-of-competition-law-to-regulated-industries>

3. Conduct *market studies* where we identify some aspect of a market that may potentially impede competition, such as creating barriers to entry, or harming consumers.
 4. Make *market investigation references (MIRs)* to the CMA to carry out an in-depth market investigation over a period of up to 18 months¹⁰, which may lead to the CMA imposing remedies to rectify any adverse effects on competition (AECs) that it finds.
 5. *Communicate* with stakeholders about how the market is functioning, and how to comply with competition law. This includes issuing guidance on our powers.
- 1.16 One of our aims is to improve quality, choice and value for aviation consumers. Competition works for the benefit of consumers when businesses compete fairly on the merits of the product or service they provide. We will therefore use our competition powers, where necessary, to achieve this in practice for businesses and consumers.
- 1.17 Further information on the CMA and our concurrent competition powers is set out in chapter 2.

How to comply with competition law

- 1.18 The majority of businesses¹¹ will wish to comply with competition law.
- 1.19 It is the responsibility of each business to satisfy itself that it is complying with competition law on an on-going basis. We recognise that a 'one size fits all' approach is not necessarily appropriate for competition law compliance and that the appropriate actions to achieve compliance may vary, for example depending on the size of business and the nature of the risks identified. Neither we nor the CMA will endorse or approve a business's compliance programme or give pre-approval to specific agreements or practices.
- 1.20 More information on compliance can be found in the CMA guidance

¹⁰ This period may be extended, by no more than six months, if the CMA considers that there are special reasons for doing so.

¹¹ See chapter 5 below for the definition of a business in the context of the application of EU and UK competition law.

'How your business can achieve compliance with competition law'.¹²

Structure of this Guidance

1.21 The Guidance is divided into the following chapters:

- Chapter 2 – Overview of CAA's powers.
- Chapter 3 – Complaints and early stage analysis.
- Chapter 4 – Information gathering and disclosure.
- Chapter 5 – Competition prohibitions.
- Chapter 6 – Market oversight provisions.
- Chapter 7 – Super-complaints.

¹² This guidance is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

CHAPTER 2**Overview of CAA's powers**

Overview of CAA's powers

We are the UK's independent specialist regulator in the aviation sector and have a range of sectoral regulatory powers and duties under the Civil Aviation Act 1982, the Transport Act 2000 (TA00), the Civil Aviation Act 2012 (CAA12) and the instruments made under them.

CAA's sectoral powers

CAA12 requires us to regulate certain airports directly via a licence if we judge that they have substantial market power and were we believe direct regulation will work better than using competition law.

Under TA00 the Government issued a licence to NATS (En Route) plc (NERL) to provide en route air traffic services in UK airspace and in parts of the Eastern Atlantic. Under TA00, the CAA is the economic regulator of NERL.

The Airport Charges Regulations 2011 (ACRs) cover all airports handling over 5 million passengers and provide airlines with a number of protections. For example, it requires airports to provide information to and consult with airlines when changing airport charges, and not to discriminate between airlines without relevant, transparent and objective justification.

The Airports (Groundhandling) Regulations 1997 (AGRs) place some limitations on airport operators at airports with more than 2 million passengers annually, if they want to restrict the number of self handling airlines or third-party groundhandlers that operate at the airport.

We have powers to enforce consumer protection law in the aviation sector through European legislation providing rights to air passengers and consumer protection legislation covered by Part 8 of the Enterprise Act 2002 (EA02).

CAA's competition law powers

We are one of the sectoral regulators in the UK with certain concurrent competition law powers.

The arrangements, by which the CMA and the sectoral regulators apply competition law in the regulated sectors, are often known as 'concurrency' arrangements.

This means that, alongside the CMA, we can:

- Enforce the UK competition prohibitions in Chapters I and II of CA98 and, where trade between Member States of the EU may be affected, the equivalent EU competition prohibitions in Article 101 and Article 102 of the Treaty on the Functioning of the EU (TFEU). (See chapter 5).
- Undertake market studies under Part 4 (market investigations) of the Enterprise Act 2002 (EA02). (See chapter 6).
- Make market investigation references under Part 4 of EA02. (See chapter 6).
- Undertake investigations into super-complaints under Part 1 of EA02. (See chapter 7).

As a designated national competition authority (NCA) with responsibility to apply the EU competition prohibitions in relation to AOS and ATS, we consult and liaise closely with the European Commission and the network of Member State NCAs in matters relating to the enforcement of the EU competition prohibitions in the aviation sector. Where a potential case involves the application of the EU competition prohibitions, we also have regard to the case allocation principles and duties of consistency and cooperation as part of the European Competition Network (ECN).

Introduction

- 2.1 This chapter outlines the range of sectoral powers which fall exclusively to us and the competition law powers that we exercise concurrently with the CMA.

CAA's sectoral powers

- 2.2 We are the UK's independent specialist regulator in the aviation sector and have a range of sectoral regulatory powers and duties under the Civil Aviation Act 1982, the Transport Act 2000 (TA00), the Civil Aviation Act 2012 (CAA12) and the instruments made under them. We are also:

- responsible for the application and enforcement of various regulations which derive from EU law, specifically the Airport Charges Regulations 2011 (ACRs) and the Airports (Groundhandling) Regulations 1997 (AGRs); and
- the designated enforcer in respect of consumer protection legislation, including passengers' rights during flight disruption, reduced mobility access and unfair trading practices.

2.3 We have issued separate guidance on how we carry out these sectoral powers.¹³

Regulation of airports with substantial market power

2.4 CAA12 requires us to regulate certain airports directly via a licence if we judge that they have substantial market power and we assess that licence-based regulation will work better than using competition law and is proportionate. We make these decisions as a "Market Power Test" (MPT), which is published as a market power determination (MPD).

2.5 As a result of our MPDs in January and March 2014¹⁴, we now regulate Heathrow and Gatwick airports through licences. These licences came into effect on 1 April 2014.¹⁵

2.6 In 2015, we plan to issue guidance on how we will assess the MPT for future determinations. Until this guidance is issued, stakeholders are referred to the CMA Guidance on Market Definition and Market Power (OFT403 and OFT415)¹⁶ as well as our 2014 MPD decisions, for the latest approach we will take into account in assessing market power of

¹³ Guidance on the CAA's sectoral powers in relation to ACRs, AGRs and consumer protection are available from: <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14467>
<http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=69>
<http://www.caa.co.uk/default.aspx?catid=2211&pageid=13319>

¹⁴ The MPDs we have undertaken are available from:
<http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=12275>

¹⁵ The licences for Heathrow and Gatwick are available from:
<http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=67>

¹⁶ The CMA guidance is available from:
<https://www.gov.uk/government/organisations/competition-and-markets-authority>

airports.¹⁷

- 2.7 Although there are some parallels between making MPDs and in investigating complaints under the competition prohibitions, there are also some important differences between them. For instance, when assessing market power at an airport as a whole, we will usually consider the overall bundle of AOS services and then determine the relevant market in which the airport offers those services. In comparison, when assessing complaints under the competition prohibitions, we need to start by determining a product market relevant to the complaint in question. This may be much narrower than the total range of services offered at an airport e.g. it could relate to groundhandling or forecourt access at an airport or airports.

Regulation of Air Traffic Services

- 2.8 Under TA00, the Government issued a licence to NATS (En Route) plc (NERL) to provide en route air traffic services in UK airspace and in parts of the Eastern Atlantic. Under TA00, the CAA is the economic regulator of NERL. We exercise this role mainly through monitoring and enforcing the conditions in the Licence and through modifications to NERL's Licence.¹⁸
- 2.9 En Route and Terminal Air Navigation Services (TANS) operators at airports over a certain size are subject to the Single European Sky Performance scheme set out in Regulations EU 2013/390 and EU 2013/391. For En Route, this is applied through the NERL licence. For other operators, the regulation applies directly.

Airport Charges Regulations

- 2.10 The Airport Charges Regulations 2011 (ACRs)¹⁹ came into effect in November 2011 and transposed into UK law Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on

¹⁷ The CAA's Guidance on the assessment of airport market power (April 2011) has been withdrawn.

¹⁸ Further information on the regulation of National Air Traffic Services is available from: <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=585>

¹⁹ The airport charges directive is available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:070:0011:0016:EN:PDF>

The airport charges regulations can be found at:

http://www.legislation.gov.uk/uksi/2011/2491/pdfs/uksi_20112491_en.pdf

airport charges. The ACRs cover all airports handling over 5 million passengers and provide airlines with a number of protections. For example, it requires airports to provide information to and consult with airlines when changing airport charges, and to not discriminate between airlines without relevant, transparent and objective justification.

- 2.11 The CAA must investigate complaints by an airline on which airport charges have been levied, or by another airport that considers its business has been harmed by the airport not complying with the ACRs. The CAA also may investigate on its own initiative under the ACRs for an apparent breach of its requirements.
- 2.12 More information on the ACRs can be found on our website.²⁰ We plan to update our guidance on how we implement the ACRs in 2015.

Airports (Groundhandling) Regulations

- 2.13 The Airports (Groundhandling) Regulations 1997 (AGRs) transpose the European Groundhandling Directive into UK law.²¹ Groundhandling covers a multitude of activities including check-in, handling baggage, cargo and mail, re-fuelling aircraft, and transporting passengers and crew to aircraft. The AGRs place some limitations on airport operators at airports with more than 2 million passengers annually, if they want to restrict the number of self handling airlines or third-party groundhandlers that operate at the airport. If an airport operator at an airport with more than 2 million passengers annually wants to restrict the number of self-handling airlines or third-party groundhandlers that operate at the airport, it requires a determination from the CAA to be able to do so.
- 2.14 There are currently no legal restrictions on the number of handlers at airports in the UK. Where handlers use aircraft facilities, such as check-in desks, baggage belts and fuel hydrant systems, the airport operator must set its charges according to relevant, objective,

²⁰ More information on the ACRs is available from:
<http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14467>

²¹ Airport Groundhandling Regulations – The airport groundhandling directive can be found at:
<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31996L0067>
The airport groundhandling regulations can be found at:
<http://www.legislation.gov.uk/uksi/1997/2389/made>

transparent and non-discriminatory criteria. The CAA must investigate alleged breaches of the AGRs.

2.15 More information on the AGRs can be found on our website.²²

Consumer and Information Powers

2.16 We have powers to enforce consumer protection law in the aviation sector through European legislation providing rights to air passengers; and consumer protection legislation covered by Part 8 of the Enterprise Act 2002 (EA02). This includes:

- 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;
- unfair terms in consumer contracts;
- the Electronic Commerce Directive;
- consumer protection from unfair trading;
- the Package Travel, Package Holiday and Package Tours Regulations;
- the Consumer Rights (Payment Surcharges) Regulations;
- the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations; and
- regulations on co-operation between national authorities responsible for the enforcement of consumer protection laws.

2.17 Our licensing of travel firms, stewardship of the ATOL (Air Travel Organisers' Licensing) scheme and management of repatriation, refund and fulfilment activities are intended to give effect to European and UK government policy ensuring consumers of air holidays are protected from the adverse effects of travel firms becoming insolvent.

²² More information on the AGRs is available from:
<http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=69>

We maintain an effective scheme of consumer protection by:

- licensing market entrants;
- limiting and reducing the impact on consumers of insolvencies that occur;
- ensuring sufficient security is in place to cover the liabilities of failed firms;
- making sure that businesses pay correct levels of ATOL Protection Contributions (APC) in a timely fashion;
- ensuring that consumers know when they are protected and when they are not; and
- by taking steps to ensure that repatriation and refund activities can be handled effectively and effectively.

2.18 A key element of our strategy to protect consumers is enforcement action against firms making licensable sales without holding an ATOL.

2.19 Our airline operating licensing activity ensures that we meet our obligations under European and UK law for the licensing of all aspects of UK carriers with the exception of finance and safety (although finance and safety are pre-conditions for the retention of such licences). By doing so, we ensure that those carrying passengers, cargo or mail for payment meet a number of requirements including insurance, ownership and control, and fitness (of accountable managers and shareholders).

2.20 Guidance on our consumer enforcement powers is available on our website.²³

CAA's competition law powers

Concurrent jurisdiction between the CAA and the CMA

2.21 We are one of the sectoral regulators in the UK with certain concurrent competition law powers.²⁴ The arrangements by which the

²³ <http://www.caa.co.uk/enforcement>

²⁴ The other sectoral regulators are Ofcom (Office of Communications), Ofgem (the Gas and Electricity Markets Authority), ORR (the Office of Rail Regulation), Ofwat (the Water Services Regulation Authority) and NIAUR (Northern Ireland Authority for Utility Regulation). Monitor

CMA and the sectoral regulators apply competition law in the regulated sectors are often known as 'concurrency' arrangements.

2.22 Since 2001, we have had concurrent competition powers with the CMA²⁵ under both the UK and EU competition prohibitions and the market provisions in respect of the supply of ATS. We were given the same powers in respect of the provision of AOS in April 2013.

2.23 This means that, alongside the CMA, we can:

- enforce the UK competition prohibitions in Chapters I and II of CA98 and, where trade between Member States of the EU may be affected, the equivalent EU competition prohibitions in Article 101 and Article 102 of the Treaty on the Functioning of the EU (TFEU). (see chapter 5);
- undertake market studies under Part 4 (market investigations) of the Enterprise Act 2002 (EA02)²⁶ (see chapter 6);
- make market investigation references under Part 4 of EA02. (see chapter 6); and
- undertake investigations into super-complaints under Part 1 of EA02 (see chapter 7).

2.24 All other competition law powers in the aviation sector are exercised by the CMA (and, in respect of the EU competition law prohibitions and EU merger control, by the European Commission). The CMA therefore has general oversight for air transport services provided by airlines and other commercial services provided at airports, such as retail sales. The table in the next section outlines the different powers, and who can exercise them, in the aviation industry.

2.25 The intention of the most recent competition legislation²⁷ is to

has had concurrent powers in respect of healthcare services in England since April 2013. The FCA (the Financial Conduct Authority) and the PSR (the Payment Systems Regulator) will acquire concurrent powers from 1 April 2015.

²⁵ Prior to 1 April 2014, the competition prohibitions and the market provisions were applied and enforced in the UK by the CMA's predecessors, the OFT (Office of Fair Trading) and the Competition Commission (CC).

²⁶ The CAA does not have powers under section 166 (register of undertakings and orders: Part 4) and section 171 (advice and information: Part 4) of the Enterprise Act.

²⁷ Enterprise and Regulatory Reform Act 2013 (ERRA13) and 'The Competition Act 1998

strengthen the use of competition law and improve coordination between CMA and concurrent regulators such as the CAA. Where a matter raises issues that fall within both our and the CMA's concurrent jurisdiction, we and the CMA will closely cooperate to avoid duplication, ensure transparency and maximise our complementary skills and expertise whilst promoting competitive outcomes in the aviation sector for the benefit of consumers.

2.26 We have powers, which we do not share with the CMA, to undertake sector reviews under CAA12 (see chapter 6).

Airport operation services

2.27 Airport operation services (AOS) are defined in CAA12 as services provided at an airport for the purposes of:

- the landing and taking off of aircraft;
- the manoeuvring, parking or servicing of aircraft;
- the arrival or departure of passengers and their baggage;
- the arrival or departure of cargo;
- the processing of passengers, baggage or cargo between their arrival and departure; and
- the arrival or departure of persons who work at the airport.

2.28 Airport operation services (AOS) also include provision at an airport of:

- groundhandling services described in the Annex to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports;
- facilities for car parking and allowing access to and/or use of them; and
- facilities for shops and other retail businesses and allowing access to and/or use of them.

2.29 Airport operation services (AOS) do not include:

- air transport services for the carriage of passengers or cargo by air;

(Concurrency) Regulations 2014' (Concurrency Regulations).

- air traffic services; or
- services provided in shops or as part of other retail businesses.

Air traffic services

2.30 Air traffic services (ATS) are defined in TA00 as:

- providing instructions, information or advice with a view to preventing aircraft colliding with other aircraft or with other obstructions (whether in the air or on the ground);
- providing instructions, information or advice with a view to securing safe and efficient flying;
- managing the flow of air traffic with a view to ensuring the most efficient use of airspace;
- providing facilities for communicating with aircraft and for the navigation and surveillance of aircraft; and
- notifying organisations of aircraft needing search and rescue facilities, and assisting organisations to provide such facilities.

Who can apply competition law in the aviation sector

2.31 The competition law functions and which body has the power to apply them in the aviation sector are set out in the following table.

Figure 2.1: Main areas of competition law and which body or bodies apply them in the aviation sector

| Aviation sector | Sector review under CAA12 and TA00 and EA02 | General review powers under EA02 | Market studies and market investigation references | Anti-competitive agreements and abuses of a dominant position | Super-complaints |
|---|---|----------------------------------|--|---|------------------|
| Airlines and other providers of air transport | CMA | CMA* | CMA* | CMA* | CMA* |
| Airport operation service ²⁸ providers | CAA | CMA* | CAA or CMA* | CAA or CMA* | CAA or CMA* |
| Air traffic service ²⁹ providers | CAA | CMA* | CAA or CMA* | CAA or CMA* | CAA or CMA* |
| Other providers of retail services at airports | CMA | CMA* | CMA* | CMA* | CMA* |
| Tour operators | CMA | CMA* | CMA* | CMA* | CMA* |

* Where the agreement or conduct concerned may affect trade between Member States of the EU, the European Commission may apply the EU competition prohibitions.

Effective cooperation between the CMA and the sectoral regulators

2.32 The CMA and the sectoral regulators have demonstrated their commitment to making the concurrency framework more effective through the establishment of the UK Competition Network (UKCN).

²⁸ Airport Operation Services are defined earlier in this chapter.

²⁹ Air Traffic Services are defined earlier in this chapter.

This is an enhanced forum for cooperation to enable them to work together to ensure the consistent and effective use of competition powers across all sectors.

- 2.33 We discuss issues of mutual interest with the CMA as part of the UKCN and bilaterally, and we engage with each other not just in the exercise of our concurrent competition powers but also with a view to promoting competition for the benefit of users of AOS and ATS. To the extent permitted by law, we engage in broad strategic dialogue, share relevant information, best practice and cooperate closely to ensure the consistent application of competition law in the UK. We also consult one another on any issues that may have significant implications for the other.
- 2.34 The Competition Act 1998 (Concurrency) Regulations 2014 (Concurrency Regulations) set out mechanisms for allocation of cases, require the establishment of information sharing arrangements, and facilitate the secondment of staff for competition case work as between the CMA and sectoral regulators.³⁰

Who is best placed to take action

- 2.35 Where there is a suspected infringement of the competition prohibitions, we will liaise and cooperate closely with the CMA. This includes the two authorities exchanging information in their possession about the potential infringement, subject to the relevant legal requirements, including for the purposes of determining jurisdiction as set out in the Concurrency Regulations and the 'Guidance on concurrent application of competition law to regulated industries'.³¹
- 2.36 We will reach agreement on which authority is better placed or best placed to take responsibility for the case. The factors for determining allocation will include as appropriate:
- the sectoral knowledge of the CAA and the CMA;

³⁰ Respectively, articles 4 to 8, 9 and 10 of the Regulations.

³¹ 'The Competition Act 1998 (Concurrency) Regulations 2014' are available from:

<http://www.legislation.gov.uk/uksi/2014/536/contents/made>

The 'Guidance on concurrent application of competition law to regulated industries' (CMA10) is available from: <https://www.gov.uk/government/publications/guidance-on-concurrent-application-of-competition-law-to-regulated-industries>

- whether the case affects more than one regulated sector and/or non-regulated sectors not subject to concurrent competition law;
- previous contacts between the parties or complainants and the CAA or the CMA;
- experience in dealing with any of the companies which may be involved in the proceedings;
- experience in dealing with any similar issues which may be involved in the proceedings;
- whether the CMA considers it necessary to exercise its functions under the competition prohibitions in relation to a case in order to develop United Kingdom competition policy or to provide greater deterrent and precedent effect for the benefit of competition and consumers, either within the relevant regulated sector, or more widely; and
- whether the case being allocated to the CMA and supported by the CAA (or vice versa) will provide the best combination of competition and sector-specific expertise.

2.37 If a suspected competition prohibition infringement is drawn to the attention of the CAA or the CMA by way of a complaint, it is expected that an agreement on case allocation will take no more than two months after the receipt of the complaint by the authority that first received it. However, if agreement cannot be reached within a reasonable time, the CMA has the final decision on how to allocate the case. The complainant will be informed, as a matter of policy, as to which authority is handling the complaint.

2.38 The Concurrency Regulations³² provide for a 'standstill obligation' so that, once it has been decided which competition authority will deal with a particular case, no other authority can deal with individual 'prescribed functions' in relation to that same case. These are:

- the opening of a formal investigation under section 25 of CA98;

³² ' The Competition Act 1998 (Concurrency) Regulations 2014' are available from:
<http://www.legislation.gov.uk/ukxi/2014/536/contents/made>

- the withdrawal of an exclusion from the Chapter I prohibition in relation to an individual agreement; and
- the making of certain formal decisions, including finding of an infringement, requiring that an infringement be brought to an end, ordering interim measures, accepting commitments by decision and imposing fines.

2.39 In effect, this means that a case will be dealt with by only one organisation. However, the 'standstill obligation' does not prevent us from liaising with other authorities within the UKCN and cooperating with them as appropriate in respect of a case.

2.40 Once jurisdiction in relation to a case has been allocated to us, the only way in which another authority can take action in relation to that case is where the case is formally transferred to that authority or the CMA decides to take over a case from us.

2.41 Further information regarding the concurrent competition powers and concurrency arrangements are set out in:

- The Competition Act 1998 (Concurrency) Regulations 2014³³;
- The CMA's 'Guidance on concurrent application of competition law to regulated industries' (CMA10)³⁴; and
- The Memorandum of Understanding between the CMA and the CAA on concurrent competition powers (the MOU).³⁵

Effective cooperation within the European Union

2.42 As a designated national competition authority (NCA) with responsibility to apply the EU competition prohibitions in relation to AOS and ATS, we consult and liaise closely with the European Commission and the network of Member State NCAs in matters relating to the enforcement of the EU competition prohibitions in the

³³ 'The Competition Act 1998 (Concurrency) Regulations 2014' are available from: <http://www.legislation.gov.uk/ukxi/2014/536/contents/made>

³⁴ The 'Guidance on concurrent application of competition law to regulated industries' (CMA10) is available from: <https://www.gov.uk/government/publications/guidance-on-concurrent-application-of-competition-law-to-regulated-industries>

³⁵ The Memorandum of Understanding between the CMA and the CAA on concurrent competition powers is available at: <http://www.caa.co.uk/docs/5/MoUCAAndCMA.pdf>

aviation sector. Where a potential case involves the application of the EU competition prohibitions, we also have regard to the case allocation principles and duties of consistency and cooperation as part of the European Competition Network (ECN).³⁶ Further details on the ways in which we can participate in the work of the ECN can be found in the Commission's Notice on Cooperation within the Network of Competition Authorities.³⁷

Interplay between the CAA's sectoral powers and competition law powers

2.43 As noted above, the CAA regulates some businesses directly through their licences as well as being a competition authority. The objectives of our sector-specific regulatory powers may overlap with the aims of competition law to a certain extent but they are not identical.

2.44 For example, when we are regulating airports with substantial market power under CAA12³⁸ we have to:

"carry out our functions under this Chapter – the regulation of operators of dominant airports – in a manner which we consider will further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services. We must carry out the functions, where appropriate to do so, in a manner which we consider will promote competition in the provision of airport operation services."

2.45 Likewise, when regulating ATS under TA00³⁹ we must:

³⁶ The European Competition Network (ECN) is a forum for discussion and cooperation of European competition authorities in cases where Articles 101 and 102 of TFEU are applied. Its aim is to ensure an efficient division of work and an effective and consistent application of EC competition rules. The EU Commission and competition authorities from EU member states cooperate with each other through the ECN by: informing each other of new cases and envisaged enforcement decisions; coordinating investigations, where necessary; helping each other with investigations; exchanging evidence and other information; and discussing various issues of common interest.

³⁷ OJ C 101, 27.04.2004, p43

³⁸ Section 1 of CAA12.

³⁹ Section 2 of TA00.

"exercise our functions under this Chapter – air traffic services – so as to maintain a high standard of safety in the provision of air traffic services. We must exercise our functions, subject to the above overriding duty, in the manner we think is best calculated to:

- a) further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them, including by promoting competition in the provision of air traffic services;*
- b) promote efficiency and economy on the part of licence holders;*
- c) secure that licence holders will not find it unduly difficult to finance activities authorised by their licences;*
- d) take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State;*
- e) take account of any guidance on environmental objectives given to the CAA by the Secretary of State."*

2.46 At the same time, we are required to consider whether it would be more appropriate to use our powers to apply the UK and EU competition prohibitions before we take enforcement action against an airport operator or an air traffic service provider for breach of a licence condition. We may not take such licence enforcement action to the extent that we consider it would be more appropriate to proceed under the competition prohibitions.⁴⁰ Separate guidance⁴¹ covers how we will act if there is a suspected breach of licence conditions in the licences for the economic regulation of AOS and ATS.

2.47 Many of our regulatory objectives set out above are consistent with the aims of competition law, which seeks to improve choice, quality and value for aviation consumers⁴². However, as noted above, if we were acting under our competition powers we could only take into

⁴⁰ Section 46 of CAA12 and Schedule 14 paragraph 15 of ERA13..

⁴¹ This guidance is 'CAA Guidance on the enforcement of economic licences', which is available from: <http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=67> and <http://www.caa.co.uk/default.aspx?catid=2516&pagetype=90>

⁴² In this guidance, an 'aviation consumer' is a user of an airport operation service (as defined in the Civil Aviation Act 2012), or an air traffic service (as defined in the Transport Act 2000).

account the sectoral objectives set out above where the CMA would be able to have regard to those same matters when exercising its competition law functions. So some matters, for example environmental effects and financeability, may not be relevant considerations when we apply our competition law powers.

- 2.48 In some situations, we may be able to choose between the powers available to us to address a particular matter and there may be similarly overlapping objectives of different powers. Where we are able to choose between the powers available to us to address a particular matter, we will select the one we consider is the most appropriate in the specific case. However, as noted above, we are required to consider whether to use competition powers in preference to taking enforcement action against an airport operator under CAA12 or against a provider of ATS under TA00.

CHAPTER 3**Complaints and early stage analysis**

Complaints and early stage analysis

You can contact us to share information with us and discuss any concerns you may have relating to the aviation sector.

We encourage those with concerns to read this Guidance and consider the following suggestions:

- try and resolve matters through discussions;
- speak to us;
- consider any relevant decisions; and
- gather as much evidence and information as possible.

We aim to address concerns and complaints in the most efficient and effective way. In some cases, we may be able to resolve an issue through informal advice to complainants and whistleblowers.

Before we commence an investigation, a sector review or a market study, we carry out an initial enquiry to determine whether there is an issue to address.

When we have a complaint or an issue arising from other sources, we will consider which of our powers is most appropriate to consider the complaint.

As well as deciding which power to use, we also assess issues (complaints as well as possible sector reviews or market studies and super-complaints) against our prioritisation framework for consumer protection, competition and economic regulation issues.

Introduction

- 3.1 This chapter explains how you can tell us about any concerns you may have and, if appropriate, how we will carry out any early stage analysis and, where appropriate, proceed to a formal complaint.

Telling us about your concerns

- 3.2 You can contact us to share information with us and discuss any

concerns you may have relating to the aviation sector.

3.3 We encourage those with concerns to read this Guidance and consider the following suggestions:

- **Try and resolve matters through discussions.** Not every matter of disagreement is suitable for resolution through an investigation. If it is appropriate, there may be benefits in trying to resolve problems directly with the target of your complaint before asking us to take action.
- **Speak to us.** We are always prepared to discuss emerging issues. We will not give a view on the merits of a complaint but may be able to refer you to previous policy decisions or investigations that have dealt with similar issues. If you would like to share any information or raise any concerns, please email economicregulation@caa.co.uk.
- **Consider any relevant decisions.** The issue that concerns you may have been the subject of a previous sector review, market study or decision. Details of previous reviews, studies and decisions are available on our website.⁴³
- **Gather as much evidence and information as possible.** We realise that, in some cases, complainants may not have access to all relevant information (for example information that is in the possession of the business whose conduct you are concerned with or of a competitor). However, you should provide as much evidence as possible to support your complaint.

3.4 Once you have talked to us, we may ask you to send us supporting information or invite you to submit a formal complaint as explained in the relevant chapters of this Guidance.

Early stage analysis

Pre-complaint stage

3.5 We aim to address concerns and complaints in the most efficient and effective way. In some cases, we may be able to resolve an issue through informal advice to complainants and whistleblowers.

⁴³ <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523>

The enquiry phase

- 3.6 Before we commence an investigation, a sector review or a market study, we carry out an initial enquiry to determine whether there is an issue to address.
- 3.7 We may gather further information (usually without using any formal information gathering powers) to help us decide whether to undertake any subsequent work.
- 3.8 We generally do not publish details of enquiries, or comment publicly on enquiries. To the extent we are permitted to do so, we may discuss enquiries with other stakeholders where we believe that they may be able to provide information or other assistance to help us decide whether to undertake any subsequent work. For example, we may request factual information from or seek the views of the CMA in the light of its expertise and experience.
- 3.9 Following these initial enquiries, we may request that the complainant submit to us a written reasoned complaint to form the basis for further action. The types of information that we may ask for are explained in the relevant chapters of this Guidance.
- 3.10 Once we have any further information we can gather at this stage we will consider what action to take next. In addition to the powers set out in the chapters of this Guidance, we will consider whether informal advice and action may be appropriate. Details of what we would expect to see in a reasoned complaint and explanation of our competition law investigation procedures are explained further in Chapter 5.

Prioritisation principles

- 3.11 When we have a complaint or an issue arising from other sources, we will consider which of our powers is most appropriate to consider the complaint.
- 3.12 As well as deciding which power to use, we also assess issues (complaints as well as possible sector reviews or market studies and super-complaints) against our prioritisation framework for consumer protection, competition and economic regulation issues.
- 3.13 The framework enables the CAA to make the best use of resources to address issues in the interests of aviation consumers and to produce

the greatest benefits for consumers. Details of our prioritisation principles are explained in the 'CAA's prioritisation framework for consumer protection, competition and economic regulation issues', which is available on our website.⁴⁴

- 3.14 If we decide to not investigate a suspected UK and/or EU competition prohibition breach, we will advise the person who brought the matter to our attention, and note any other avenues they could consider, including private action, and that we may re-prioritise it in future.

⁴⁴ The 'CAA's prioritisation framework for consumer protection, competition and economic regulation issues', which is available from:

<http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523>

<http://www.caa.co.uk/default.aspx?catid=2516&pagetype=90>

<http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=67>

CHAPTER 4**Information gathering and disclosure**

Information gathering and disclosure

In assessing matters brought to our attention, as well as reviewing the information contained in a complaint, we will make use of publicly available information and, where permitted, information already available to us through our regulatory, consumer and competition activities.

Under Part 9 of EA02, there is a general restriction (subject to exceptions) on disclosure by us of information that we obtain in connection with our market study, market investigation reference, super-complaint, or CA98 investigation functions (referred to as 'specified information'), which relates to an individual or to the business of an undertaking, and which is not already lawfully public.

Under CA98, we are not allowed to require the production or disclosure of privileged communications. A privileged communication is a communication between a professional legal adviser and that adviser's client or a communication which is made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

The Data Protection Act 1998 (DPA98) controls how personal information relating to individuals is used so that individuals are treated fairly. Where we process such data, we must comply with the data protection obligations set out in the DPA98.

The Freedom of Information Act 2000 (FOIA00) gives people access to information held by public authorities.

We acknowledge the importance parties attach to their confidential information. With that in mind, and to ensure compliance with the legal provisions, we have developed internal processes to ensure that we handle confidential information with care.

Introduction

- 4.1 This chapter sets out the legal framework and our approach to information gathering and disclosure of information.

Information gathering

4.2 In assessing matters brought to our attention, as well as reviewing the information contained in a complaint, we will make use of publicly available information and, where permitted, information already available to us through our regulatory, consumer and competition activities. Such information may be derived from:

- regulatory reviews and MPDs of airport operators;
- sector reviews and market studies into the supply of AOS and ATS;
- complaints under ACRs and AGRs; and
- complaints we receive under consumer law or competition law.

4.3 We will also, where permissible, make use of information provided to the CAA through our membership of the UKCN and the European Competition Network (ECN).

4.4 Even where we have extensive information that has been obtained for one regulatory purpose, we may need to supplement that information in order to carry out a specific assessment of the issue in another regulatory context. In such circumstances, we may rely on parties to cooperate and provide information on a voluntary and informal basis before having recourse to our formal information gathering powers.

4.5 In line with the Better Regulation principles, we are required to take evidence-based decisions. The receipt of information is therefore important to the quality and effectiveness of our work. However, we are conscious of the burden that information requests can place on business. When formulating and determining the scope of information requests, we will therefore seek to be fair and reasonable, and issue clear and focussed requests with a realistic timeframe for response, while seeking to balance these considerations with ensuring the efficient and effective operation of the CAA. Parties should make known to us any difficulties and discuss any queries raised by any information request with us as soon as possible after receiving a request, or as soon as they become aware that they may not be able to meet the stipulated deadline.

Disclosure of information

4.6 We aim to be transparent in the way we carry out our competition

investigative and enforcement work. This:

- ensures engagement of and fairness for parties which are directly affected by our work;
- allows other interested persons an opportunity to engage with our work, where appropriate;
- contributes to robust, properly evidenced, and effective outcomes, for which we are accountable; and
- enhances the value of our work by making it more meaningful and accessible to aviation industry participants, including aviation consumers.

4.7 At the same time, the law places on us certain legal obligations in relation to the protection and disclosure of information that we obtain in the course of our work. These duties are contained in the EA02, CA98, TA00, the Data Protection Act 1998 (DPA98), and the Freedom of Information Act 2000 (FOIA00). With this legal framework in mind, we have put in place measures to ensure the careful handling of confidential material we obtain as part of our competition work.

4.8 In conducting our work, we must balance the often competing, considerations of transparency and openness on the one hand against the protection of confidential information on the other. This chapter outlines in brief the applicable legal framework and explains our approach to disclosure and practical handling of confidential information.

The legal framework

What information is protected from disclosure

4.9 Under Part 9 of EA02, there is a general restriction (subject to exceptions) on disclosure by the CAA of information that we obtain in connection with our market study, market investigation reference, super-complaint, and CA98 investigation functions (referred to as 'specified information'), which relates to an individual or to the business of an undertaking⁴⁵, and which is not already lawfully public.

⁴⁵ The term 'undertaking' refers to any autonomous economic entity engaged in economic activity, regardless of its legal status and the way in which it is financed. It includes

The general restriction on disclosure applies during the lifetime of the individual or while the undertaking continues in existence.⁴⁶

4.10 In terms of the exceptions to this general restriction on disclosure, we may only disclose such information where one or more of the information 'gateways' set out in sections 239 to 243 EA02 applies. Disclosure may be to another person, another public authority in the UK, or to an overseas public authority. However, the gateways do not apply to all of the information we receive under our competition related functions.

4.11 Under EA02, we may disclose specified information if one of the following gateways applies:

- we obtain the relevant consent(s)⁴⁷;
- an EU obligation requires its disclosure⁴⁸;
- it is disclosed to facilitate the exercise by the CAA of any of our statutory functions⁴⁹;
- it is disclosed to another public authority in the UK to facilitate the exercise by that authority of its functions under EA02, CA98 and certain of its other statutory functions⁵⁰;
- it is disclosed to any person:
 - in connection with the investigation of any criminal offence in any part of the UK;
 - for the purposes of any criminal proceedings there; or
 - for the purpose of any decision whether to start or bring to an end such an investigation or proceedings; and in each case;

companies, firms, businesses, partnerships, individuals operating as sole traders, agricultural cooperatives, associations of undertakings, non-profit making organisations and (in some circumstances) public entities that offer goods or services on a given market. Companies in the same corporate group will generally be considered to constitute a single 'undertaking'.

⁴⁶ Section 237 EA02.

⁴⁷ Section 239 EA02.

⁴⁸ Section 240 EA02.

⁴⁹ Section 241(1) EA02.

⁵⁰ Section 241(3) EA02.

- the CAA is satisfied that the disclosure is proportionate to what is sought to be achieved by it⁵¹ or
- it is disclosed to an overseas public authority to facilitate the exercise of its functions.⁵²

4.12 Where an information gateway applies, before we disclose any information, in each case, we must have regard to three considerations set out in section 244 EA02. These are:

- the need to exclude from disclosure (so far as practicable) any information whose disclosure the CAA thinks is contrary to the public interest;
- the need to exclude from disclosure (so far as practicable):
 - commercial information whose disclosure the CAA thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - information relating to the private affairs of an individual whose disclosure the CAA thinks might significantly harm that individual's interests; and
- the extent to which disclosure of such commercial information or information about an individual's private affairs is necessary for the purpose for which the CAA is permitted to disclose it.

4.13 If we are considering disclosing the information to an overseas public authority to assist it in exercising certain of its functions, as well as having regard to the considerations in section 244 EA02, we must also take into account the factors set out in section 243(6) EA02.⁵³

⁵¹ Section 242 EA02.

⁵² Section 243 EA02. This information gateway does not apply to specified information we obtain in connection with our market study and market investigation reference functions under Part 4 EA02

⁵³ These factors are (i) whether the matter in respect of which the disclosure is sought is sufficiently serious to justify making the disclosure; (ii) whether the law of the overseas country to whose authority disclosure would be made provides appropriate protection against self-incrimination in criminal proceedings; (iii) whether the law of that overseas country provides appropriate protection for the storage and disclosure of personal data; and (iv) whether any mutual assistance arrangements apply in relation to the disclosure of

- 4.14 If we disclose information pursuant to an information gateway, restrictions on its use and further disclosure may apply to the person or body to whom we disclose it.⁵⁴
- 4.15 It is a criminal offence to disclose information in circumstances where such disclosure is not permitted under Part 9 EA02⁵⁵, or where the Secretary of State has given a direction that disclosure must not be made to an overseas authority⁵⁶, or where a person uses information disclosed to him for a purpose not permitted under Part 9 EA02.⁵⁷
- 4.16 More detailed guidance on the protection of information and disclosure under Part 9 EA02 is available in the CMA's 'Transparency and disclosure: Statement of the CMA's policy and approach': CMA6.⁵⁸

Enhanced information sharing with the CMA and other sectoral regulators

- 4.17 The Concurrence Regulations provide that the CMA and sectoral regulators with concurrent CA98 powers must put in place information sharing arrangements to enable disclosure of certain information to each other in respect of investigations under CA98 relevant to their regulated sectors in order to facilitate the exercise of their functions.⁵⁹ This requirement has been given effect by the CAA working with the CMA, including in the Memorandum of Understanding on concurrent competition powers dated 16 June 2014 between the CMA and CAA, and through the establishment by the CMA, the CAA and other sectoral regulators of the UK Competition Network.
- 4.18 We must have regard to the Part 9 EA02 provisions, referred to above, including the three statutory considerations set out in section 244 EA02 (see paragraph 4.12 above), prior to sharing information in this way and also if we propose to disclose any

information of the kind to which section 237 EA02 applies.

⁵⁴ Section 241(2), (2A), and (4) EA02, section 242(2) EA02, section 243(10) EA02.

⁵⁵ Section 245(1) EA02.

⁵⁶ Section 245(2) EA02.

⁵⁷ Section 245(3) EA02.

⁵⁸ The guidance is available from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270249/CMA6_Transparency_Statement.pdf

⁵⁹ Regulation 9(1)

information we have obtained under Part I of CA98 or under EA02 for the purposes of our sector specific functions.

- 4.19 More information on our approach to sharing information with the CMA in relation to our concurrent CA98 powers is available in the Memorandum of Understanding referred to above.⁶⁰

Disclosure of specified information required by an EU obligation

- 4.20 As stated in paragraph 4.11 above, we may disclose specified information to another person if disclosure is necessary for the purpose of an EU obligation.
- 4.21 As a designated NCA within the ECN, (see chapter 2 above) we are required to carry out our EU competition law functions in close co-operation with our European competition partners.⁶¹
- 4.22 In particular, we may exchange confidential information with the European Commission and NCAs of other Member States of the EU.⁶² Shared in this way, information may only be used to apply the EU competition prohibitions and in respect of the subject matter for which it was collected. However, if national competition law is applied to the same case and in parallel to EU competition law, and if it does not lead to a different outcome, the information may also be used in the application of our national competition law powers.⁶³
- 4.23 Council Regulation 1/2003 and the joint statement of the European Council and the Commission on the functioning of the ECN⁶⁴ set out the main principles on how the network functions. Details of the system are contained in the Commission Notice on cooperation within the Network of Competition Authorities.⁶⁵
- 4.24 Before sharing information under this obligation, we must take into

⁶⁰ The Memorandum of Understanding between the CAA and the CMA is available from: <https://www.gov.uk/government/publications/cma-and-cao-memorandum-of-understanding>

⁶¹ Article 11(1) Council Regulation 1/2003/EC of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Regulation 1/2003).

⁶² Article 12(1) of Regulation 1/2003.

⁶³ Article 12(2) of Regulation 1/2003.

⁶⁴ This notice is available from: http://ec.europa.eu/competition/ecn/joint_statement_en.pdf

⁶⁵ 2004/C 101/03

account the three statutory considerations set out in section 244 EA02 and referred to at paragraph 4.12 above.

Additional considerations

Relevant to competition prohibition investigations – privileged communications

- 4.25 Under CA98, we are not allowed to require the production or disclosure of privileged communications.⁶⁶
- 4.26 A privileged communication is a communication between a professional legal adviser and that adviser's client or a communication which is made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.⁶⁷

Relevant to market studies and market investigation references

- 4.27 In addition to Part 9 EA02, Schedule 9 of TA00 also applies to information we obtain in the context of our market study and market investigation reference functions relating to the supply of ATS. Where that information relates to the affairs of an individual or to a particular business, we are not permitted to disclose it during the lifetime of the individual or so long as the business is carried on.⁶⁸
- 4.28 We may only disclose the information if one or more of the information gateways in paragraphs 2, 3 and 5 of Schedule 9 applies. These information gateways are similar to those set out in Part 9 EA02. It is a criminal offence to disclose information where such disclosure would not be permitted under schedule 9.
- 4.29 As criminal sanctions apply both to disclosure of information in contravention of Part 9 EA02 and in contravention of schedule 9 TA00, in the event of a conflict between these provisions, we will adopt a cautious approach and will not disclose any information if to do so would not be permitted by either EA02 or TA00.

⁶⁶ Section 30(1) CA98

⁶⁷ Section 30(2) CA98

⁶⁸ Paragraph 1, Schedule 9 TA00

CMA CA98 Rules

- 4.30 We must also comply with the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014⁶⁹ (CA98 Rules).⁷⁰
- 4.31 The rules provide that where a person has given information to us and has identified it as information that we should treat as confidential, and we propose to disclose that information, we must take all reasonable steps to:
- inform that person of our proposed action; and
 - give that person a reasonable opportunity to make representations to us on our proposed action.⁷¹
- 4.32 The CA98 Rules define confidential information as:
- commercial information whose disclosure the CMA or a regulator thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - information relating to the private affairs of an individual whose disclosure the CMA or a regulator thinks might significantly harm the individual's interests; or
 - information whose disclosure the CMA or a regulator thinks is contrary to the public interest.
- 4.33 Under the CA98 Rules, we may request a person who has supplied information to us to identify in writing which of that information we should treat as confidential information or to provide written reasons why that person considers that we should treat that information as confidential information.⁷² In either case, we may seek further clarification from that person.⁷³
- 4.34 A person may raise concerns they have relating to an information request with us.

⁶⁹ SI (2014) No 458

⁷⁰ With the exception of rule 20. See rule 1(3).

⁷¹ Rule 7(1)

⁷² Rule 7(2)

⁷³ Rule 7(3)

- 4.35 The CAA will comply with the provisions of Part 9 of the EA02 when deciding whether information is confidential and/or whether it may be appropriate to disclose information for the purposes of facilitating the exercise of our functions under the CA98.

Data Protection Act 1998 principles

- 4.36 The Data Protection Act 1998 (DPA98) controls how personal information relating to individuals is used so that individuals are treated fairly. Where we process such data, we must comply with the data protection obligations set out in the DPA98.
- 4.37 Where we propose to share personal information about an individual with another organisation, the DPA98 requires that we inform the individual that their information may be shared, so the individual can choose whether to object.
- 4.38 A person may request a copy of any information that we hold about that person in whatever format. If that person is not satisfied with our response, they may complain to the Information Commissioner's Office (ICO).⁷⁴

Freedom of Information Act 2000

- 4.39 The Freedom of Information Act 2000 (FOIA00) gives people access to information held by public authorities.⁷⁵ Where we receive a valid request under FOIA00, we must respond within 20 working days.⁷⁶ We must (i) inform the applicant whether we hold any information which falls within the scope of their request and, if we do, (ii) provide that information, unless an exemption applies.
- 4.40 We are not required to disclose information where:

⁷⁴ Further information on contacting the Information Commissioner's Office is available from: <http://ico.org.uk/concerns>

⁷⁵ FOIA00 covers a range of information but does not include access to an individual's personal data, which falls under the DPA98.

⁷⁶ This period may be extended if we reasonably request further information or if we are considering the public interest test (section 1(3) and section 10(3) FOIA00).

- Disclosure would be prohibited by any enactment, including EA02 or TA00.⁷⁷ This is an absolute exemption, which means that there is no obligation under FOIA00 to release the requested information.
- Disclosure would, or would be likely to, prejudice the exercise by us of our statutory functions for the purpose of ascertaining whether any person has failed to comply with the law or for the purpose of ascertaining whether circumstances which would justify regulatory action exist or may arise. This is a qualified exemption and so is subject to a public interest test, which means that we are required to assess the balance of the public interest for and against disclosure.

4.41 Our website explains how to make a request for information under FOIA00.⁷⁸ Any person not satisfied with our refusal to provide the requested information may seek a review by the CAA of that refusal. There is a further right to complain to the ICO if that person is not satisfied with the outcome of the review.

CAA's approach to disclosure in case handling

- 4.42 As stated above, we must balance the often competing, considerations of transparency and openness on the one hand against the protection of confidential information on the other.
- 4.43 When providing submissions or supplying information to us, for example in response to an information request, parties should identify which of the information is confidential and give reasons why its disclosure would significantly harm their interests. We do not accept blanket or unsubstantiated confidentiality claims. We will carefully consider these explanations, having regard to the relevant legal considerations, before we decide whether to disclose the information concerned.
- 4.44 We may consider that the information concerned is not confidential or we may agree that it is confidential but we may consider that the need to disclose the information, for example for reasons of procedural fairness and due process, outweighs the interests of the party which

⁷⁷ Section 44(1)(a) FOIA00.

⁷⁸ Information on making requests for information to the CAA is available from: <http://www.caa.co.uk/application.aspx?catid=286&pagetype=65&appid=24>

requests that the information is kept confidential.

4.45 Where we decide that disclosure is permitted and would be appropriate, prior to making disclosure, typically we will notify the party claiming confidentiality or the party to whom the confidential information relates that we propose to disclose the information and will provide details of that information.⁷⁹

4.46 In certain circumstances, however, we may consider that giving prior notice would not be practicable or appropriate.⁸⁰ For example, we may decide not to give prior notice where one or more of the following applies:

- the giving of prior notice may hamper our, and/or the requesting authority's, investigation;
- the information is being passed to another UK public authority or investigating or prosecuting authority;
- the information is being passed to a UKCN member (or observer);
- the information is required urgently; in which case we will consider whether it would be appropriate to inform the relevant party after disclosure is made;
- advance notice would not be practicable due to the number of persons who would need to be notified, in which case we will consider whether it would be appropriate to publish a notice on our website announcing our intention to disclose information and inviting comments from interested parties.

4.47 Subject to the circumstances described above, in CA98 investigations, we will ensure that we comply with our Rule 7 duties to give notice and invite representations. See paragraph 4.31 above.

4.48 We will consider the manner of disclosure having regard to any appropriate protections. For example, we may disclose market share figures by providing ranges or we may redact or anonymise

⁷⁹ Particular procedures apply to disclosure of information provided by would-be leniency applicants. For details, please see CMA guidance entitled Applications for leniency and no-action cartel cases (OFT1495), in particular chapter 7.

⁸⁰ See R (on the application of Kent Pharmaceuticals Limited) v Director of the Serious Fraud Office [2004] EWCA Civ 1494, 11 November 2004.

confidential information. We may use confidentiality rings or data rooms if we are satisfied that the information should be disclosed but consider that the sensitive nature of the material requires additional safeguards to be applied. In the context of CA98 investigations, in certain circumstances, the CAA may consider giving access to file by methods other than supplying the file in electronic form on a DVD or by other suitable electronic means, for example, by using a confidentiality ring.

- 4.49 The CAA has discretion as to whether or not to use the procedures described above. A confidentiality ring ensures that the information is provided to specified persons subject to those persons undertaking to the CAA not to disclose the information further. A data room is a physically secure, continually monitored environment, in which a restricted number of persons, typically parties' external legal and/or economic advisers, may access confidential information. The defined group of persons allowed into a confidentiality ring or a data room will be determined on a case by case basis.
- 4.50 Access to documents in a confidentiality ring or data room will be subject to confidentiality undertakings provided by the persons with access which address, among other things, how they may use the information disclosed and the restrictions on onward disclosure. It will be a condition of access to the confidentiality ring or data room that information reviewed by advisers is not shared with their client(s). Before access to a data room is granted, advisers are required to give undertakings to the CAA regarding their conduct in the data room, in particular how they handle the information. We expect that data rooms will not be used often in the context of our competition investigations.
- 4.51 If a party is not satisfied with a proposed disclosure decision, it may request a review of that decision to the CAA.
- 4.52 A person may raise any concerns they have relating to a proposed disclosure decision to the SRO in the first instance.

CAA access to and storing of confidential information

- 4.53 We acknowledge the importance parties attach to their confidential information. With that in mind, and to ensure compliance with the legal provisions set out above, we have developed internal processes

to ensure that we handle confidential information with care.

- 4.54 Confidential material received from parties is accessed only by staff allocated to the case to which the information relates and is only shared more widely, where to do so would, in the CAA's view, be appropriate in the circumstances. We store electronic copies of confidential material on a secure CAA database. We also operate a clear desk policy so that printed confidential material is locked away at the end of each working day.

CHAPTER 5

Competition prohibitions

Competition law infringements

We have concurrent powers with the CMA to enforce the UK competition prohibitions in CA98, and the equivalent EU competition prohibitions in Articles 101 and 102 of TFEU, in cases related to AOS and ATS:

- Chapter I of CA98 and Article 101⁸¹ of TFEU prohibit agreements between undertakings, decisions by associations of undertakings and concerted practices that have the object or effect of preventing, restricting or distorting competition to an appreciable extent.
- Chapter II of CA98 and Article 102⁸² of TFEU prohibit conduct⁸³ which amounts to an abuse of a dominant position in a market.

The possible outcomes during and following an investigation, include that we may:

- close a case using our prioritisation framework, in order to make the best use of resources;
- make a no grounds for action decision under the Chapter I and/or Chapter II prohibitions;
- make a no case to answer decision under Article 101 or Article 102 of TFEU;
- give directions to bring an infringement (which has been proven) to an end;

⁸¹ Articles 101 and 102 apply when there is appreciable effect on trade between member states.

⁸² Articles 101 and 102 apply when there is appreciable effect on trade between member states.

⁸³ conduct by one or more undertakings

- give interim measures directions during an investigation;
- accept binding commitments offered to us;
- consider settlements offered to us;
- impose financial penalties on undertakings for infringing Article 101, Article 102, the Chapter I and/or Chapter II prohibitions; and
- apply for directors' disqualification orders (i.e. to disqualify a director of a business that has infringed any of these prohibitions from holding a UK directorship for a period).

Decisions that we or the CMA make as to whether penalties should be imposed may be appealed. Appeals to the CAT of infringement and non-infringements decisions are full appeals on the merits of the decision.

Introduction

5.1 This chapter discusses our powers to investigate potential infringements of the competition prohibitions. It covers:

- what is a competition infringement;
- when would we investigate a competition infringement;
- general applicability to providers of AOS and ATS;
- managing an investigation;
- powers of investigation;
- what happens during and following an investigation;
- appeals against decisions;
- private actions in the courts; and
- where to find further information.

What is a competition infringement

5.2 We have concurrent powers with the CMA to apply and enforce the

UK competition prohibitions in Chapter I⁸⁴ and Chapter II⁸⁵ of CA98, and the equivalent EU prohibitions in Article 101 and Article 102 of TFEU⁸⁶ in relation to the provision of ATS and the supply of AOS.⁸⁷

Article 101 and the Chapter I prohibition: anti competitive agreements

- 5.3 Article 101 of TFEU and the Chapter I prohibition in CA98 both prohibit agreements between undertakings⁸⁸, decisions by associations of undertakings and concerted practices that have the object or effect of preventing, restricting or distorting competition. Article 101 applies to agreements that may appreciably affect trade between Member States of the EU. The Chapter I prohibition applies to agreements implemented or intended to be implemented in the whole or part of the United Kingdom, which may affect trade within the United Kingdom.
- 5.4 These prohibitions apply to agreements which:
- directly or indirectly fix purchase or selling prices or any other trading conditions;
 - limit or control production, markets, technical development or investment;
 - share markets or sources of supply;

⁸⁴ Section 2(1) of CA98.

⁸⁵ Section 18(1) of CA98.

⁸⁶ Sections 62 and 63 of CAA12 give the CAA concurrent powers with the CMA to investigate anti-competitive behaviour for airport operation services under CA98.

Sections 86 and 88 of Transport Act 2000 give the CAA concurrent powers with the CMA to investigate anti-competitive behaviour for air traffic services under CA98.

⁸⁷ Chapter 2 explains the definition of air traffic services (ATS) and airport operation services (AOS).

⁸⁸ The term 'undertaking' refers to any autonomous economic entity engaged in economic activity, regardless of its legal status and the way in which it is financed. It includes companies, firms, businesses, partnerships, individuals operating as sole traders, agricultural cooperatives, associations of undertakings, non-profit making organisations and (in some circumstances) public entities that offer goods or services on a given market. Companies in the same corporate group will generally be considered to constitute a single 'undertaking'.

- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and/or
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

5.5 This list is non-exhaustive and only illustrative. The CAA may apply the Chapter I prohibition and Article 101 prohibition to other types of agreements⁸⁹ to determine whether they fall foul of these prohibitions.

5.6 Further information on the nature of the prohibitions on anti-competitive agreements is available in the CMA competition guideline entitled Agreements and Concerted Practices: understanding competition law (OFT401).⁹⁰

Legal exemption regime

5.7 In certain circumstances, an agreement may be exempt from the Article 101 prohibition or the Chapter I prohibition. It is for parties and their advisers to satisfy themselves that the agreement or practice in question benefits from the exemption. Neither we nor the CMA will give pre-approval to a particular agreement or practice.

5.8 Agreements that fall within the prohibition but which satisfy the conditions set out in Article 101(3) of TFEU and/or sections 9(1) or 10 of CA98 are exempt. Such agreements are valid and enforceable from the moment that the conditions are satisfied, and for as long as that remains the case.

5.9 There are four conditions, all of which must be met for an agreement to have the benefit of the exemption:

- the agreement contributes to improving production or distribution or promoting technical or economic progress.⁹¹;

⁸⁹ In this chapter, we use the term 'agreement' to mean an agreement, a decision of an association of undertakings, or a concerted practice.

⁹⁰ This guidance is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

⁹¹ In Article 101(3), this criterion includes the phrase... "the production or distribution of

- the agreement allows consumers a fair share of the resulting benefit.
- the agreement does not impose on the businesses concerned restrictions which are not indispensable to the attainment of these objectives; and
- the agreement does not afford the businesses the possibility of eliminating competition in respect of a substantial part of the products in question.

5.10 The European Commission has issued a Notice entitled *Guidelines on the Application of Article 101(3) of the Treaty*⁹² to assist companies and their advisers in determining whether an agreement satisfies the exemption conditions.

5.11 As stated above, it is for parties and their advisers to determine whether the agreement or arrangement in question satisfies the exemption conditions. The CAA is not required to carry out an assessment of whether these conditions are satisfied before deciding to commence an investigation into a potential breach. Notwithstanding this, if a party argues that its agreement is exempt, we will have regard to the European Commission's Notice in considering whether an exemption applies.

5.12 The European Commission may also adopt block exemption regulations so that particular categories of agreement which it considers satisfy the conditions in Article 101(3) are not prohibited under Article 101.⁹³ Where an agreement is covered by an EU block exemption regulation⁹⁴ the parties to the agreement are relieved of the

goods....", but is typically applied by analogy to the production or distribution of services.

⁹² OJ C101. 27.04.2004, p97.

⁹³ The European Commission may only issue an EU block exemption regulation where it has been empowered to do so by an EU Council Regulation. For instance Council Regulation (EEC) 19/65 (JO, 06.03.1965, p533, Spec. ed. (1965-1966) p35)) (as amended, most recently, by Council Regulation (EC) 1215/1999 and the Modernisation Regulation) allows the European Commission to adopt EC block exemption regulations in respect of vertical agreements and industrial property rights.

⁹⁴ Relevant EU block exemption regulations in force that may be applicable in the aviation sector include: Commission Regulation (EC) No 2658/2000 on the application of Article 101(3) of the Treaty to categories of Specialisation agreements (OJ, L304, 5.12.2000, p3); Commission Regulation (EC) No 2659/2000 on the application of Article 101(3) of the

burden of showing that their agreement satisfies the conditions in Article 101(3). They do, however, have to prove that the agreement falls within the block exemption. The agreement will also then be exempt from the Chapter I prohibition.

- 5.13 The European Commission may withdraw the benefit of any EU block exemption regulation if it finds that in a particular case the agreement in question has effects that are incompatible with the exemption conditions. Similarly, the CMA or a sectoral regulator (including the CAA) may cancel a block exemption⁹⁵ or vary the conditions for a parallel exemption under section 10 of CA98 in a particular case.⁹⁶

Article 102 and the Chapter II prohibition: abuse of dominant position

- 5.14 Article 102 of TFEU and the Chapter II prohibition in CA98 both prohibit conduct by one or more undertakings which amounts to an abuse of a dominant position in a market. Article 102 applies to conduct within the EU or in a substantial part of it in so far as it may affect trade between Member States of the EU. The Chapter II prohibition applies if the dominant position is held within the whole or part of the United Kingdom and the conduct in question may affect trade within the whole or part of the United Kingdom.
- 5.15 These prohibitions provide that conduct may constitute an abuse if a dominant business:
- directly or indirectly imposes unfair purchase or selling prices or other unfair trading conditions;
 - limits production, markets or technical development to the prejudice of consumers;

Treaty to categories of research and development agreements (OJ L304, 5.12.2000, p7); Commission Regulation (EC) No 2790/1999 on the application of Article 101(3) of the Treaty to categories of vertical agreements and concerted practices (OJ L336, 29.12.1999, p21); Commission Regulation 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements (OJ L 93, 28.3.2014, p17-23).

⁹⁵ Article 29(2) of the Modernisation Regulation.

⁹⁶ Section 10(5) of CA98.

- applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- makes the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Exclusions

5.16 Certain types of conduct are excluded from the application of the prohibition. These include:

- conduct which would result in a concentration with a Community dimension and thereby be subject to the EU Merger Regulation;⁹⁷ and
- conduct which is carried out by an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue producing monopoly, insofar as the application of Article 102 would obstruct the performance, in law or fact, of the particular tasks assigned to the undertaking.

Exemptions

5.17 There is no legal exception regime, block nor parallel exemptions from Article 102 or the Chapter II prohibition but it is a defence for the dominant company to show that its conduct was objectively justified by, and proportionate to, the achievement of legitimate commercial objectives.

Exclusions to Chapter I and Chapter II

5.18 In addition to the exclusions noted, CA98 sets out a number of specific exclusions from the prohibitions for certain categories of conduct⁹⁸.

⁹⁷ Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings. (OJ L24, 29.1.04, p. 1–22).

⁹⁸ A domestic exclusion does not, however, exclude conduct from applicable EU law. Any conduct affecting trade between Member States of the EU that is excluded under CA98 remains subject to Article 102, unless there is an equivalent exclusion at EU level. Accordingly should conduct infringe Article 102, all the consequences of infringement

- section 40 of CA98 provides for immunity from penalty under the Chapter II prohibition (but not Article 102 of TFEU) for conduct of minor significance if the perpetrator's turnover is less than £50 million per annum;
- to the extent the conduct is engaged in order to comply with a legal requirement;
- conduct which is necessary to avoid conflict with international obligations and is the subject of an order by the Secretary of State; and
- conduct which is necessary for compelling reasons of public policy and is the subject of an order by the Secretary of State.

5.19 The Secretary of State has the power to add, amend or remove the exclusions from the Chapter II prohibition in certain circumstances.

How the prohibitions are applied

5.20 Where the Chapter I or Chapter II prohibitions are applied and there is an actual or potential effect on trade between Member States of the EU, we are required to apply Article 101 and/or 102 of TFEU in accordance with Article 3 of Regulation 1/2003⁹⁹. Depending on the particular facts of the case, we will decide whether to apply the Chapter I or Chapter II prohibitions in parallel with the application of Articles 101 or 102.¹⁰⁰

5.21 We will consider each case individually in conjunction with the principles developed through EU case law and will have regard to the notice issued by the European Commission 'Guidance on the effect on trade concept contained in Articles 101 and 102 of the EC Treaty' (2004/C/101/07).

described at paragraphs [2.12 and 2.13 below] will follow, irrespective of any domestic exclusion.

⁹⁹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0001&from=EN>

¹⁰⁰ In cases where an undertaking has committed an infringement of both EU competition law (Article 101 or Article 102 of the Treaty on the Functioning of the European Union) and national competition law (Chapter I or Chapter II of the CA98), the undertaking will not be penalised twice for the same anti-competitive conduct (paragraph 4.13 of 'Competition law modernisation').

- 5.22 When we apply Articles 101 and 102 of TFEU, we are bound by the fundamental principle of the primacy of EU law. This means that we must follow the case law of the European Court interpreting EU legislation, and we must have regard to any existing relevant decision or statement of the European Commission. Consequently, an agreement or conduct which is prohibited by Article 101 or Article 102 cannot be permitted under domestic law.
- 5.23 In addition, section 60 of CA98 sets out that in handling questions arising in relation to the application of the Chapter I and Chapter II prohibitions, we must act consistently with relevant judgements of the EU Court of Justice (including its lower court, the 'General Court') and must have regard to European Commission decisions, Notices and other enactments. For further information, see the CMA competition law guidance on modernisation (OFT442).¹⁰¹
- 5.24 Our jurisdiction extends to all activities connected with ATS and AOS in the UK. In this context, we may:
- consider complaints about possible infringements of any of Article 101, Article 102, the Chapter I prohibition and the Chapter II prohibition;
 - impose interim measures pending the outcome of an investigation to prevent any significant damage occurring or to protect the public interest;
 - carry out investigations, both on our own initiative and in response to complaints, including requiring the production of documents and the provision of information, and searching premises - for further details see CMA Guidance on 'Powers of Investigation of anti-competitive behaviour' (OFT404)¹⁰²;
 - accept commitments that are binding on an undertaking;

¹⁰¹ See the CMA guidance on 'Competition law modernisation' (OFT442), which is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁰² This is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

- agree to settle a case under Chapter I or Chapter II (or Articles 101 or 102) whereby a business under investigation may admit to an infringement and accept a streamlined administrative procedure for the remainder of the investigation in return for us imposing a reduced penalty¹⁰³;
- impose financial penalties on undertakings found to have infringed any of the prohibitions, having regard to the statutory guidance on penalties issued by the CMA¹⁰⁴;
- give and enforce directions to bring an infringement to an end¹⁰⁵;
- offer information on how Article 101 and Article 102 and the Chapter I and Chapter II prohibitions apply to the provision of ATS and AOS;
- publish written guidance in the form of an opinion where a case raises novel or unresolved questions about the application of Article 101, Article 102, the Chapter I and/or the Chapter II prohibition in the UK, and where we consider there is an interest in issuing clarification for the benefit of a wider audience; and
- submit objections in private legal proceedings before the court, as a designated NCA under the EU Modernisation Regulation 1/2003.

5.25 Moreover, when enforcing the competition prohibitions, we must:

¹⁰³ In the past, settlement has sometimes been referred to as 'early resolution'. We now use the term 'settlements'. This term is also used by other competition authorities such as the European Commission. See Rule 9 of the CMA CA98 Rules. See also paragraph 2.1 and 2.26 of the CMA's Guidance as to the appropriate amount of a penalty (OFT423), which provides that the CMA will reduce penalties where a business settles. The guidance is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁰⁴ The CMA guidance 'Appropriate CA98 penalty calculation' (OFT423) is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁰⁵ The CMA Guidance on 'Competition law application and enforcement' (OFT407) is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

- liaise with other EU and UK competition authorities as appropriate on cases including sharing information with the CMA, the other sector regulators and the European Commission in respect of the application of Articles 101 and 102 of TFEU and the Chapter I and Chapter II prohibitions, where appropriate^{106 107};
- issue a statement of objections (SO) to each party we consider has infringed any of the competition prohibitions where we propose to make an infringement decision;
- inform the SO addressee(s) of the period within which they may make written representations to us on confidentiality of their information in the SO and on the matters referred to in the SO;
- give the SO addressee a reasonable opportunity to inspect documents¹⁰⁸ in our file which relate to the matters referred to in the SO¹⁰⁹; and
- offer the SO addressee an opportunity to attend an oral hearing to make oral representations to us on any matter referred to in the SO.

5.26 As well as this, we have to follow the CMA's specific guidance on penalties, commitments and settlements¹¹⁰ and procedural rules, which are set out in the CA98 Rules.¹¹¹ In issuing such guidance and

¹⁰⁶ See the CMA guidance on 'Concurrent application of competition law to regulated industries (CMA10) is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁰⁷ Sector regulators oversee activities, business and services in specific sectors. They are responsible for setting out the rules and regulations that the organisations within their jurisdiction must comply with, and also for monitoring activity within their given sector to ensure that the rules continue to be applied.

¹⁰⁸ The obligation does not extend to confidential information or to internal CAA documents.

¹⁰⁹ For further information on access to file, see the CMA's guidance 'Guidance on the CMA's investigation procedures in Competition Act 1998 cases' (CMA8), is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹¹⁰ In particular, 'Guidance on the CMA's investigation procedures in Competition Act 1998 cases' (CMA8) and 'Appropriate CA98 penalty calculation' (OFT423). These guidance documents are available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹¹¹ The CA98 rules are rules about how we and the CMA conduct investigations of infringements of the competition prohibitions. They are available from:

rules, the CMA is required to consult publicly with stakeholders as well as with the sectoral regulators.

- 5.27 Subject to observing the procedural requirements in the CA98 Rules, the CAA may conduct competition law investigations in accordance with its own procedures.
- 5.28 The CMA maintains a register of decisions in investigations under CA98. Further information on how the CMA has applied and enforced competition law in particular cases may be found in the CMA's decisions.¹¹²
- 5.29 We must provide the Secretary of State and/or CMA, as appropriate, information, advice or assistance in relation to an investigation concerning ATS or AOS if we receive a request from the Secretary of State or the CMA to that effect or if we believe that it would be appropriate to do and, in either case, it would be practicable for us to do so.

Short-form Opinions

- 5.30 The Short-form Opinion (SfO) process is designed to provide guidance, within a prompt timetable, to businesses and their advisers on the application of competition law to prospective agreements between competitors raising novel or unresolved questions, the clarification of which would benefit a wider audience.¹¹³ This process covers not only prospective horizontal agreements between competitors but also prospective vertical agreements between parties operating at different levels of the supply chain for the purposes of the

<http://www.legislation.gov.uk/ukxi/2014/458/contents/made>

¹¹² These decisions are available from the CMA's website:

<https://www.gov.uk/government/publications/ca98-public-register>

¹¹³ On 1 May 2004, EC Regulation 1/2003 (the Modernisation Regulation) came into force requiring national competition authorities and national courts of the European Union Member States to apply Article 101 and Article 102 of the Treaty on the Functioning of the European Union (TFEU) when national competition law is applied to agreements, decisions by associations of undertakings or concerted practices which may affect trade between Member States or to abuse prohibited by Article 102. Furthermore, as a result of the Modernisation Regulation and consequent changes to the Act, businesses now self-assess whether an agreement or any behaviour is compatible with Article 101 and Article 102 of the TFEU and Chapter I and Chapter II of the Competition Act 1998 rather than notify the agreement or behaviour for clearance or exemption by the relevant competition authority.

agreement.

- 5.31 The SfO process is only available for a limited number of cases per year in order to maintain the principle that businesses should self-assess the compliance of their agreements with competition law, rather than notify them for clearance or exemption by competition authorities.
- 5.32 When determining whether to issue a SfO, we will have regard to our prioritisation principles¹¹⁴, as well as the criteria detailed in the relevant CMA guidance.¹¹⁵

When we would investigate a competition infringement

- 5.33 The CAA will liaise with the CMA to determine which authority is better placed to proceed in a given case. Details of the concurrency regime are provided in chapter 2 above.
- 5.34 The CAA has discretion whether to open an investigation. Before doing so, in each case, we will apply our prioritisation principles¹¹⁶ and the Regulatory Enforcement Policy (REP)¹¹⁷ to determine whether we consider there is merit in taking the case forward.
- 5.35 We may commence an investigation into a suspected breach of Article 101, Article 102, the Chapter I and/or Chapter II prohibitions in the following situations:

114 CAP 1233 'Prioritisation Principles for the CAA's Consumer Protection, Competition Law and Economic Regulation Work' is available on our website <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523> and <http://www.caa.co.uk/default.aspx?catid=2516&pagetype=90>

115 'CMA's approach to short-form opinions' CMA27, which is available from: <https://www.gov.uk/government/publications/guidance-on-the-cmas-approach-to-short-form-opinions>

116 The CAA's prioritisation framework for consumer protection, competition and economic regulation issues', is available on our website <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523> and <http://www.caa.co.uk/default.aspx?catid=2516&pagetype=90>

117 The CAA's Regulatory Enforcement Policy (REP) is available from: <http://www.caa.co.uk/default.aspx?catid=2516>

- following a formal complaint made by a customer, competitor or other third party (for example, a whistleblower) (see chapter 2)¹¹⁸;
- following a super-complaint (see chapter 7);
- as a result of a business telling us about an issue under our leniency policy (see next section);
- on a referral or transfer of a case from another regulatory authority within the UKCN or in conjunction with the CMA under our concurrent powers; or
- on our own-initiative as the result of our own intelligence gathering or market monitoring (i.e. outside the context of a market study or regulatory work), or of concerns identified in a sector review (chapter 6), a market study (chapter 6), or regulatory work either during the development of the regulation for the next regulatory period or from monitoring of a licensed provider of AOS or ATS.

5.36 In order to open an investigation, either as a result of a complaint, information from a leniency applicant, or on our own initiative, we must have reasonable grounds for suspecting that a breach has occurred.¹¹⁹ That is not the same as a formal decision that the prohibition has been infringed.

5.37 This assessment of whether there are reasonable grounds for suspicion involves factual, economic and legal analysis and will depend upon our assessment of the information available. Examples of information that may be taken into account in making such assessment include information provided by disaffected members of a cartel, statements from employees or ex-employees, or a complaint or it may derive from other workstreams carried out by the CAA under our sector review, market study or regulatory functions. Where permitted by law, we may also have recourse to information exchanged with members of the UKCN or the ECN.

5.38 In some cases, we may need to supplement the information available by gathering information informally prior to deciding whether to open an investigation.

¹¹⁸ The CAA encourages business representatives who suspect that their business has been involved in cartel activity to blow the whistle on the cartel.

¹¹⁹ Section 25 of CA98.

5.39 The table below sets out the information it would be helpful to have in order to assess a complaint under the competition prohibitions. While the information requested in the table is not prescriptive, the more information we have, the easier it is to consider the complaint. Also, as noted in chapter 3, we are always prepared to discuss emerging issues. We will not give a view on the merits of a complaint, but may be able to refer you to previous policy decisions or investigations that have dealt with similar issues, and can discuss the information it would be helpful to have.

Figure 5.1: Information relevant to a complaint under the competition prohibitions

| Information | Detail |
|--|---|
| Complainants details | <p>Complainant</p> <ul style="list-style-type: none"> - Name, legal form – for example, sole trader, partnership, private or public company, part of a corporate group. - Contact details of the complainant and a person authorised to discuss the detail of the complaint. - Please state whether you would like your own or your organisations' identity kept confidential. |
| Details on who the complaint is about | <p>Supplier of Airport Operation Services/ Supplier of Air Traffic Services against which the complaint is directed.</p> <ul style="list-style-type: none"> - Name, legal form – for example private or public company, part of a corporate group. - Contact details - address, phone/fax number, and/or email address of the supplier whose behaviour is alleged to be anti-competitive. |
| Description of the material effect | <ul style="list-style-type: none"> - Explanation of why the complainant is (or is likely to be) materially affected by the alleged anti-competitive behaviour by the supplier of airport operation services/supplier of air traffic services. - Include a description of the relationship between the complainant and the supplier and an explanation of how the complainant has been (or is likely to be) affected by the behaviour. |
| Reasons for the complaint | <p>Description of the behaviour considered to be anti- competitive</p> <ul style="list-style-type: none"> - Description of the business operated by the supplier of airport operation services/supplier of air traffic services and an indication of its geographic scale – for example, local, national, or international). - Summary of events with relevant dates, including details of any |

| | |
|--|---|
| | relevant contact between the complainant and the supplier – for example, meetings, phone calls, emails. |
| Complainant's view of the market(s) affected by the behaviour | <ul style="list-style-type: none"> - Description of the how the conduct relates to an airport operation service as defined in section 68 of CAA12, or the supply of air traffic services as defined in section 98 of TA00. - Market position of the supplier – for example, approximate turnover and/or market share. - If the complaint concerns abuse of a dominant position, an explanation of why the complainant believes that the supplier is in a dominant position. - How competition is (or is likely to be) affected by the alleged anti-competitive behaviour. |
| - For airport operation services | - Explanation of how consumers, and in particular passengers carried on air transport services or persons with a right in property carried by the service are (or are likely to be) adversely affected by the alleged anti-competitive behaviour. |
| - For suppliers of air traffic services | - Explanation of how the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them are (or are likely to be) adversely affected by the alleged anti-competitive behaviour. |
| Action sought | <ul style="list-style-type: none"> - Any action which the complainant wishes the CAA to take. - Explanation of whether (and if so, why) the complaint is urgent. |
| Factual evidence supporting the complaint | <ul style="list-style-type: none"> - All available evidence supporting the complaint – that is, information which the complainant already possesses, or which is readily accessible to it. - Copies of relevant documentation (for example, contracts, notes of phone conversations, emails, minutes of meetings, board papers), relevant industry reports/consumer surveys, and details of any person who can testify to the facts in the complaint. |
| Litigation | <ul style="list-style-type: none"> - Information about whether the same (or similar) subject-matter as that of the complaint is or has been the subject of litigation (in the UK or anywhere else). - If so, details of the litigation (for example, which court(s), stage of the proceedings) and any resulting order/judgment. |
| Other competition investigations | - Information about whether the same (or similar) complaint has been made to the CAA or another competition authority (for example, the DG Competition of the European Commission or another national |

| | |
|-------------------------------|---|
| | <p>competition authority in the European Union).</p> <p>- If so, details of the complaint and/or investigation (for example, the investigating authority and the stage of the proceedings) and any resulting decision and/or judicial proceedings and judgments.</p> |
| Other means of redress | <p>Whether the Complainant has considered other means of redress available to it:</p> <p>- (for suppliers of airport operation services) the ACRs; the AGRs; modification of licence conditions issued by the CAA under CAA12; or arbitration; or</p> <p>- (for suppliers of air traffic services) modification of licence conditions issued by the CAA under TA00; or arbitration.</p> |

Cartels and leniency

- 5.40 A cartel is a particular form of agreement between businesses that has the objective of seriously restricting competition. Cartels may illegally agree on price fixing, bid rigging, output quotas or restrictions, and/or market sharing or division. In some cartels, more than one of these elements may be present. Typically, they are agreements between competitors, although resale price maintenance (a supplier agreeing with its business customer as to the price at which that customer will resell goods or services) also may be a cartel. The cartel agreement can often be oral.
- 5.41 A business which is or has been involved in a cartel may wish to take advantage of the benefits of the leniency programme (as set out in CMA guidance¹²⁰), prompting them to approach the CAA with information about its operation.
- 5.42 By cooperating with the CAA, a business could qualify for total immunity from, or a significant reduction in, any financial penalties and other sanctions that the CAA can impose if we decide that there is a breach of the Chapter I prohibition and/or Article 101 of TFEU.¹²¹

¹²⁰ The CMA's guidance on 'Leniency and no-action applications in cartel cases' (OFT1495) is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹²¹ More information on how the CMA sets penalties is available in 'Competition 1a application and enforcement' (OFT407) and OFT's guidance 'Appropriate CA98 penalty calculation' (OFT423). These are available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

- 5.43 To benefit from immunity or reductions in penalty, a business must meet the following conditions:
- **Admission** – Leniency is given in exchange for admissions of participation in cartel conduct, including an acceptance that such conduct amounted to an infringement of the civil competition laws and, if relevant, the criminal cartel offence. There are different protections available for individuals from criminal offences and for businesses from civil penalties;
 - **Information** – The applicant must provide us with all non-legally privileged information, documents and evidence available to it regarding the cartel activity;
 - **Cooperation** – The applicant must maintain continuous and complete cooperation throughout the investigation and any subsequent proceedings is at the heart of the leniency process; and
 - **Termination** – The applicant must refrain from further participation in the cartel activity from the time of disclosure to the CAA of the cartel activity (unless the CAA directs otherwise, which we will do only rarely).
- 5.44 However, if the applicant has taken steps to coerce another business to take part in the cartel activity, it will be eligible only for a reduction in fine of up to 50 per cent, even if it is the first to report (although non-coercing employees will still be eligible for criminal immunity).
- 5.45 We will handle leniency applications in strict confidence. Applications for lenient treatment under our leniency programme should be made to the Group Director responsible for competition law powers in the first instance. Details on how to contact us are available on our website.¹²²

General application of the competition prohibitions to providers of AOS and ATS

- 5.46 There have been a number of cases relating to the application of competition law in relation to AOS and ATS. These have arisen as

¹²² Details on how to contact us are available from:
<http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523>

airport operators and ATS providers (in many EU countries) are often public bodies or private bodies given exclusive rights and obligations by the State. The main issues dealt with relate to:

- whether service providers should be considered as 'undertakings' for the purposes of competition law; and
- whether airports are providing a service of general economic interest and, as such, whether the operation of competition law should be constrained.

Are providers of AOS and ATS undertakings

- 5.47 As stated above, the UK and EU competition prohibitions only apply to 'undertakings'. This term is not defined in CA98 or TFEU, but its meaning has been considered in EU and UK case law.
- 5.48 Under that case law, the definition of 'undertaking' means, broadly, any autonomous economic entity engaged in economic activity regardless of its legal form or the way in which it is financed.¹²³
- 5.49 The focus of the assessment of whether a body is an undertaking is on the nature of the particular activity it is performing, and not the nature of the body. It is possible, therefore, that the same legal entity may be acting as an undertaking and, therefore, be subject to competition law, when it carries on one activity but not when it is carrying out another activity.
- 5.50 The competition prohibitions may therefore apply to public sector bodies and not-for-profit bodies, as well as to private sector bodies, public authorities, state-controlled enterprises, charities, etc.. These may all fall within the meaning of an undertaking, to the extent they are carrying out an economic activity.
- 5.51 Specifically, in relation to the airport sector, EU competition law recognises that a company can be considered both an undertaking and not an undertaking depending on the particular function it is carrying on (e.g. *Aéroports de Paris v ECP* 2000 ECR II-3929¹²⁴). As

¹²³ Case C-41/90 *Hofner & Elser v Macrotron GmbH* [1991] ECR I-1979 and Case t-319/99 *FENIN v Commission* [2003] ECR II-357, upheld on appeal to the Court of Justice Case C-205/03 P *FENIN v Commission* [2006] 5 CMLR 559.

¹²⁴ This case was an appeal by *Aéroports de Paris* against a decision by the European

a result, each activity carried on by a public body must be considered separately to assess whether or not it is 'economic'.

- 5.52 In relation to more obviously commercial airport services, this question does not arise. The European Commission has at times expressly made the point that airport operators are, according to the definition of the European Court, undertakings within the meaning of Article 102, for example where they provide airlines with access to civil airport facilities in return for a fee: see *Finnish Airports* (1999/198/EC) (at paragraph 23).
- 5.53 Overall, it is likely to be the case that, for both airport operators and air traffic service providers, there may be some aspects of their functions that will bring them within the definition of an 'undertaking' for the purposes of the application of the competition prohibitions and others which may not.
- 5.54 Activities that are most likely not to bring the entity within the definition of an 'undertaking' are those which relate to fundamental safety and security and any which, by their nature, are typically or necessarily those of a public authority.
- 5.55 Meanwhile, those activities which are provided on a commercial basis by a provider with an economic purpose are more likely to be considered undertakings. Moreover, it is also of relevance that it is the clear intention of Parliament, in granting the CAA concurrent competition powers, that the supply of both AOS and ATS should be subject to competition law to some extent.
- 5.56 In applying the competition prohibitions to the AOS and ATS, the CAA will consider the question of whether the entity is an undertaking in each case having regard to the particular facts.
- 5.57 Further information on the definition of an undertaking is available in

Commission that the airport had contravened Article 82 of the EC Treaty (now Article 102 of TFEU). One of the grounds of the appeal was that the Commission had wrongly decided that the airport company was an undertaking. The judgement said that on deciding whether Aéroports de Paris was an undertaking a distinction had to be made between "purely administrative activities, in particular supervisory activities" and "the management and operation of the Paris airports, which are remunerated by commercial fees." (Paragraph 112).

the CMA guidance on public bodies and competition law.¹²⁵

Services of general economic interest or 'revenue producing monopolies'

5.58 Article 106(2) of TFEU provides that:

"Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them."

5.59 In other words, such undertakings are not subject to the competition rules in so far as the application of those rules would obstruct the performance of the tasks assigned to them.

5.60 Under CA98¹²⁶, there is a similar exclusion from the UK competition prohibitions which is closely modelled on Article 106(2) above.

5.61 The CAA is required to follow the EU's case law in this respect.¹²⁷ Undertakings seeking to benefit from the exclusion will have to demonstrate that all the requirements of the exclusion are met. In considering whether the exclusion applies, we will, in particular, need to be satisfied that the undertaking has been 'entrusted' with the operation of a service of general economic interest and that the application of the prohibitions would obstruct the performance, in law or in fact, of the particular task entrusted to it.

Managing an investigation

5.62 This section sets out the key elements on how we will manage an investigation into a suspected competition prohibition breach.

Publish notice of the investigation

5.63 Once a formal investigation is opened (and parties have been informed), we will normally publish a notice of investigation stating our

¹²⁵ This guidance 'Public bodies and competition law' (OFT1389) is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹²⁶ Paragraph of schedule 3 of CA98.

¹²⁷ Section 60 of CA98.

decision to conduct a formal investigation. This would indicate which of the competition prohibitions are suspected to have been infringed, summarise the case under investigation (i.e. the nature of the suspected infringement), and, on a case by case basis may identify any business whose activities are being investigated and any market affected.

- 5.64 The decision about whether we publish such a notice and the content of any notice will be specific to the circumstances of each case, and will take into account requests by the complainant(s), if there are any, for their details and/or the complaint to be kept confidential.

Keeping the business under investigation informed

- 5.65 Once the decision has been taken to open a formal investigation, we will send the businesses under investigation a case initiation letter setting out brief details of the conduct that we are looking into, the relevant legislation, the case-specific timetable, and key contact details for the case such as the Project Leader and the SRO.

Information gathering

- 5.66 Once a formal investigation has been opened, we have a range of information gathering powers under our competition enforcement functions. Sections 26-28A of CA98 provide us with various powers to investigate suspected anti-competitive behaviour, subject to procedural protections against self-incrimination and legal advice. Generally, we can:

- require any person to produce documents or information in a specified format that is related to the relevant matter of the investigation;
- compel individuals connected to a business under investigation to attend interviews and answer questions about documents; and
- make unannounced visits to search business and residential premises and seize documents and evidence that are not subject to legal privilege.

- 5.67 There are penalties for non-compliance with our information requests and it is a criminal offence to obstruct the information gathering process.

- 5.68 These powers are set out in detail in the CMA's guidance 'Powers of

Investigation of anti-competitive behaviour' (OFT404) and in 'Guidance on the CMA's investigation procedures in Competition Act 1998 cases' (CMA8).¹²⁸

- 5.69 When requesting information under CA98 and under the EU competition prohibitions, we will specify the suspected infringement that we are investigating. In the first instance, we are likely to seek information from the business we are investigating and from the complainant, if a complaint has been made. But we may also seek information from third parties as appropriate. Such third parties may include competitors, customers and suppliers of the undertaking(s) under investigation.
- 5.70 We may also have recourse to information that has been obtained using our general regulatory powers under CAA12, TA00, or under our consumer protection powers in Part 4 of EA02 and use that information to facilitate an investigation of a matter under CA98.¹²⁹
- 5.71 As a designated NCA within the ECN, we will receive information from the European Commission, and NCAs from other Member States of the EU, pursuant to Regulation 1/2003. We will only use information received from the European Commission or another NCA in accordance with Articles 12 and 28 of the Regulation 1/2003. This means that, generally, information which is shared will only be used in evidence for the purpose of applying Articles 101 and 102 and in respect of the subject-matter for which it was collected by the transmitting competition authority. If the information has been collected for a European Commission case and an NCA is applying national competition law in the same case (and will not be arriving at a different outcome to the decision in the Commission's case), the information can be used by the NCA. There are further restrictions in place concerning the exchange of leniency materials and privileged documents as well as a restriction on the use of evidence to impose

¹²⁸ This is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹²⁹ See Schedule 6 of CAA12, Schedule 9 of TA00, and Part 9 of EA02. Similarly, information obtained during a CA98 investigation may be used by the CAA to facilitate its other statutory functions under CAA12, TA00, Part 4 of EA02 and the ACRs: see Part 9 of EA02 and Schedules 14 and 15 thereto. Further details on the use and disclosure of information gathered by the CAA are set out in chapter 4 above.

criminal sanctions on individuals.¹³⁰

Statements of objections and parties' rights to make representations

- 5.72 Under section 31 of CA98, following an investigation, the CAA may make a decision in relation to an alleged infringement of Article 101 or Article 102 or the Chapter I or Chapter II prohibitions.
- 5.73 Before doing so, we must provide written notice to the person or persons likely to be affected (a 'statement of objections' or SO) and provide them with an opportunity to make representations. The statement of objections sets out the CAA's preliminary position regarding the alleged infringement, including the key elements of law and facts relied upon, so that the accused can exercise its rights of defence. It will also indicate whether the CAA intends to impose a fine and the remedies that are necessary to bring the alleged infringement to an end. As part of the right to be heard, the addressee will be given access to the CAA's file, subject to appropriate confidentiality arrangements, so that they can comment on the evidence relied upon and gather evidence that might support their case.
- 5.74 If appropriate, we may also prepare and provide a non-confidential version to certain interested parties, such as the complainant if there is one.¹³¹
- 5.75 Following receipt of a statement of objections, parties may make written representations to us on the statement. We will also allow parties to develop their position on the statement by means of representations at an oral hearing.
- 5.76 Should subsequent evidence come to light after the parties' representations, we will notify them of our position by means of a letter of facts or a supplementary statement of objections and allow them to comment before we take a final decision.

¹³⁰ See the Commission Notice on Cooperation with the Network of Competition Authorities OJ 2004 C101 p.43

¹³¹ In respect of the EU competition prohibitions, Article 6 of Commission Regulation (EC) No 773/2004 (relating to the conduct of proceedings by the Commission pursuant to Article 81 and 82 of the EC Treaty) requires that in certain circumstances we must provide the complainant with a non-confidential version of the statement of objections.

During and following an investigation

- 5.77 There are a range of possible outcomes during and following an investigation. Our enforcement powers under sections 31A-36 of CA98 allow us, amongst other things, to:
- close a case using our prioritisation framework, in order to make the best use of resources to address issues in the interests of aviation consumers and to produce the greatest benefits for consumers. Details of our prioritisation principles are explained in the 'CAA's prioritisation framework for consumer protection, competition and economic regulation issues', which is available on our website;¹³²
 - make a no grounds for action decision under the Chapter I and/or Chapter II prohibitions;
 - make a no case to answer decision under Article 101 or Article 102 of TFEU;
 - give directions to bring an infringement (which has been proven) to an end;
 - give interim measures directions during an investigation;
 - accept binding commitments offered to us;
 - consider settlements offered to us;
 - impose financial penalties on undertakings for infringing Article 101, Article 102, the Chapter I and/or Chapter II prohibitions; and
 - apply for directors' disqualification orders.
- 5.78 We intend that enforcement decisions will be taken on the basis of strict separation between the investigation and the decision functions. So, for example, post-SO decisions on infringement will be taken by persons other than those responsible for the decision to issue an SO. We are considering a range of possibilities in this respect, including the use of a specially assembled 'Enforcement Panel'.
- 5.79 The CMA's guidance 'Guidance on the CMA's investigation

¹³² <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523> and <http://www.caa.co.uk/default.aspx?catid=2516&pagetype=90>

procedures in Competition Act 1998 cases' (CMA8), and the CMA's website set out more details of how the CMA and Concurrent Regulators, including the CAA, will apply their powers of enforcement.¹³³

Directions

- 5.80 We may give such written directions as we consider appropriate to bring an infringement to an end where we have made a decision that Article 101, Article 102, the Chapter I and/or Chapter II prohibition has, or have been, infringed¹³⁴. Such directions might, amongst other things, require a business to modify or terminate an agreement or modify or cease its conduct. Directions may also require positive action (or structural changes) on the part of the business concerned.
- 5.81 The directions, which are enforceable by court order¹³⁵, may be given to such person(s) as we consider appropriate, which includes individuals and undertakings. The CAA is not limited to giving directions to the infringing parties but may also extend them to suppliers, customers or other third parties.

Interim measures directions

- 5.82 Interim measures directions are temporary directions which require certain steps to be taken while a CA98 investigation is carried out. We may give interim measures directions, pending our final decision as to whether:
- there has been an infringement of Article 101, Article 102 of TFEU, the Chapter I and/or Chapter II prohibitions;
 - there are no grounds for action under the Chapter I and/or Chapter II prohibitions; or
 - there is no case to answer under Article 101 or Article 102 of TFEU.
- 5.83 Interim measures directions will not affect the final decision.
- 5.84 We have the power to give interim measures directions if both of the

¹³³ This is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹³⁴ Sections 32 and 33 of CA98.

¹³⁵ Section 35 of CA98.

following conditions are satisfied¹³⁶:

- we have reasonable grounds to suspect an infringement but have not yet completed our investigation; and
- we consider that it is necessary to do so as a matter of urgency because of one of the following factors:
 - to prevent significant damage to a particular person or category of persons; and
 - to protect the public interest.

5.85 For further guidance on the application of these principles, see the 'Guidance on the CMA's investigation procedures in Competition Act 1998 cases' (CMA8).¹³⁷

Accepting commitments

5.86 We may accept binding commitments from undertakings suspected of infringing Article 101, Article 102, the Chapter I and/or Chapter II prohibitions. Under section 31D of CA98, we are required to have regard to the CMA's guidance when considering whether to accept commitments offered (part 4 of Competition law application and enforcement).¹³⁸ We are only likely to consider it appropriate to accept commitments in cases where the competition concerns are readily identifiable, where the concerns are addressed by the commitments offered and the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.¹³⁹

¹³⁶ Section 35 of CA98.

¹³⁷ This is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹³⁸ 'Guidance on the CMA's investigation procedures in Competition Act 1998 cases' (CMA8). This is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹³⁹ The earlier OFT guidance (OFT407) stated that in relation to any one investigation, we may accept commitments in respect of some of our competition concerns and continue our investigation in respect of other concerns arising from the same agreement or conduct. While this is not included in CMA8 (the CMA's new guidance), the CMA and the CAA are not precluded from doing so, although neither we nor the CMA have done so in practice.

Settlements

- 5.87 We may consider settlement in relation to a breach of Article 101, Article 102, the Chapter I and/or Chapter II prohibition, provided the evidential standard for giving notice of a proposed infringement decision is met.
- 5.88 Settlement is a voluntary process in which a settling business must admit that it has breached competition law and accept that a streamlined administrative process will apply for the remainder of the investigation.
- 5.89 An infringement decision will be issued in every settlement case unless the CAA decides not to make an infringement finding against the settling business.
- 5.90 We may impose a financial penalty on any settling business, including a settlement discount.

Imposing penalties

- 5.91 We have the ability to impose a financial penalty in relation to a breach of Article 101, Article 102, the Chapter I and/or Chapter II prohibition. We must have regard to the CMA's guidance when determining the appropriate level of a penalty we will impose for an infringement. This relevant guidance is 'Appropriate CA98 penalty calculation' (OFT423).¹⁴⁰
- 5.92 When imposing a penalty, under the CA98 Rules¹⁴¹ (rules 11), in advance of issuing a penalty, we will provide the parties with an opportunity to make written and oral representations on a draft penalty statement.
- 5.93 We may impose a financial penalty on an undertaking of up to 10 per cent of the undertaking's worldwide turnover.

Directors' disqualification orders

- 5.94 The CAA can apply to the court for a Competition Disqualification

¹⁴⁰ This is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁴¹ The CA98 rules are rules about how we and the CMA conduct investigations of infringements of the competition prohibitions. They are available from: <http://www.legislation.gov.uk/uksi/2014/458/contents/made>

Order (CDO) against an individual director.¹⁴² Under a CDO, the court may disqualify an individual from acting as a director of a company.

- 5.95 Before making an application for a CDO against a person, the CAA will give notice to the person likely to be affected by the application (a 'section 9C notice').
- 5.96 The CAA may accept a Competition Disqualification Undertaking (CDU) from a person instead of applying for a CDO or, where a CDO has been applied for, instead of continuing with the application for a CDO.¹⁴³
- 5.97 A CDU is an undertaking by a person that for the period specified in the undertaking he or she will not do any of things that would be a criminal offence for any person subject to a CDO.
- 5.98 Directors can eliminate the risk of a CDO being made against them by ensuring that their company does not infringe competition law. Accordingly, directors have a direct individual incentive to be committed to ensuring that their company has an effective competition law compliance culture.
- 5.99 Further information on CDOs is available in the CMA guidance on 'Company directors and competition law' (OFT1340).¹⁴⁴ Further information on how to ensure a company has an effective competition law compliance culture, can be found in the CMA guidance 'How your business can achieve compliance with competition law' (OFT1341).¹⁴⁵

Publishing decisions

- 5.100 Where we make a decision under Article 101 and/or Article 102 of TFEU, the Chapter I and/or Chapter II prohibitions, we will publish our decision on our website and on the CMA's public register.¹⁴⁶ The

¹⁴² Sections 9A to 9E Company Directors Disqualification Act 1986 (CDDA), as amended by EA02.

¹⁴³ Section 9B(2) CDDA.

¹⁴⁴ The CMA guidance on 'Company directors and competition law' (OFT1340) is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁴⁵ This is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁴⁶ CA98 decisions are published on the CAA's website <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523> and the CMA's

decisions we may make are that:

- there has been an infringement of Article 101 and/or Article 102 of TFEU, the Chapter I and/or Chapter II prohibitions;
- there are no grounds for action under the Chapter I and/or Chapter II prohibitions; or
- there is no case to answer under Article 101 or Article 102 of TFEU.

5.101 If we start an investigation but then decide to terminate it, we must publish a notice that the activities of the business in question are no longer being investigated.

5.102 When making public the outcome of our investigation, we will have regard to whether the information to be published is market sensitive (which will include considering the position of listed companies as appropriate) or could otherwise harm a party's legitimate commercial interests. We will take this into account when deciding on the timing of announcements, as is current practice for the announcements that we make relating to price control proposals.

Appeals against decisions

5.103 Under sections 46 and 47 of CA98, certain decisions taken by us may be appealed to the Competition Appeal Tribunal (CAT). In particular, decisions the CAA or the CMA make as to whether:

- there has been an infringement of Article 101 and/or Article 102 of TFEU, the Chapter I and/or Chapter II prohibitions and the penalties imposed for an infringement;
- there are no grounds for action under the Chapter I and/or Chapter II prohibitions; and
- there is no case to answer under Article 101 or Article 102 of TFEU.

5.104 Appeals to the CAT of these decisions are full appeals on the merits of the decision. The CAT may confirm or set aside our decision, impose, revoke or vary the amount of any penalty imposed by us, remit the matter to us or make any other decision, give any such directions or take such other steps that we ourselves could have made.

- 5.105 Other decisions we take may be subject to judicial review only. Judicial review allows individuals, businesses, and other groups to challenge the lawfulness of decisions made by Ministers, Government Departments, local authorities and other public bodies. The main grounds of review are:
- that the decision maker has acted outside the scope of its statutory powers;
 - that the decision was an unreasonable one; and
 - that the decision was made using an unfair procedure.
- 5.106 The Human Rights Act 1998 created an additional ground, making it unlawful for public bodies to act in a manner which is incompatible with rights under the European Convention on Human Rights.¹⁴⁷

Private actions in the courts

- 5.107 This section explains that businesses can take private action in respect of alleged competition law infringements. This is a separate to any action we might take under our powers.
- 5.108 As well as any public enforcement action that we can take, an individual or business may rely on the Chapter I and II prohibitions and Articles 101 and 102 of TFEU directly before a court to seek compensation for any harm suffered and/or an injunction to prevent an infringement continuing. A claimant will have to show that the defendant breached one of the UK or EU competition prohibitions and that, as a result of the infringement, they have suffered a quantifiable loss.
- 5.109 Where this happens, statements of case relating to competition law are copied to CMA and competition authorities have the opportunity to make observations to the Court.
- 5.110 An individual or business wishing to bring a claim can commence either a standalone action or a follow-on action.

¹⁴⁷ The House of Commons Library published a Research Paper 06/44 on 28 September 2006 'Judicial Review: A short guide to claims in the Administrative Court' <http://www.parliament.uk/documents/commons/lib/research/rp2006/rp06-044.pdf>

Standalone actions

- 5.111 A standalone action is a claim brought where the alleged breach of competition law is not already the subject of an infringement decision by a relevant competition authority, such as the European Commission, the CAA or the CMA. In this type of action, the claimant will have to prove to the court that the breach of competition law occurred and that the claimant suffered loss as a result of that breach.
- 5.112 Standalone actions must be brought before the ordinary courts. The CAT has no jurisdiction to hear standalone actions.¹⁴⁸

Follow-on actions

- 5.113 Where a breach of competition law has already been established in an infringement decision taken by a relevant competition authority, a claimant may bring a follow-on action. This means that the claimant can rely on the findings of infringement and fact contained in the decision¹⁴⁹: in most cases they need prove only that they suffered loss as a result of that infringement.

Follow-on actions in the ordinary courts

- 5.114 Where a claim relates to precisely the same facts and parties as an existing infringement decision, the decision is effectively binding on the ordinary courts. A claimant can generally rely on the decision in the ordinary courts to prove the breach of competition law and findings of fact¹⁵⁰ and will need to prove only that the breach caused them to suffer loss. Where an existing decision does not relate to precisely the same facts, it will not have the same binding effect on the court. The decision may be relevant however – for example, if it concerns the same market but different parties – and it may still be admitted as evidence and is likely to have a persuasive influence on the court.

¹⁴⁸ The Consumer Rights Bill, currently before parliament contains provisions which would amend this, and grant the CAT power to consider standalone and follow-on actions.

¹⁴⁹ It is unclear whether all findings of fact, or only those that constitute the elements of the infringement, can be relied on. See Case no. 1106/5/7/08 Enron Coal Services Limited (in liquidation) v English Welsh & Scottish Railway Limited on 21 December 2009 ([2009] CAT 36).

¹⁵⁰ If the decision is being appealed, the claim can only be brought with permission of the court.

'Follow-on' actions in the Competition Appeal Tribunal

5.115 The CAT is bound by existing infringement decisions of a relevant competition authority. This means that a claimant relying on such a decision need only prove that the infringement caused them to suffer loss.

Representative actions

5.116 Follow-on actions for damages may also be brought before the CAT by a body representing a number of consumers.¹⁵¹ Such representative actions are intended to facilitate claims against a defendant where a large number of consumers have suffered similar losses, but where each loss is too small for an individual claim to be worthwhile. This might happen where a large number of consumers have each been overcharged a relatively small sum as the result of a cartel.

5.117 A representative action may be brought only by a 'specified body' appointed by the Secretary of State, such as Which?, and only on behalf of named consumers. This means that a consumer will be included in the action only if he expressly agrees to join, or 'opts in'.¹⁵²

When we might act in relation to private action

5.118 On a case by case basis, when we consider that there might be greater benefit in us taking forward an investigation into a suspected competition law infringement, we would consider whether to ask the court which was hearing a private action into the same set of facts to stay that action while we carried out our investigation.

Case Law

5.119 At the time this guidance was prepared, there had been two standalone private action cases relating to the aviation sector:

- *Arriva The Shires Ltd -v- London Luton Airport Operations Limited*, High Court 2014. The judgment is available at: [2014] EWHC 64 (Ch).

¹⁵¹ For example, Which? brought a representative action against JJB Sports plc to compensate consumers who were overcharged when they bought replica football shirts. (Case no. 1078/7/9/07, *The Consumer Association (Which?) v. JJB Sports Plc*).

¹⁵² The Consumer Rights Bill, currently before parliament includes proposals for Opt-out collective actions.

- *Purple Parking Limited and Meteor Parking Limited -v- Heathrow Airport Limited*, High Court 2011. The judgment is available at: [2011] All ER (D) 169 (Apr).

Further information

- 5.120 Further information on how the CAA, the CMA and the other concurrent Regulators have applied and enforced the competition prohibitions in particular cases may be found in the CAA's, the CMA's and Regulators' decisions, which are available on their websites.
- 5.121 The CMA has a range of guidance on the application of competition law including on private actions.¹⁵³

¹⁵³ This guidance is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

CHAPTER 6**Market oversight provisions**

Market provisions**Sector reviews**

Under our sector-specific functions, we must keep under review the provision of AOS and ATS in the UK and elsewhere, and collect information about the provision of such services. Sector reviews do not have to consider a specific issue but can be carried out to improve our understanding of a particular aspect of AOS or ATS.

A sector review does not need to lead to a particular course of action or require a decision about whether to apply a remedy.

Market studies

Market studies, carried out under our competition law powers, assess whether a particular market is improving choice and value for aviation consumers, potentially leading to proposals as to how competition might be made to work more effectively.

Market studies can relate to practices across a range of services. We may conduct a market study to improve our knowledge or to look at developing markets, for example, where the potential risks to consumers may be high, or where there may be potential barriers to entry.

A market study may result in a range of outcomes.

Market investigation references

We can make a market investigation reference (MIR) to the CMA requesting that it conduct an in-depth market investigation.

Alternatively, in lieu of us making an MIR, we can accept binding undertakings from market participants to address any competition harming features we have identified.

Introduction

- 6.1 This chapter discusses our market oversight powers. It is split into two main sections:
- Sector reviews (under our sector-specific powers) and market studies (under our competition law powers); and
 - Market Investigation References (MIRs).
- 6.2 As stated in chapter 2 above, we are required to consider whether to use our competition prohibition powers in preference to taking enforcement action under licences against an airport operator or a provider of ATS.
- 6.3 We will also consider whether the use of our CA98 powers would be more appropriate before we use our market oversight provisions to promote competition. Therefore, before initiating a market study or making a market investigation reference, we will, in normal circumstances, first consider whether a matter warrants investigation as an infringement of the UK and/or EU competition prohibitions. If we conclude that it does, we will discuss and agree with the CMA who should take it forward.

Sector reviews and market studies

What are sector reviews and market studies

- 6.4 Sector reviews and market studies allow us to consider, in broad terms, the functioning of the markets for which we have responsibility. We may carry out a sector review or a market study where we consider we require a more in depth understanding of the industry or a particular market. Indeed, the legislation requires that, so far as it appears practicable, we keep the provision of AOS and ATS under review. Sector reviews and market studies may cover a particular product or service, a group of products and services, or particular practices that affect the provision of products and services across a range of markets.
- 6.5 Sector reviews and market studies are concerned with a holistic view of the market and the ability to address more than one aspect of the market, such as a combination of structural and behavioural features, rather than the behaviour of any particular undertaking(s).

- 6.6 The sector review is wholly a CAA function under section 64 of the CAA12 in the case of AOS and section 91 of TA00 in the case of ATS. Its purpose is to allow us to maintain oversight of the sectors for which we are responsible.
- 6.7 A market study under Part 4 of EA02 is a concurrent function with the CMA. Our powers are derived from section 60 of CAA12 in the case of AOS and section 86 of TA00 in the case of ATS.
- 6.8 A market study is more formal in structure than a sector review in that it has a 12-month maximum statutory timetable. Its purpose is to examine the causes of why particular markets are not working well, leading to proposals as to how they might be made to work better. To commence a market study we must first publish a market study notice. The publication of the notice triggers the statutory timetable to which we must abide and provides us with information gathering powers under section 174 of EA02. By contrast, a sector review does not have a statutory timetable or specific formal information gathering powers.
- 6.9 In addition:
- the Secretary of State can ask us to undertake a variety of work under sections 16 and 17 of the Civil Aviation Act 1982; and
 - the Secretary of State and the CMA can ask us to undertake a variety of work under section 91 of TA00 and section 64 of CAA12.
- 6.10 The work undertaken is specific to the request made and as such it is not covered in this guidance. However, it may encompass competition issues that we may have otherwise covered in a sector review or market study.

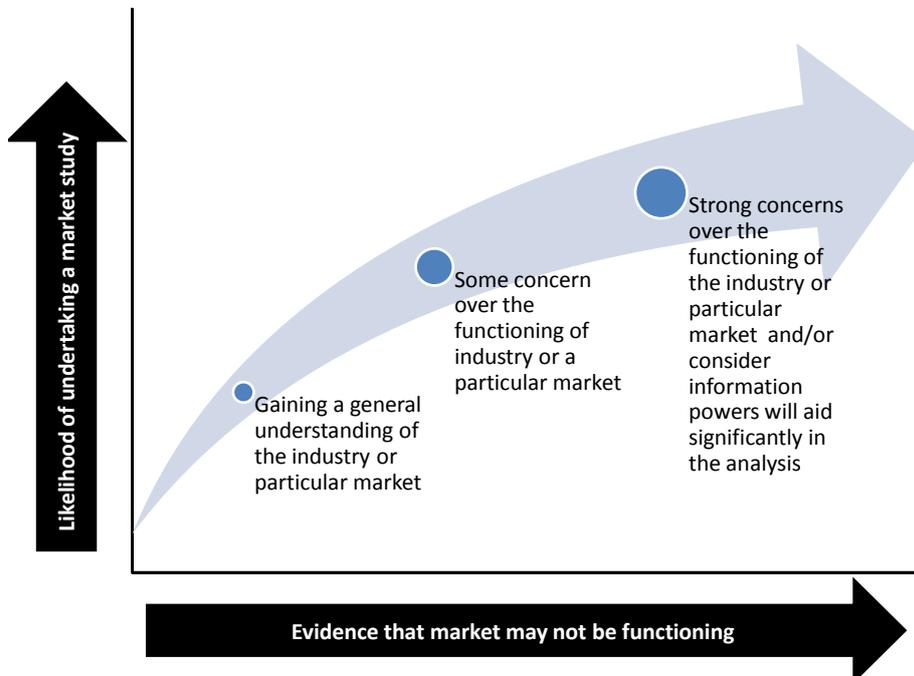
Choosing between a sector review and a market study

- 6.11 In choosing whether to undertake a sector review or a market study, it is useful to consider them as being a potential continuum of enforcement action.
- 6.12 In general, we are more likely to undertake sector reviews on an ongoing basis rather than market studies so as to maintain an understanding of the aviation sector. The more evidence we have that there are particular features of a market which have the potential to affect competition adversely, the more likely we are to conduct a

market study (see Figure 6.1).

- 6.13 A sector review does not need to have a specific issue or concern at its origin. It could, for instance, be a response to issues raised by stakeholders or because we want to understand more about a particular issue. Additionally, it does not need to lead to a particular course of action or require a decision about whether to apply a remedy.
- 6.14 Conversely, a market study is a more formal tool which requires that we either provide the industry or particular market with a 'clean bill of health', or pursue further action to remedy any competition harm we have identified. The more serious nature of a market study is reflected in the applicable 12-month statutory timeframe and in the access it provides to the wide ranging information gathering powers under section 174 of EA02. See paragraph 6.26 below for more information on these powers.
- 6.15 In certain circumstances, we are limited in our options and are required to undertake a formal market study. We must issue a notice where both of the following criteria are satisfied:
- we are proposing to consider the extent to which a matter in relation to the provision of AOS/ATS has or may have adverse effects on competition (AEC) and to assess the extent to which steps should be taken to remedy, mitigate or prevent any such adverse effects; or
 - we consider the matter is one where it would be appropriate for us to exercise our powers of investigation under EA02 in connection with deciding whether to make an MIR to the CMA.

Figure 6.1: The continuum of enforcement: sector review to market study



- 6.16 In considering whether to undertake a sector review or a market study, we will consider:
- issues raised by industry either consistently in ongoing discussions or as part of a complaint;
 - issues arising from our market monitoring, intelligence gathering, surveys and research;
 - issues arising from a complaint under consumer law;
 - issues arising from the discharge of our regulatory functions; and
 - where permitted by law, information exchanged within the UKCN and ECN.
- 6.17 The table below sets out the information it would be helpful to have in order to consider whether to undertake a sector review or a market study.

Figure 6.2: Information relevant to selecting a sector review or market study

| Information | Detail |
|--|---|
| Name Organisation Contact details | Please state whether you would like your own or your organisation's identity kept confidential. |
| Proposed market for review | This need not be an economic market defined according to competition law. It could be an area of aviation. |
| Description of problems | Please set out the problems and how they are likely to lead to significant harm to consumers (passengers or cargo owners). |
| Market importance | Please explain why this is an important area for us to examine. Please be as specific as possible and include details such as total market turnover or the significance of the service/product to aviation. |
| Supporting information | Please either attach the evidence you have to support this proposal, or provide your sources if these are easily accessible, such as internet hyperlinks to reference documents. |
| Further assistance | Please state the level of further assistance that you or your organisation would be able offer us if we prioritise your proposal for review. |

Managing sector reviews and market studies

- 6.18 We expect to follow a broadly similar process for sector reviews and market studies. However, we have significantly greater flexibility for a sector review than for a market study.
- 6.19 In either case, we will appoint a project manager who will be the single point of contact for the review or study.
- 6.20 We will usually initially undertake a period of primarily desk-based research before deciding what particular market oversight tool we will use. At this point we will not, as general practice, notify the industry that we are undertaking a review or study. We may advise key industry stakeholders at this stage, especially if we are seeking to gather information externally.
- 6.21 Following our initial research, we will then decide, subject to our findings and prioritisation principles, whether to take further action and what form it will take; either a sector review or market study. We consider we are under no obligation to publish the findings of our

initial research should we decide that no further action is necessary at that time.

6.22 Once we have decided to progress to either a sector review or market study we will publish a notice to that effect. To commence a market study, the CAA is required to publish a statutory market study notice. The notice must specify the following points:

- the matter in relation to which we are proposing to carry out the market study;
- the period during which representations may be made to us in relation to the matter; and
- the timetable for the market study.

6.23 For a sector review, we are not required to publish a notice. However, we intend to publish a notice that we plan to carry out work under section 64 of CAA12 or section 91 of TA00 as appropriate. The notice will include the scope and timetable for the work.

6.24 In practice, we expect there will be little difference in the broad content of a notice for a sector review or a market study. The main difference will be in regard to the timetable imposed: under a market study we are obliged to follow a 12-month statutory timetable (illustrated in Figure 6.3 below). In the case of a sector review, we may follow a different timetable and we are not obliged to make decisions concerning a potential MIR. Despite this, we consider that it is consistent with our duties and the better regulation principles to produce a timetable so as to reduce uncertainty in the industry or market(s) under review.

Figure 6.3: Stylised statutory timetable for a market study

6.25 As noted above, we are required under a market study to set a timetable to gather representations from industry. We will also adopt this practice when undertaking a sector review. Given the timetable requirements, the period for submitting representations will generally be no more than six weeks starting from the date of publication of the notice. During this period, it is likely we will also deploy (under a market study) our formal information gathering powers (described below). In using our formal information gathering powers, we will aim to be fair and reasonable in our requests for information and in the deadlines we set for parties to respond to such requests. We will seek to avoid unnecessary burdens for businesses while seeking to balance those concerns with timetable demands and effective operation of a market study. It is unlikely that we will be able to consider further representations beyond the dates specified in our publications or information requests.

6.26 Following publication of the first report, there will be a period during which representations may be made in response to the report's findings. Again, given the short timetable, this will generally last for no more than six weeks starting from the date of publication.

Formal powers to gather information in a market study

6.27 Section 174 of EA02 gives us certain investigatory powers that we may use when we consider we have reasonable grounds for suspecting that any feature of a market prevents, restricts or distorts competition. These powers allow us to require:

- the attendance of parties to give evidence;
- the production of specified documents; and
- the supply of specified information including estimates and forecasts.

6.28 There are penalties for non-compliance with our information requests and it is a criminal offence to obstruct the information gathering process.

Outcomes of sector reviews and market studies

6.29 The potential outcomes of a sector review and a market study may be similar. However, for a sector review, there is no requirement on the CAA to reach a definitive conclusion about further action or to specifically consider the possibility of making an MIR to the CMA. As noted above, we consider that they are part of a potential continuum of enforcement. As such, a potential outcome of a sector review is that we may subsequently undertake a market study, in which case we will issue a market study notice at the time we publish our sector review report.

6.30 The principal outcomes of a sector review or market study are one or more of the following:

- a clean bill of health for the market;
- consumer-focused action;
- recommendations to business;
- recommendations to Government;
- investigation and enforcement action, which could encompass consumer law or competition law as well as regulatory action under economic licence enforcement; and/or
- an MIR or, having consulted on a potential MIR – undertakings in lieu of an MIR (see below for further information on MIRs).

6.31 Except in the event of a clean bill of health, the outcomes of a sector review or a market study generally require follow-up work, either to implement actions which are for the CAA to pursue, or to monitor the implementation of recommendations addressed to others, such as business or Government. We consider each of these in turn below.

A clean bill of health

- 6.32 A clean bill of health will mean that some or all of the potential consumer detriment identified during the initial review is not substantiated by the information obtained, or that intervention would not be proportionate to the detriment. However, it does not preclude us from revisiting the market at a later date should new information come to light, or if a change in market circumstances were to occur.

Consumer-focused action

- 6.33 Consumer-focused action may take the form of a CAA-led information campaign in relation to AOS. It is unlikely given the remoteness from the ultimate consumer that consumer focused action will be taken in relation to ATS. The objective of such campaigns could be to raise passenger and cargo-owner awareness so that consumers are able to make better purchasing decisions. The campaign may stress factors that consumers should consider when making a purchase, or inform consumers of their rights when transacting with businesses.
- 6.34 Consumer-focused action may involve us working in partnership with organisations that assist consumers and other Government bodies. If the market involves a particular group of passenger and cargo-owners, we may work with the most appropriate organisation to help ensure that the campaign is successful.
- 6.35 Further information on our consumer enforcement powers is available in our 'Guidance on consumer enforcement'.¹⁵⁴

Recommendations to business

- 6.36 Where market problems can be addressed through changes to business behaviour, we may make recommendations to business. For example, we may recommend that businesses in the market develop a code of conduct or improve an existing one. As codes are voluntary, we will be more likely to recommend a code if the businesses concerned already wish to make improvements for consumers.

¹⁵⁴ 'Guidance on consumer enforcement' CAP 1018, is available from:
<http://caa.co.uk/enforcement>

Recommendations to government

- 6.37 If we conclude that changes in legislation, government policy and/or regulatory practice are necessary to remedy any problems which may be identified in the market, we will make recommendations to the Government and/or other public agencies or other regulators.
- 6.38 If the recommendations are wider than the UK, we may recommend that the Government takes action at the EU or ICAO¹⁵⁵ level.
- 6.39 We will share information where permitted to accompany our recommendations.
- 6.40 To promote our recommendations to Government, we will meet relevant agencies and departments to present findings and answer questions. The Government has committed to responding to the CAA's recommendations within 90 days of the market study report being published.¹⁵⁶
- 6.41 The Department for Business, Innovation and Skills (BIS) is responsible for coordinating the Government's responses where market studies make regulatory recommendations.¹⁵⁷ We will liaise closely with BIS¹⁵⁸ and, where appropriate, other interested Government departments, to monitor how actions on recommendations are progressing.

Investigation and enforcement action

- 6.42 A review or a study may help inform potential enforcement action, or identify alternative or additional outcomes. This is likely where one of the following is satisfied:

¹⁵⁵ ICAO is International Civil Aviation Organisation – is a specialised agency of the United Nations. It codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth.

¹⁵⁶ The 90-day response time to market studies is a Government commitment made in the White Paper, Productivity and Enterprise: a world class competition regime, Department of Trade and Industry, 2001.

¹⁵⁷ The Department for Business Innovation and Skills' responses to market studies can be found on the Department's website:
<https://www.gov.uk/government/organisations/department-for-business-innovation-skills>

¹⁵⁸ Where recommendations are to the devolved administrations, the CAA works with the relevant bodies to promote the recommendations and monitor how they are acted upon.

- evidence or understanding obtained indicates possible breaches of competition law, consumer law or economic regulation licence conditions;
- evidence or understanding obtained indicates a modification to an economic licence condition is appropriate; or
- where the review or study concludes that enforcement action is necessary to address the issues identified.¹⁵⁹

Market investigation reference to the CMA

6.43 When the findings of a market study give rise to reasonable grounds to suspect that a feature or combination of features of a market in the UK prevents, restricts or distorts competition, and an MIR appears to be an appropriate and proportionate response, we are able to make an MIR to the CMA to conduct an in-depth market investigation. This market investigation is conducted by a CMA 'Group' of independent panel members.¹⁶⁰

Further information

- 6.44 Further information on sector reviews and market studies that the CAA has undertaken may be found on the CAA's website.
- 6.45 The CMA guidance on market studies contains further information 'Market studies and investigations - guidance on the CMA's approach': CMA3.¹⁶¹

¹⁵⁹ Guidance and policy statements describing how the CAA uses its powers to enforce consumer protection and competition law are available from:

<http://www.caa.co.uk/enforcement> and

<http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=14523>

¹⁶⁰ The CMA's guidance 'Market Investigation References' (OFT511) describes the legal test applied by the CMA when making a decision to refer a market, the process for making that decision and how the test is applied is available from:

<https://www.gov.uk/government/organisations/competition-and-markets-authority>

The CMA's guidance 'Market investigation guidelines' (CC3) describes how it conducts its market investigations once a reference has been made. This guidance is available from:

<https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁶¹ The CMA guidance is available from: <https://www.gov.uk/government/collections/cma-markets-guidance>

Market investigation references (MIRs)

What is an MIR

- 6.46 An MIR is the first step in a detailed examination of cross-market practices or particular market(s) we have decided to refer to the CMA. The MIR sets out:
- evidence that we have collected and analysed to deduce that there is a feature or features of a particular industry, market or market(s) that are having an adverse effect on competition (AEC); and
 - what we consider is beyond the scope of our statutory powers to remedy but where the CMA has the potential to remedy with its more wide ranging powers.
- 6.47 Our power to make an MIR under Part 4 of EA02 is a concurrent function with CMA. Further details on our concurrent MIR powers are in chapter 2.
- 6.48 The CAA has the power to make two types of MIR. These are an ordinary reference and a cross-market reference.

Ordinary reference

- 6.49 An ordinary reference is a reference which is not a cross-market reference (see below).¹⁶²
- 6.50 To make an ordinary reference, we must have reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK for goods or services prevents, restricts, or distorts competition in connection with the supply of acquisition of any goods or services in the UK or a part of the UK.¹⁶³

¹⁶² This is the type of reference that existed under EA02 prior to the addition of the cross-market reference which came into effect on 1 April 2014 as a result of the Enterprise and Regulatory Reform Act 2013. Please note also that public interest references can be made by the Secretary of State in cases that raise defined public interest issues. For further information on public interest references, see Market studies and investigations: guidance on the CMA's approach (CMA 3). This guidance is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁶³ Section 131 of EA02.

Cross-market reference

- 6.51 A cross-market reference is a reference in respect of a specific feature or a combination of features that exist in more than one market, which means that we do not have to refer the whole of each market concerned.¹⁶⁴
- 6.52 To make a cross-market reference, we must have reasonable grounds for suspecting that a feature of a combination of features, of more than one market in the UK within AOS and/or ATS prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in the UK or a part of the UK.¹⁶⁵ Only features which relate to conduct can be the subject of a cross-market reference.¹⁶⁶
- 6.53 The types of issue for which cross-market references are likely to be most appropriate include:
- features that do not fit neatly within one market; or
 - recurring sources of consumer complaint or identified detriment which have the potential to affect competition adversely across multiple, distinct markets.
- 6.54 A cross market MIR must specify all of the following:
- the enactment under which it is made;
 - the date on which it is made; and
 - the feature or features concerned and the descriptions of goods or services to which it or they relate.¹⁶⁷

Choosing an MIR

- 6.55 If the statutory tests for making an MIR are met, we have the discretion, rather than a duty, to make an MIR. We will only make an MIR to the CMA if in our view the appropriate reference test set out in section 131 of EA02 is met and where we consider that each of the following criteria is met:

¹⁶⁴ Sections 131(2A) and (6) of EA02.

¹⁶⁵ Section 131 of EA02.

¹⁶⁶ Sections 131(1) and 131(2A) of EA02.

¹⁶⁷ Section 133(1) of EA02.

- it would not be more appropriate to deal with the competition problem(s) identified by applying our (or the CMA's) CA98 powers or other powers available to us;
- it would not be more appropriate to address the competition problem(s) identified by accepting undertakings in lieu of an MIR;
- the scale of the problem(s) identified in terms of the adverse effect on competition is such that a more detailed examination by a CMA group would be appropriate; and
- there is a reasonable prospect that appropriate remedies would be available in the event that the CMA was to find that competition is adversely affected.

6.56 For the purposes of an ordinary MIR, a feature may be one or more of the following:

- the structure of the market concerned or any aspect of that structure;
- any conduct¹⁶⁸ (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; and/or
- any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

6.57 For the purposes of a cross-market MIR, a feature may only be one or more of the conduct features mentioned above.

6.58 We may consider that we have sufficient evidence to meet this test, and to trigger the MIR in a number of ways including but not limited to:

- the result of a sector review;
- the result of a market study;
- the result of a super-complaint; or
- the result of information gathered during our discharge of our regulatory functions.

¹⁶⁸ In this context, 'conduct' includes any failure to act (whether intentional or not) and any other unintentional conduct.

6.59 Further information on the different forms of MIR is available in the CMA guidance 'Market Studies and Market Investigations: Supplemental guidance on the CMA's approach': CMA3 and 'Market investigations guidelines': CC3.¹⁶⁹

Managing an MIR

6.60 Where we are proposing to make an MIR to the CMA, we must first consult, so far as practicable, any person on whose interests the reference is likely to have a substantial impact.¹⁷⁰ We will discharge this obligation through public consultation on a provisional decision on an MIR.

6.61 In performing this consultation, we must, so far as practicable, give our reasons for the proposed reference. The specific content of the provisional decision will vary from case to case but we expect that it would typically cover the following points:

- draft terms of reference for the market investigation, including:
 - a description of the goods or services concerned;
 - the identity of the main parties affected by the reference, whether as suppliers or as customers; or this may involve the identification of categories of parties rather than parties; and
 - a view as to the possible definition of the market (or markets) affected;
- a statement of reasons setting out a summary of the evidence that has led us to have a reasonable suspicion that competition is prevented, restricted or distorted, including the possible market features that may be relevant; and
- some indication of the availability of the potential remedies that the CMA has available that it could apply to the market(s) to remove the adverse effects on competition.

6.62 Unless arising from a substantial piece of analysis such as a sector review or market study, we will not attempt to make more than a

¹⁶⁹ This guidance is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

¹⁷⁰ Section 169 of EA02.

preliminary analysis of these points in the statement of reasons. It will be for the CMA group to produce a definitive analysis if an MIR is made.

- 6.63 If an MIR is proposed during a market study, we must publish a provisional decision within 6 months and the formal MIR decision within 12 months of the publication of the market study notice (see Figure 6.3).
- 6.64 The length of the formal consultation period, following the issuing of a provisional decision stating our reasons for a proposed MIR, will depend upon the complexity of the issues and the extent to which discussions have already taken place with the affected parties including where appropriate consumer representative bodies. In general, we expect to have discussed and consulted on the issues with the parties concerned, where they have been identified, before the start of the formal consultation period. In such cases, a relatively short formal consultation may be appropriate and we will aim to conduct a consultation for no more than six weeks. However, where the issues directly concern passengers, we may extend this period to ensure we give enough time for passengers and passenger representative bodies to respond. It is during this consultation that any representations regarding undertakings in lieu of an MIR should be made.

Decision following MIR consultation

- 6.65 At the end of the MIR consultation period, we will take account of any representations received before making a final decision about whether to make an MIR.
- 6.66 The possible outcomes following an MIR consultation include:
- accepting undertakings in lieu of an MIR;
 - making an MIR to the CMA;
 - not making an MIR; and
 - pursuing any other alternative action noted above, such as a clean bill of health, recommendations to business and recommendations to government.
- 6.67 We can accept undertakings in lieu of an MIR (when we are considering an MIR) where such undertakings achieve as

comprehensive a solution as is reasonable and practicable to any adverse effects on competition identified (and any detrimental effects on consumers so far as they result or may be expected to result from such adverse effects). We may also have regard, as appropriate, to the effect of the undertakings on any relevant customer benefits arising from a feature or features of the markets concerned.

- 6.68 In this situation, the report following the consultation must, in particular, contain the decision to accept the undertakings, the reasons for the decision and such information we consider appropriate for facilitating a proper understanding of our reasons for the decision.
- 6.69 EA02 obliges us to consult any persons whose interests are likely to be substantially affected before making a decision about whether or not to accept undertakings in lieu of an MIR.
- 6.70 Any MIR that we make must be published together with the reasons for it. This will cover the same ground as the draft MIR notice, taking account of any relevant points that have arisen from the consultation on the proposal. An MIR shall, in particular, specify:
- the enactment under which it is made;
 - the date on which it is made; and
 - the description of goods or services to which the feature or combination of features concerned relates.

Outcome of an MIR

- 6.71 Following an MIR it is for the CMA to decide whether competition is indeed prevented, restricted or distorted, and (if so) what, if any, action should be taken to remedy the adverse effect(s) on competition and/or any detrimental effect(s) on customers resulting from it (in the form of higher prices, lower quality, less choice of services, or less innovation in relation to services in any market in the UK).

Further information

- 6.72 Further information on how the CAA, the CMA and the other concurrent Regulators make market investigation references may be found on their websites.
- 6.73 The CMA has issued guidance on making MIRs which contains further

information.¹⁷¹

¹⁷¹ The CMA 'Market studies and investigations – guidance on the CMA's approach' (CMA3) is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

CHAPTER 7**Super-complaints**

Super-complaints

Consumer bodies designated by the Secretary of State may submit a super-complaint to the CMA and the concurrent regulators (including us) where they consider that there is any market feature, or combination of features, such as the structure of a market or the conduct of those operating within it, that is or appears to be significantly harming the interests of consumers.

We and the CMA have concurrent powers to undertake investigations as a result of super-complaints regarding AOS and ATS.

Within 90 days of receiving a super-complaint, we have a duty to publish a reasoned response stating what action, if any, we intend to take in response to a super-complaint.

Introduction

7.1 This chapter discusses our powers to investigate super-complaints. It covers:

- what a super-complaint is;
- who can bring super-complaints;
- why we would investigate a super-complaint;
- managing a super-complaint investigation;
- potential outcomes of a super-complaint investigation; and
- where to find further information.

What is a super-complaint

7.2 A super-complaint can be made when a designated body considers that there is a market feature, or combination of features (such as the structure of a market or the conduct of those operating within it), that is or appears to be significantly harming the interests of consumers.

7.3 We and the CMA have concurrent powers to undertake investigations as a result of super-complaints¹⁷² made about AOS and ATS.¹⁷³ As part of the concurrency arrangements, we will consult each other to decide which authority is better placed to deal with the super-complaint. Further details on our concurrent super-complaint powers are in chapter 2.

Who can bring a super-complaint

Need to be a designated body

7.4 The aim of the super-complaints process is to strengthen the voice of consumers, as they are unlikely to have access individually to the kind of information necessary to judge whether markets are failing them. Consumer groups can collate individuals' complaints to assess whether there is a problem and take the necessary action.

7.5 However, it is important to remember that anybody can still bring complaints to the CAA for us to consider. Super-complaints are simply a route into the system – an initial 'fast-tracking' - to ensure that complaints about market failure which harms consumers are given consideration within a fixed timeframe.

Which bodies have been designated so far

7.6 Only bodies designated by the Secretary of State can bring a super-complaint. At the time of publication, the bodies who have been designated as bodies which can submit super-complaints that are of relevance to AOS and ATS are:

- The Consumers' Association (known as 'Which?');
- the national Association of Citizens Advice Bureaux;
- the general Consumer Council for Northern Ireland; and
- the Scottish Association of Citizens Advice Bureaux.

Why we would investigate a super-complaint

7.7 We have a duty to make a reasoned response to a super-complaint

¹⁷² The CAA has its concurrent powers to deal with super-complaints by virtue of section 205 of EA02 and the 2003 Regulations.

¹⁷³ These terms are explained more fully in chapter 2.

within 90 calendar days from the day after a complaint is received. This includes a decision on whether or not we or the CMA intend to take any action.

Managing a super-complaint investigation

- 7.8 On receipt of a super-complaint concerning AOS or ATS, the super-complainant will be contacted within five working days to acknowledge receipt and let them know whether the CAA or the CMA will be the main contact during the 90 day period.
- 7.9 We will examine the contents of the super-complaint in more detail to see if it meets the criteria set out in section 11 of EA02. The complaint must explain the feature, or combination of features, of a market in the UK for goods or services that is or appears to be significantly harming the interests of consumers. The CMA has issued guidance on what information to submit for a super-complaint to ensure it is given super-complaint status.¹⁷⁴
- 7.10 Within 90 days after the day on which we receive the super-complaint, we have a duty to publish a reasoned response stating what action, if any, we intend to take in response to the complaint. This 90 day period is the maximum time allowed for a response, but a swifter decision may be possible in certain circumstances.

Potential outcomes of a super-complaint investigation

- 7.11 The possible outcomes of a super-complaint include:
- enforcement action under regulatory, competition or consumer law;
 - commencing a sector review or market study into the issue;
 - making an MIR to the CMA if there is a potential adverse effect on competition;
 - finding that another authority with concurrent duties is better placed to deal with the super-complaint and take necessary action;

¹⁷⁴ The CMA guidance 'How consumer bodies can make super-complaints' (OFT514) is available from: <https://www.gov.uk/government/organisations/competition-and-markets-authority>

- referring the super-complaint to another sectoral regulator without concurrent duties;
- referring the super-complaint to another consumer enforcement body;
- finding the super-complaint requires no action;
- finding the super-complaint to be unfounded; and
- dismissing the super-complaint as frivolous or vexatious.

7.12 This list is not exhaustive. It should also be noted that a super-complaint could generate more than one outcome depending on the issues raised.

Further information

7.13 Further information on how the CAA, the CMA and the other concurrent Regulators investigate super-complaints may be found on their websites.

7.14 More information on super-complaints can be found in CMA guidance 'Super-complaints: Guidance for designated consumer bodies'.¹⁷⁵

¹⁷⁵ This guidance is available from: <https://www.gov.uk/government/publications/super-complaint-concurrent-duties>

APPENDIX A

Abbreviations

| Abbreviation | Explanation |
|-------------------------|---|
| AECs | adverse effects on competition |
| ACRs | Airport Charges Regulations 2011 |
| AGRs | Airports (Groundhandling) Regulations 1997 |
| ANSPs | air navigation service providers |
| AOS | airport operation services |
| APC | ATOL Protection Contributions |
| ATOL scheme | Air Travel Organisers' Licensing scheme |
| ATS | air traffic services |
| BIS | Department for Business, Innovation and Skills |
| CA98 | Competition Act 1998 |
| CAA12 | Civil Aviation Act 2012 |
| CAT | Competition Appeal Tribunal |
| CC | Competition Commission |
| CDDA | Company Directors Disqualification Act 1986 |
| CDO | Competition Disqualification Order |
| CDU | Competition Disqualification Undertaking |
| CMA | Competition and Markets Authority |
| CMA10 | CMA's 'Guidance on concurrent application of competition law to regulated industries' |
| Concurrency Regulations | Competition Act 1998 (Concurrency) Regulations 2014 |
| DPA98 | Data Protection Act 1998 |
| EA02 | Enterprise Act 2002 |
| ECN | European Competition Network |
| ERRA13 | Enterprise and Regulatory Reform Act 2013 |
| | |

| Abbreviation | Explanation |
|---------------------|--|
| FOIA00 | Freedom of Information Act 2000 |
| ICO | Information Commissioner's Office |
| MIRs | market investigation references |
| MPDs | market power determinations |
| MPT | Market Power Test |
| NCA | national competition authority |
| NERL | NATS (En Route) plc |
| OFT | Office of Fair Trading |
| OFT403 and OFT415 | CMA Guidance on Market Definition and Market Power |
| REP | Regulatory Enforcement Policy |
| SO | statement of objections |
| TA00 | Transport Act 2000 |
| TANS | Terminal Air Navigation Services |
| TFEU | Treaty on the Functioning of the EU |
| UKCN | UK Competition Network |