

# Draft guidance on the application of the Market Power Test under the Civil Aviation Act 2012: Consultation

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## Executive Summary

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1. The Civil Aviation Act 2012 (CAA12) requires that we, the CAA, regulate certain airport operators directly by means of a licence if they, following a Market Power Determination (MPD), meet the requirements of the Market Power Test.
2. The Market Power Test consists of three parts:
  - Test A - whether an airport operator has substantial market power (SMP), which was the focus of our previous guidance.
  - Test B - whether competition law does not provide sufficient protection against the risk of abuse of the SMP.
  - Test C - whether the benefits of regulating the airport operator by means of a licence outweigh the adverse effects.
3. In April 2011, before CAA12 was enacted, we published 'CAA guidance on the assessment of airport market power'. This document was prepared in anticipation of CAA12 coming into force and did not cover all elements of the Market Power Test as set out in CAA12. The draft guidance in this consultation is intended to replace this 2011 document.
4. During 2013 and 2014 we conducted MPDs covering the three largest London airports.<sup>1</sup> The draft revised guidance largely reflects the framework we used for these MPDs. Some elements of the previous 2011 guidance have been removed where they were found to be overly detailed and did not have generic application. As well as these changes to guidance on Test A, we have also added sections to cover Tests B and C.
5. The revised guidance also contains more detail on the process we will follow. This aims to improve the way MPDs are delivered. In particular we propose:
  - a clear distinction between stages when we will be gathering information and when we will be consulting on our assessment;

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<sup>1</sup> The 2014 MPDs are available at <http://www.caa.co.uk/default.aspx?catid=78&pageid=12275>.

- to set out an indicative timetable in advance for each MPD we commit to undertake. We aim to complete future MPDs within 18 months.
6. We are, therefore, now consulting on draft guidance. The document is on our website at [www.caa.co.uk/CAP1354](http://www.caa.co.uk/CAP1354)
  7. This remainder of this paper summarises the draft guidance and raises some questions stakeholders may particularly want to consider in any response. You are not, however, restricted to commenting on these issues and we would welcome views on any aspect of this draft guidance. Please can you send any responses to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk) no later than 12 February 2016.
  8. We will publish responses on our website after the end of the consultation period. If there are parts of your response that you consider to be commercially confidential, please can you clearly mark them as such and send us a non-confidential version that we can publish.
  9. If you would like to discuss any aspect of the draft guidance please can you contact Pedro Lino Pinto at [pedro.pinto@caa.co.uk](mailto:pedro.pinto@caa.co.uk).
  10. We will take all responses received into account when producing our final guidance.