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Executive Summary

Purpose

1. This document outlines stakeholder responses to our proposed, draft guidance, which are set out in the four documents listed below, and any changes we made to those documents. The four documents are:
 - Prioritisation Principles for the CAA's Consumer Protection, Competition Law and Economic Regulation work.
 - Guidance on Consumer Enforcement.
 - Economic Licensing Enforcement Guidance.
 - Guidance on the Application of the CAA's Competition Powers.

Consultations

2. On 31 October 2014, we published the four documents for consultation to gain stakeholders' comments on how we propose to apply our powers. We received responses from six stakeholders, which are published on our website.
3. We held a consultation workshop on 19 December 2014 to present the documents to stakeholders and to gather initial comment on them. Representatives from 16 stakeholders attended.

Stakeholder comments

4. Stakeholders' comments helped us to ensure that the final guidance is useful in explaining the powers we have. In finalising our guidance, we have taken account of the comments expressed at the workshop and the written responses that stakeholders submitted.
5. All stakeholders welcomed the CAA initiative in issuing and updating our guidance. Most of the points raised were matters of clarification or explanation. These are summarised in the main body of this paper.

Final guidance

6. The final documents are published alongside this responses document and are available on our website¹:
 - Prioritisation Principles for the CAA's Consumer Protection, Competition Law and Economic Regulation work.
 - Guidance on Consumer Enforcement
 - Economic Licensing Enforcement Guidance.
 - Guidance on the Application of the CAA's Competition Powers.
7. We will review the guidance from time to time to assess whether it needs updating. Updates could be required as a result of, for example, experience gained from applying the powers, changes to legislation, or new case law.

1 The guidance documents are available from <http://www.caa.co.uk/default.aspx?catid=2516>

CHAPTER 1

Stakeholder general comments

Introduction

- 1.1 This chapter outlines stakeholder general comments gained from written responses to the consultation and comments at our workshop, which apply across all four consultations. It also sets out our final policy on the matters raised. The four consultations were:
- Draft Prioritisation Principles for the CAA's Consumer Protection, Competition Law and Economic Regulation work (Prioritisation Principles).
 - Guidance on Consumer Enforcement (Consumer Enforcement Guidance).
 - Draft Economic Licensing Enforcement Guidance (Licence Enforcement Guidance).
 - A Consultation –Guidance on the Application of the CAA's Competition Powers (Competition Powers Guidance).

Stakeholder comments and our response

Definition of consumer

Stakeholder comment

- 1.2 Stakeholders asked what definition of the concept of 'consumer' we were using in each document, and whether it was consistent between the four documents. They also asked whether the definition of consumer included airlines, on the grounds that passenger and airline interests are often aligned.

CAA proposed policy

- 1.3 The ways in which we refer to consumer in the four consultation documents are outlined below.
- 1.4 In the Licensing Enforcement Guidance and the Prioritisation Principles, the footnote to paragraph 1.1 defined an aviation consumer as:

- *In this consultation, 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), which will normally be a passenger arriving at or departing from an airport or travelling in an aircraft, or a person with property rights in cargo carried in an aircraft. See the CAA's Regulatory Enforcement Policy for more information.*

1.5 In the Consumer Enforcement Guidance, we referred to consumer and consumers of aviation services, but we did not define either term.

1.6 In the Competition Powers Guidance, we referred to consumer and aviation consumer but we did not define either term.

CAA response and final policy

1.7 The definition of a consumer set out in the CAA's Regulatory Enforcement Policy is "an end-user of an aviation service who does not himself provide an aviation service, such as a passenger, a freight customer, a student pilot or a buyer of flying lessons."²

1.8 The definition of consumer has some variations between the guidance documents, due to the different legal powers being applied. To reflect these different definitions, we have amended the Prioritisation Principles by replacing all references to 'aviation consumers' with the broader term 'user.' We have set out the relevant statutory definitions of 'user' and cross-referred to the corresponding guidance.

1.9 We consider this provides clearer signposting and greater accuracy with respect to our consumer protection, competition law and economic regulation powers and the respective definitions of users. We also consider that the term 'user' may include passengers, freight customers, student pilots, buyers of flying lessons and other consumers and is therefore consistent with the CAA's Regulatory Enforcement Policy. It is also broad enough to cover specific definitions used in the relevant legislation

1.10 We will make the following changes in the prioritisation principles to reflect this:

² See http://www.caa.co.uk/docs/2516/Regulatory_Enforcement_Policy.pdf

- In chapter 1, we will refer to the definition of consumer as set out in the CAA's Regulatory Enforcement Policy.
- In chapter 1, we will insert new paragraphs setting out the different definitions of user which will depend on the respective statutory definitions.
- In chapter 2, where applicable we will include the respective definitions of user according to the power in question.
- In chapter 3 and throughout the document we will remove all references to 'aviation consumers' and replace them with 'users.'

1.11 For the Consumer Enforcement Guidance, we have added:

- ***In this guidance when we refer to "consumers", we mean the end-users of an aviation service who do not themselves provide an aviation service. Examples of "consumers" in this context include passengers, freight customers, student pilots or buyers of flying lessons.***

1.12 This will also be the 'user' for the purposes of the prioritisation principles.

1.13 For the Licensing Enforcement Guidance we have removed the term 'aviation consumer' as it was only used once and, in the light of stakeholder comments, was too restrictive in that context. Instead the Licensing Enforcement Guidance refers to 'users' which are defined as:

- ***'Users' in relation to airport operation services (AOS) [under the Civil Aviation Act 2012] are passengers and those with an interest in cargo (cargo owners).***
- ***Users' in relation to air traffic services (ATS) [under the Transport Act 2000] include aircraft owners and operators, airport owners and managers, people travelling in aircraft and cargo owners.***

1.14 In the Competition Powers Guidance, the term 'consumer' is not restricted to those who use consumer aviation products or services but has a generic commercial meaning that applies it to a person or entity that consumes and a person or organisation that purchases or uses a commodity or service.

- 1.15 The term 'aviation consumer' in the Competition Powers Guidance, is defined as:
- ***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).***
- 1.16 The CAA does consider that passenger/airline interests are often aligned in some areas but that airlines are nevertheless not a true or complete proxy for passengers. The extent of alignment needs to be assessed on a case-by-case basis. As such, the definitions do not make reference to passenger and airline interests being aligned in the various definitions of consumer that we use.

Timetables for our work

Stakeholder comment

- 1.17 One stakeholder suggested that it would be helpful if we set out expected timetables for all of our work, and a specific timetable at the start of an individual piece of work.

CAA proposed policy

- 1.18 The Prioritisation Principles did not mention timescales.
- 1.19 Paragraphs 1.31 and 1.32 of the draft Consumer Enforcement Guidance stated that:
- *We will aim to be transparent about the reasons why we are taking enforcement action and will provide information to any business being investigated about the process. This will include details of:*
 - *the business activity or practice causing concern;*
 - *the legislation we believe is being breached;*
 - *an invitation to open dialogue;*
 - ***an explanation of the next steps, including timescales and the possible consequences of failure to respond;***
 - *the risks we have identified which we believe make enforcement action necessary;*
 - *contact details for the CAA's Case Manager and Case Officer;*

- *information on any right to appeal following the outcome of enforcement action.*
- *We will normally continue to communicate with the business throughout the investigation. However, in some cases it will not be appropriate as it may prejudice the investigation.*

1.20 The Licence Enforcement and Competition Powers Guidance documents did not set expected timetables for applying the powers, except where there was a legal requirement to do so, for example where we are required to complete an investigation into a super complaint within 90 days. These documents also did not indicate that we would set specific timetables for individual pieces of work.

CAA response and final policy

1.21 Where there is legal imperative to complete a piece of work within a set period, we explain that in the guidance.

1.22 We do not, however, consider that it would be feasible to set out reliable generic timetables for our work under the guidance documents. This is because the timetable for each case or piece of work will depend on the circumstances of that case. We do not consider that generic timetables that are usually subject to exceptions are of much value to stakeholders.

1.23 Prioritisation Principles do not require a separate timetable as they are an internal tool that we use to choose which pieces of work to carry out.

1.24 We consider that it is appropriate to set a timetable for a specific case at the time we open a formal investigation under our licence enforcement and competition powers.

1.25 We have added a paragraph to the Licence Enforcement Guidance that says:

- ***We will give a provisional timeline for the key steps of an investigation and when we expect to give updates. Companies under investigation can expect regular updates, often by telephone or email. The timeline may change as the case progresses. If it does we will notify the company.***

1.26 We have added a paragraph to chapter 5 of the Competition Powers Guidance that says:

- ***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.***

Ease of use of CAA website

Stakeholder comment

- 1.27 One stakeholder suggested that as the CAA and our website serve many purposes, it would be helpful if there were targeted notification subscriptions to make it easier to be alerted to documents by topic/focus.

CAA proposed policy

- 1.28 The guidance documents did not refer to the layout or ease of use of the CAA website.

CAA response and final policy

- 1.29 This comment coincides with a major redevelopment of the CAA website. Key aims of this work are to improve the navigation and make it easier for users to locate content.
- 1.30 We are also looking to improve how we proactively alert stakeholders to information and changes (from the current system of information notices and website alerts). We aim to roll this out at the same time as the new website.
- 1.31 We have not included any reference to this in the final guidance documents.