

Review of market conditions for surface access at UK airports – Final report

CAP 1473



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Executive summary

Scope

1. Surface access describes the journeys passengers make in order to get to and from an airport to their ultimate point of origin or destination on the ground.
2. Surface access to UK airports can account for a sizeable proportion of the cost of any air journey and forms a significant part of the aviation value chain.
3. We commenced a review of surface access in 2015 to review market conditions in this sector and to understand how effectively it is operating and serving the interests of consumers from a competition and consumer law perspective. The review was mainly based on qualitative information we received on how surface access is operating and serving the interests of consumers, rather than quantitative data on the sector. The review was conducted under Section 64 of the Civil Aviation Act 2012, which requires us to monitor airport operation services provided at airports.¹ We focused it around two main topics:
 - The first was to understand the market structure for surface access, in particular how competitive conditions for road and forecourt access at individual UK airports affect outcomes to consumers. This included interactions between airport operators and surface transport providers such as independent car-parking operators, taxi/minicab operators, bus operators and car hire operators.
 - Our second area of interest was transparency in terms of the extent to which consumers are well informed about the options they have to

¹ Sections 64 of CAA12 requires that we must, so far as it appears to it practicable to do so, keep under review the provision of airport operation services in the UK and collect information about the provision of such services in the UK with a view to facilitating the carrying out of our competition functions under Chapter 2 of CAA12.
<http://www.legislation.gov.uk/ukpga/2012/19/contents/enacted>

access UK airports and the charges they face. This included how surface access products are distributed online.

4. While the review was concentrated primarily on road and forecourt access, we recognised that the availability of rail modes is important to understand competitive conditions at UK airports.
5. The review has increased our understanding of the sector in the following ways:
 - We now better understand what is provided by airport operators, their commercial interests and the wider context and objectives underpinning how airport operators develop their surface access strategies.
 - We now better understand the risks faced by consumers, which will better equip us to prioritise possible future competition and consumer complaints and inform our economic regulatory activity for the airport operators we regulate.

Outcomes

6. We appreciate the time stakeholders took to talk to us and to respond to our consultation. The wide range of information and evidence we received has given us a deeper understanding of the surface access sector.
7. Overall, we found that the sector appears to have a variety of businesses active in providing surface access services of different types to passengers.
8. The review concluded that the range of choice available to passengers varies considerably by airport. Passengers travelling to and from large urban airports generally benefit from greater choice compared with those using smaller airports or airports with poorer transport links.

9. We do not consider we have, at this point in time, sufficient grounds for a Market Study under the Enterprise Act 2002 (EA02)² on the basis that there is sufficient evidence of features amounting to adverse effects on competition such that consumers are being badly served by the market structure. We do not consider we have, at this point in time, sufficient grounds for an investigation under competition or consumer law.
10. We recommended, in the consultation, that each airport operator developed a set of principles on how they approach providing access to their surface access facilities which reflects competition and consumer law. We welcome the approach that airport operators have taken so far in developing principles and encourage them to continue the development process.
11. While we do not propose to take further action at this time, the review identified a number of areas regarding business practices that may have the potential to infringe the competition law prohibitions against anti-competitive agreements and abuse of dominance³ and/or certain aspects of consumer law.⁴ These are set out below.
12. We note, however, that not commencing a market study or a competition or consumer law infringement investigation, at this time, does not stop us from doing so in the future.

² Market Studies are examinations into the causes of why particular markets are not working well for consumers, in which competition authorities can use formal information gathering powers, and that could lead to a number of outcomes aimed at making markets work better for consumers. More information on market studies, including on the possible outcomes that they may trigger, is available at: www.gov.uk/government/publications/how-market-studies-are-conducted.

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

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

Advisory Letter

13. As a result we decided to write an Advisory Letter to UK airport operators, surface access operators and relevant trade associations setting out these areas identified. We encourage all market participants to review their practices and ensure they are compliant with competition and consumer law now and in the future. We have notified key stakeholders, including all those that responded to the consultation, of the publication of the Advisory Letter, the contents of which we include in italics below.

Status of the Advisory Letter

14. *The CAA, as a concurrent competition authority, can issue this Advisory Letters to:*
- *contact businesses that we're concerned might be breaking competition law; and*
 - *encourage them to comply with competition law.*
15. *The CMA prepared some guidance on the nature and status of Advisory Letters focussed on competition issues, including on steps that businesses can take in response.⁵ We consider that airport operators and surface access operators should in particular:*
- *raise this letter as a critical issue with their senior managers; and*
 - *consider getting legal advice and/or carry out a self-assessment.*

Ensuring compliance with competition law

Dominance test⁶

16. *In an investigation of abuse of dominance, the CAA would be required to define the market under investigation and assess the market power of businesses being investigated. As stated in our competition guidance⁷, such an investigation would be carried out from first principles and each*

⁵ See <https://www.gov.uk/guidance/warning-and-advisory-letters-essential-information-for-businesses>.

⁶ See also section in Chapter 4 on 'Competitive position of airport operators'.

⁷ See paragraph 2.7 of www.caa.co.uk/cap1235.

assessment would be case specific. In particular, the market definition in any future case could therefore be different than the wide bundle of airport operation services (AOS) that we used for the Market Power Determinations (MPDs) we undertook in 2014.⁸

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

Exclusivity and tendering⁹

- 18. A tendering process can be a good way to select a provider or providers of a service where the number of operators needs to be restricted for a reason that can be objectively justified (e.g. congestion, health and safety, security). Tendering processes, if conducted in a fair, transparent and objective way, can create competition for the (downstream) market. However, it may also affect competition in that market.*
- 19. For example, by granting exclusive rights to one firm or a small number of firms on a long-term basis, an airport operator may be limiting competitive entry in the market, and thus potentially adversely affecting competition, by leveraging its ability to grant access to facilities at or near the airport terminal.*
- 20. Case-law in this sector tells us that this behaviour can be an infringement of the Competition Act 1998 (CA98) Chapter II prohibition on abuse of a dominant position.¹⁰*

⁸ These market power determinations are available at www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Airport-Market-Power-Assessment/.

⁹ See also section in Chapter 4 on 'Exclusivity and discrimination'.

¹⁰ See for example [2014] EWHC 64 (Ch) at 16, www.bailii.org/ew/cases/EWHC/Ch/2014/64.html.

Discrimination¹¹

21. *Airport operators may be able to discriminate between competing independent operators or between their own operations and competing independent operators by favouring their own operations. While there may be an objectively justifiable reason for treating competing providers differently, airport operators should ensure that they do not apply "dissimilar conditions to equivalent transactions" without objective justification.*
22. *Case-law in this sector tells us that this behaviour can be an infringement of the CA98 Chapter II prohibition on abuse of a dominant position.¹²*

Anti-competitive agreements between providers¹³

23. *A particular feature in the surface access sector is that online distributors are often also providers of car-parking products in competition with other providers whose services they also distribute. This means that having real time access to each other's inventories, (published) prices and service levels risks coordination rather than competition between providers.*
24. *There is also the risk that trade associations may also act as a conduit facilitating the sharing between competitors of sensitive and confidential information such as on pricing, market share and service levels.*
25. *Such arrangements can be an infringement of the CA98 Chapter I prohibition on anti-competitive agreements.*
26. *Where an airport has independent car-park operator(s) as well as the airport operator's own car-parks, and the independent car-park operators need access to the airports' facilities to operate their car-park service, this can give rise to concerns about agreements between the airport operator and the independent car-park operator(s) about price and/or services. In this regard, the CAA has recently found that East Midlands International*

¹¹ See also section in Chapter 4 on 'Exclusivity and discrimination'.

¹² See for example [2011] EWHC 987 (Ch) at 109, www.bailii.org/ew/cases/EWHC/Ch/2011/987.html.

¹³ See also section in Chapter 4 on 'Competition in downstream provision of car-parking'.

Airport, and its parent company Manchester Airport Group, and Prestige Parking Ltd infringed the Chapter I prohibition of the Competition Act 1998 by participating in an agreement between (at the latest) October 2007 and September 2012 to fix the minimum prices that Prestige charged its customers for car parking services at the airport. To facilitate adherence to the price fixing agreement, the parties also exchanged sensitive pricing information between November 2010 and September 2012 and East Midlands International Airport also monitored Prestige's prices to ensure that it was complying with the terms of the agreement.¹⁴

Retail price maintenance / Distribution channels¹⁵

- 27. An airport operator's car-parking can be distributed through the airport's own website; however, a large proportion of bookings are also made through third-party channels in return for a commission. We understand that, in some circumstances, distributors of car-parking products are not allowed to offer discounts online from rates set by the car-parking operators, except to members of closed groups (e.g. Groupon or previous customers of a distributor).*
- 28. In June 2016, the Competition and Markets Authority (CMA) published an open letter¹⁶ about Retail Price Maintenance (RPM) or similar practices. RPM occurs where a supplier and retailer agree that the retailer will sell the supplier's product at or above a particular price. In the majority of cases, RPM is illegal because it constitutes a form of vertical price-fixing, preventing retailers from offering lower prices or setting their prices independently to attract more customers.*
- 29. Online distributors, surface access providers, and airport operators and relevant trade associations should review their practices and contractual*

¹⁴ See www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Notice-of-investigation-under-the-Competition-Act-1998/.

¹⁵ See also section in Chapter 4 on 'Competition in downstream provision of car-parking'.

¹⁶ See <https://www.gov.uk/government/publications/restricting-online-resale-prices-cma-letter-to-suppliers-and-retailers>

arrangements to ensure they are not infringing the Chapter I prohibition on anti-competitive agreements.

Ensuring compliance with consumer law

Consumer information¹⁷

30. *Consumer detriment may arise in the case of certain categories of passenger, such as to those passengers that use the airport infrequently (including inbound (foreign) passengers), as well as some frequent travellers, as these passengers are unlikely to be aware of the range of available surface access options. Such detriment may arise as a result of passengers not being fully aware of their options (the "unknown unknowns") or from "behavioural" (rather than totally rational) decisions made by passengers.*
31. *The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)¹⁸, require that consumers are not misled, treated aggressively, or otherwise acted unfairly towards. Airport and surface access operators should ensure that they comply with the CPRs.¹⁹*

Marketing and distribution²⁰

32. *Airport operators tend to provide surface access information on their websites and on their onward travel information areas in passenger terminals. However, that information is not always complete and, as a result of commercial arrangements made with some surface access operators, some surface access products may feature more prominently than others, possibly leading consumers to make sub-optimal decisions.*
33. *Price comparison websites or specialised online distributors can allow consumers to easily compare services and can increase transparency,*

¹⁷ See also section in Chapter 5 on 'Consumer information'.

¹⁸ We are one of the UK's enforcement bodies for general consumer law as it applies to air travel. We have this power through Part 8 of the Enterprise Act 2002 which covers a wide range of domestic and Community legislation including the CPRs.

¹⁹ For further information on this please see the CMA guidance on unfair contract terms, available at <https://www.gov.uk/government/publications/unfair-contract-terms-cma37>.

²⁰ See also sections in Chapter 5 on 'Consumer information' and 'Distribution of car-parking'.

leading to greater competition between providers of surface access services and air transport services. However, they may also provide incomplete information which can lead consumers to make sub-optimal choices.²¹

- 34.** *If marketing and advertising by airport operators, surface access operators and other distributors misleads consumers and causes them, or is likely to cause them, to take a worse surface access decision than they may otherwise have taken, this may breach the CPRs.*
- 35.** *Airport and surface access operators should ensure that their practices comply with the CPRs.*

Information about operation of car-parks at or near to airports²²

- 36.** *Airport operators' websites in general do not refer to competing car-park operators. Airport operators may have concerns over the standards of some independent parking operators in terms of security, safety and service quality provided to passengers. However, one example where the airport operator has been more active in communicating the availability of competing car-park providers is the Gatwick Approved Operators Scheme.²³*
- 37.** *We suggest that airport operators consider a form of accreditation for independent parking operators, similar to that offered by Gatwick Airport. While there is no legal requirement to accredit independent parking operators, doing so would allow for increased competition in the provision of car-parking services for consumers while reducing the risk of passengers experiencing a poor service. It would also allow airport operators to deal with reputational damage from off-site parking providers which operate without planning permission or which provide an inadequate service in terms of, for example, security. However, such*

²¹ We note that the CMA has also recently launched a new market study on digital comparison tools. For further information, see <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study>.

²² See also section in Chapter 5 on 'Distribution of car-parking'.

²³ More information on Gatwick Approved Operators Scheme is available from: www.gatwickairport.com/parking/other-parking-options/operator-scheme/.

accreditation must not determine how independent parking operators set their prices or compete more generally. In particular, there should be publicly available objective criteria for entry to the scheme and the scheme should not exclude operators on the grounds that they are more competitive than incumbents.

Services for disabled passengers and those with reduced mobility²⁴

38. *People with disabilities, whether physical or non-physical, and those with mobility restrictions may find accessing airports difficult. Regulation EC1107/2006²⁵ ensures that disabled people and those with reduced mobility have the same opportunities for air travel as all other citizens. Although this Regulation does not lay down specific rules in relation to surface access, it does require that airport operators provide this group of consumers with mobility assistance within the airport boundary in order for them to be able to access the airport and board their flights. Further, the Equality Act 2010 (EA2010)²⁶ imposes a duty on service providers, which in this case includes airport and surface access operators, to make reasonable adjustments.²⁷ Airport operators are also required to publish information on their websites on getting to the airport, including the arrangements for disabled parking at the airport (within the terminal boundary), and any specific rules for, or charges applied to, PRM passengers for using a drop-off zone at the airport.*
39. *Surface access operators such as train, bus, and taxi companies should be familiar with requirements of EA2010 and the duty to make reasonable adjustments for disabled people and those with reduced mobility. For their part, airport operators should be familiar with the requirements of Regulation EC1107/2006 as well as EA2010 in so far as it relates to the design of airport building(s). However, in relation to surface access, and especially access to the forecourt by car (i.e. pick-up and drop-off areas),*

²⁴ See also section in Chapter 5 on ‘Services for passengers with disabilities and those with reduced mobility’.

²⁵ See <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32006R1107>.

²⁶ See <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

²⁷ As defined in section 20 of EA2010.

airport operators may not always be aware that their duty to make reasonable adjustments under EA2010 extends to this area.²⁸

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

- *how they take into account the needs of disabled people and those with reduced mobility in relation to access to the forecourt by car and whether any further adjustments could be made;*
- *the level of any applicable charges that this group of consumers are required to pay, whether there are any restrictions in place²⁹ and whether these are reasonable, and the level of any penalty charges for overstaying³⁰; and*
- *the information they publish on their websites in relation to this issue and in relation to car-parking and surface access more generally.*

Conclusion

41. *Most businesses and trade associations want to comply with the law. Not only because it is the right thing to do, but because it is in their commercial interests to do so. There can be serious consequences for businesses that break competition law, including fines of up to 10 per cent of their worldwide turnover.*

42. *We encourage airport operators, surface access operators and relevant trade associations to review their behaviours and agreements and to take whatever action is needed to ensure that they are compliant with competition and consumer law.*

²⁸ We have recently published a report comparing the quality of assistance provided to disabled persons and those with reduced mobility between airports. That is available at <https://www.caa.co.uk/News/New-CAA-report-rates-airports-on-quality-of-assistance-for-passengers-with-a-disability-or-reduced-mobility/>. We intend to update this report annually.

²⁹ For example, whether only a limited range of disabled people (e.g. Blue Badge holders) can access the forecourt by car for free.

³⁰ Bearing in mind that it may take substantially longer for a disabled person to get into or out of their car, especially if they require the use of mobility equipment.

43. *You can contact the CMA or us to share information and discuss any concerns you may have relating to the aviation sector. We encourage those with concerns about business that may not be complying with competition and consumer law to consider the following suggestions:*
- *try and resolve matters through discussions;*
 - *speak to the CMA or to us;*
 - *consider any relevant decisions; and*
 - *gather as much evidence and information as possible.*
44. *Where an issue is raised with the CMA or with us, we will 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 or the CMA commence any case or investigation, we will carry out an initial enquiry to determine whether there is an issue to address.*
45. *There is a range of guidance on the CAA's and the CMA's website to help businesses.*³¹

³¹ CMA Competition Law Protection www.gov.uk/government/collections/competition-and-consumer-law-compliance-guidance-for-businesses
CMA Consumer Protection www.gov.uk/topic/competition/consumer-protection
CAA Competition Law www.caa.co.uk/CAP1235
CAA Consumer Protection www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/Consumer-protection-law/

Chapter 1

Introduction

- 1.1 Surface access³² to UK airports can account for a sizeable proportion of the cost of any air journey and forms a significant part of the aviation value chain. Surface access covers a range of modes: private car, train, cycle, private hire vehicles and taxis.
- 1.2 We have reviewed this element of airport operations to review market conditions in this sector and to understand how effectively it is operating and serving the interests of consumers.
- 1.3 The review was concentrated primarily on road and forecourt access. However, the availability of rail modes is also important to understand competitive conditions at UK airports. We also examined how parking products are distributed online.
- 1.4 The review was initially based on discussions with some key stakeholders in this sector: airport operators, consumer organisations and representatives of independent surface access operators. In January 2016, we presented our initial conclusions from these discussions and requested stakeholders views and further information from anyone with an interest in the sector.³³
- 1.5 The review is mainly based on qualitative information we received on how surface access is operating and serving the interests of consumers, rather than quantitative data on the sector.
- 1.6 The structure of the rest of this chapter is:
- Purpose of this document;
 - Background;

³² The journeys passengers make in order to get to and from the airports to their ultimate point of origin or destination on the ground.

³³ See consultation document available at www.caa.co.uk/cap1364.

- Scope of the review
- Summary of initial views;
- Our consultation;
- The Transport Select Committee's inquiry; and
- Structure of this report.

Purpose of this document

1.7 The purpose of this report on the sector review of surface access is to:

- Summarise stakeholder responses to our consultation document;
- Set out our understanding on how the sector is working for consumers; and
- Make some suggestions on ways forward to industry. These are also reflected in an Advisory Letter to industry, we have published alongside this report.³⁴

Background

1.8 We have concurrent competition powers with the Competition and Markets Authority (CMA) with respect to airport operation services (AOS). These are further explained in Chapter 3. The review was conducted under Section 64 of the Civil Aviation Act 2012, which requires us to monitor airport operation services provided at airports.³⁵

1.9 In recent years, there have been a number of private action competition cases.³⁶ In some of these, airport operators were found to have abused

³⁴ Available from <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Review-of-market-conditions-for-surface-access-to-airports>.

³⁵ Sections 64 of CAA12 requires that we must, so far as it appears to it practicable to do so, keep under review the provision of airport operation services in the UK and collect information about the provision of such services in the UK with a view to facilitating the carrying out of our functions under this Chapter, which are applying competition law in the aviation sector.

³⁶ The cases are summarised in a separate discussion paper issued with this document: "A discussion of national and European Competition Case Law relevant to the Aviation Sector", available at www.caa.co.uk/cap1370.

their dominant position³⁷ in the upstream market for the provision of facilities for surface access operators to access the market by adversely affecting competition in the downstream surface access markets. Some were found to have, for example, protected their own surface access products from competition or extracted higher commissions from third party operators that require access to facilities at the airport.

- 1.10 We have received complaints that passengers have not been aware of the cost of accessing airports (drop-off fees, car-parking cost, etc.).
- 1.11 This review fulfils a commitment we gave in response to a submission from the Independent Airport Parking Association (IAPA) to our consultation on the initial economic licence conditions for Heathrow and Gatwick airports.³⁸
- 1.12 The CAA Consumer Panel³⁹ strongly encouraged our work in this area and supported our aim of ensuring consumers have access to the widest possible range of surface access options. The Panel advised us that infrequent flyers, inbound (foreign) passengers and less engaged consumers, including those without easy access to the internet, could be unduly disadvantaged by a lack of information. The Panel understood our approach on market structure matters to be to encourage the surface access sector to ensure they were compliant with competition and consumer law. On the consumer information aspects, they cautioned us that there may still be consumer detriment that consumer surveys (such as those set out in Chapter 5) do not always pick up.

³⁷ A dominant position is a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.

³⁸ A non-confidential version of IAPA's submission is available at <http://webarchive.nationalarchives.gov.uk/+/https://www.caa.co.uk/docs/78/IAPAApr13.pdf/> (PDF).

³⁹ The panel has internal independence from the CAA and acts as a 'critical friend', scrutinising and challenging all of the CAA's work. The main aim of the panel is to be a champion for the interests of consumers. Further information on the Panel's views on this issue can be found in the minutes from the Panel's meetings, which are published on the CAA's website at www.caa.co.uk/consumerpanel.

- 1.13 The CAA Consumer Panel also urged us to consider disabled passengers and those with reduced mobility in the context of this review because surface access to airports is an area of particular importance to these groups of passengers. We cover this in the section on ‘Services for passengers with disabilities’ in chapter 5 and in the Advisory Letter to industry.

Scope of the review

- 1.14 We focused our review around two main topics:
- First, to understand the market structure for surface access, in particular how competitive conditions for road and forecourt access at individual UK airports affects outcomes for consumers. This included interactions between airport operators and surface transport providers such as independent car-parking operators, taxi/minicab operators, bus operators and car hire operators.
 - Second, transparency in terms of the extent to which consumers are well informed about the options they have to access UK airports and the prices for them. This included how surface access products are distributed.
- 1.15 The scope of the review was UK wide, we did not limit it to only larger airports. In part this is because we were already aware that passengers at larger airports generally have more surface access options than at smaller airports, where the choice is often more limited.

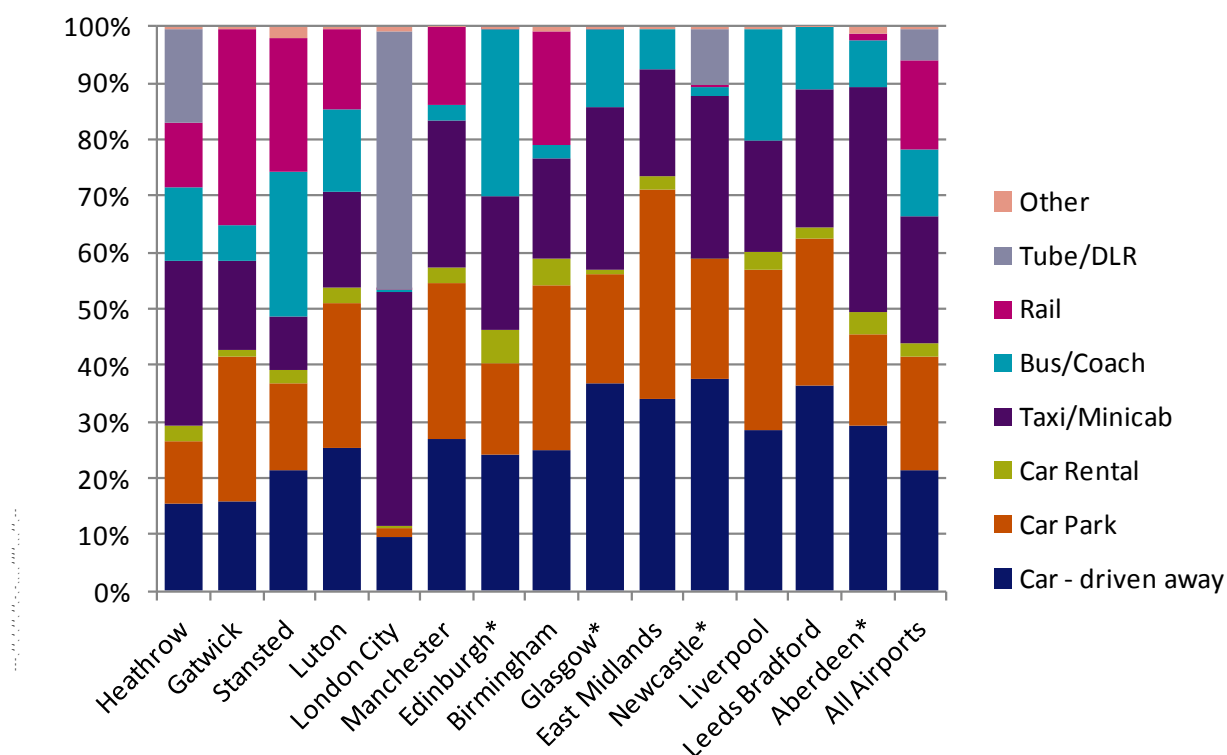
Summary of initial views

- 1.16 Our initial views, based on those early discussions were that, in general, the sector appeared to have a variety of parties active in providing surface access services of different types to consumers. These different modes, to a varying extent, compete with each other. However, the range of product choices available to consumers varies by airport. Passengers at

larger airports generally have more options whereas at smaller airports, with poorer public transport infrastructure, the choice is more limited.

- 1.17 Typically, passengers have a number of options to get to the airport both within modes (e.g. what taxi firm to use) and between modes (e.g. taking the car or going by train). However, car journeys are the predominant way to access UK airports accounting for about two thirds of journeys, with a broadly even split between drop-off, car-parking at the airport and taxi. Public transport is mainly used for access to/from city centres but this is not considered convenient for some passengers (e.g. those travelling with large amounts of luggage). Public transport accounts for a larger share at London airports (that tend to have better public transport links) than at regional airports where it plays a less significant role. (see Figure 1)

Figure 1: Surface access modal shares at large UK airports



Source: CAA Passenger Survey, 2013 (with *), 2014

NOTE: The chart is representative of journeys by passengers to the airport - not necessarily from the airport.

- 1.18 Different passengers have different needs and preferences and not all modes will be perfect substitutes. Therefore, a situation where there is

more than one competing provider of each mode, or at least, the possibility of new entry would provide more choice to passengers compared to a situation where passengers have to rely solely on competition between modes.

- 1.19 It also appeared that a key driver of passenger choice was the time it took to get to airports and the cost, so consumers appeared to be actively engaged in this aspect of the market. According to a previous survey commissioned by the CAA⁴⁰, passengers, particularly those who reside in the UK or fly frequently, state that they are broadly aware of the options they have to access UK airports. However, there was some evidence that passengers are not always able to find the best service at the best cost that suits their needs. Also, some categories of passengers may not be in a position to make fully informed decisions.
- 1.20 We found that airport operators and surface access operators engage meaningfully in commercial negotiations with each other. However, as is often the case in the commercial world, there are areas of tension and disputes.
- 1.21 Furthermore, the industry seemed to be aware that it needs to comply with competition law in view of the private action cases in recent years where airport operators were found to have breached competition law. Stakeholders told us that those decisions, in some circumstances, have had a positive deterrent effect on how airport operators treat independent surface access operators.
- 1.22 That said we identified some aspects of this sector that may potentially give rise to risks to consumers in terms of choice and value for money.
- Airport operators tend to control a large proportion of the facilities needed to run surface access operations, both at the forecourt and in surrounding areas (such as land suitable for car-parks, surface transport interchanges, etc.). Airport operators also provide many

⁴⁰ See <http://www.caa.co.uk/CAP1303>.

surface access products directly to consumers, often in competition with independent operators that require access to the airport's facilities. Airport operators are therefore active in both the provision of facilities (upstream) and in the service itself (downstream).

- Surface access is one of the few areas where airport operators have a direct commercial relationship with consumers. For most other aspects there is an intermediary in the form of an airline, tour operator, or, a retail outlet between the airport and the consumer. This may serve to strengthen the position of the airport operator, as passengers are less likely to have bargaining power than airlines and retailers who engage in commercial negotiations with airport operators.
- Surface access revenues, as for other commercial revenues generated by airport operators, are an important part of airport operators' overall revenues. These may help to keep airport charges paid by airlines (and eventually consumers) low, potentially boosting the connectivity at the airport and, depending on the extent to which reductions in airport charges are passed on to passengers, lower passenger air fares. Depending on the strength of this mechanism, passengers may or may not be indifferent on whether they pay for airport services through their airfare or through the price of their surface access products.
- Although passengers state that they are broadly aware of the options they have, there are some instances where differences in costs or service quality may not be totally clear to them. Some stakeholders considered that the way premium services are marketed and distributed at airports means that passengers often purchase more expensive services without being aware that there are cheaper alternatives for similar service outcomes. This could be particularly true in the case of those passengers that use the airport infrequently, such as inbound passengers.
- Online intermediaries play a prominent role in surface access services. As well as airport operators and independent operators selling their own services directly to consumers online, there are

dedicated online distributors which operate on a commission basis. Products may be listed on airlines' websites. Online sales channels have, in general, been the subject of several recent investigations by the CMA and other European competition authorities.⁴¹

Our consultation

- 1.23 We consulted on our initial findings from January to April 2016. The objectives of the consultation were to check that we had understood the key issues within the scope of the review and to receive further views and information from anyone with an interest in this sector. The questions we asked in the consultation are set out in Appendix B.
- 1.24 We received 39 responses to the consultation. Including from all airport operators with over 5 million passengers annually, some smaller airports, representatives of independent surface access operators, trade associations, taxi unions, consumer bodies, consultative committees and local authorities.⁴²
- 1.25 The responses were mostly consistent with our initial findings. Key points were:
- Some surface access operators expressed concern about airport operators' alleged dominance and supposedly abusive behaviour. They considered that we should be more active in the sector;
 - Airport operators said their operational and commercial freedoms benefitted consumers, and took the opportunity to justify their current practices. In particular, they considered that their commercial revenues (including car-parking and other surface access charges) helped to sustain lower airport charges, boosting connectivity;

⁴¹ See for example, online booking sector investigation (<https://www.gov.uk/cma-cases/hotel-online-booking-sector-investigation>) and private motor insurance investigation (<https://www.gov.uk/cma-cases/private-motor-insurance-market-investigation>). The CMA has also recently launched a new market study on digital comparison tools (<https://www.gov.uk/cma-cases/digital-comparison-tools-market-study>).

⁴² Chapter 2 lists all the responses received.

- Airport operators argued that their surface access arrangements operate in the interests of consumers as without good and effective surface options, consumers (and airlines) would switch to other airports, thus potentially reducing travel options; and
- Most respondents appeared to understand the importance of compliance with competition and consumer law.

1.26 Not all stakeholders responded to each consultation question. Some stakeholders provided us with their submission to the Transport Select Committee's surface access inquiry, which was not directly relevant to our review. Some stakeholders, especially airport operators, addressed the questions on airport operators' surface access principles, and did not respond to other consultation questions. The stakeholders who responded on the topics most relevant to them, did not always respond to other topics.

1.27 Comments and information that we received from stakeholders, prior to our consultation, were included in the initial views in our consultation document and their views and information have been incorporated into the final views of this report.

The Transport Select Committee's inquiry

1.28 In 2015, the Transport Select Committee⁴³ examined whether strategic connections to UK airports, which handle at least 1 million passengers per annum, fulfil current and future requirements in terms of range and capacity. The inquiry's objectives were complementary but different to those of our surface access review. While the focus of this report was the competitive conditions for airport surface access, the Committee's inquiry focussed on the Government's approach to planning surface access to airports, as well as understanding whether the Government was making

⁴³ The Transport Select Committee's inquiry report, which is available from: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/transport-committee/inquiries/parliament-2015/surface-transport-to-airports/>

full use of its powers to influence the selection of infrastructure and accompanying surface access modes of transport to and from airports.

- 1.29 The Committee's report published in 2016 states that the Government, local authorities and airport operators need to do more to encourage modal shift from private vehicles to public transport, particularly rail, and that the Government must take a clear lead on integrated transport planning which will benefit airports and the country as a whole.
- 1.30 The Committee's report welcomed our review of the market structure for surface access, but stressed the need for the review to strike a careful balance between fairness to motorists and deterring any increase in the number of private vehicle journeys to airports.
- 1.31 The Government's response⁴⁴ to Transport Select Committee's Surface Access report also welcomed our review of surface access at UK airports. It recognised the importance of ensuring that the provision of surface access services to passengers is easily understood and that those services provide good value for money.

Structure of this report

- 1.32 This document is structured as follows:
- Chapter 2 outlines who responded to the consultation;
 - Chapter 3 considers the policy and legal framework;
 - Chapter 4 considers market structure issues;
 - Chapter 5 considers consumer issues;
 - Chapter 6 considers airport operators principles for surface access;
 - Appendix A contains a summary of competition and consumer law;
 - Appendix B contains the consultation questions; and
 - Appendix C contains a glossary of terms.

⁴⁴ 'Surface transport to airports: Government Response to the Committee's First Report of Session 2015–16', May 2016, is available from:
<http://www.publications.parliament.uk/pa/cm201516/cmselect/cmtrans/995/99504.htm>.

Chapter 2

Focus of review and stakeholders who commented

Introduction

- 2.1 As set out in Chapter 1, we focused the review around two main topics:
- To understand the market structure for surface access, in particular how competitive conditions for road and forecourt access at individual UK airports affect outcomes to consumers
 - To understand the extent to which consumers are well informed about the options they have to access UK airports and the charges they face, which includes understand how surface access products are sold.
- 2.2 In the consultation, we asked interested stakeholders (including airport operators) to respond to a number of general questions covering the scope of the review.^{45,46} The questions we asked in the consultation are set out in Appendix B.
- 2.3 In the following chapters, we present the initial conclusions from the consultation, summarise stakeholders' views on the initial conclusions and provide our own final views.
- 2.4 We received written responses from 39 stakeholders, these are grouped as follows:
- **Consumer watchdog**
 - London TravelWatch is the statutory consumer watchdog representing the interests of transport users in and around

⁴⁵ Questions h) to m) in pages 50 and 51 of the Consultation.

⁴⁶ Some airport operators and other stakeholders did not respond to these questions. The points made in their wider responses have been captured below.

London, including at five airports serving London (Heathrow, Gatwick, London City, Luton and Stansted).

- **Environmental group**

- Communities Against Gatwick Noise and Emissions (CAGNE) is an association of West Sussex residents with over 600 members and is supported by 13 Parish councils, GACC (Gatwick Area Conservation Campaign), Airport Watch and CPRE Sussex. It acts as an information exchange, advisory source and pressure group; forwarded us their submission to the Transport Select Committee's surface access inquiry.

- **Local Authorities**

- Crawley Borough Council (Crawley Council) is where Gatwick Airport Limited is located. Crawley Council grants planning permission to the airport operator and other businesses associated with the airport – both on and off-airport.
- East Sussex County Council – close to Gatwick airport.
- Horley Town Council (Horley Council) – Horley is a town located on the northern edge of Gatwick airport. As a consequence, a large number of passengers and airport staff using road transport travel through the town or the M23 which runs along its eastern boundary.
- Mole Valley District Council – close to Gatwick airport.
- Tandridge District Council – close to Gatwick and Biggin Hill airports.⁴⁷

- **Other local government bodies**

- Merseytravel is the transport executive body for the Liverpool City Region Combined Authority.⁴⁸
- Transport for London (TfL) is the local government organisation responsible for most aspects of London's transport system.
- TfL Taxi and Private Hire is responsible for the licensing of taxi (black cab) and private hire services in London.

⁴⁷ It stated that the consultation does not have a significant impact on the community within the district.

⁴⁸ Forwarded their submission to the Transport Select Committee's surface access inquiry.

- **Airport consultative committees**
 - Gatwick Airport Consultative Committee (GATCOM).
 - Heathrow Airport Consultative Committee (HACC) is an independent statutory committee to foster communication and understanding between the airport's owners and operator and its users, passengers and airlines, local authorities and interest groups. HACC's Passenger Services Sub-Committee represents the interests of all passengers.
 - Stansted Airport Consultative Committee (STACC).
- **Airline and airline representative bodies**
 - Ryanair – its response focused solely on the possibility of MAG investing in Stansted Express.
 - London (Heathrow) Airline Consultative Committee (LACC) and the Airline Operators Committee, who represent the Heathrow Airline Community of 82 airlines.
- **Travel industry trade associations**
 - ABTA – The Travel Association – has around 1,200 members and represents over 4,500 retail outlets and offices. Its members range from small, specialist tour operators and independent travel agencies specialising in business and leisure travel, through to publicly listed companies and household names, from call centres to internet booking services to high street shops.
 - Scottish Passenger Agents Association (SPAA) is Scotland's largest travel trade association represents the interests of Scotland's major independent and Corporate Business Travel Management Companies as well as both Independent and Multiple Leisure Travel Agents.
- **Surface access operator**
 - Holiday Extras is the largest distributor of car-parking and other holiday-related products to users of airports in the United Kingdom.
- **Representatives of surface access operators and trade associations**

- British Parking Association (BPA) is the largest professional parking association in Europe representing around 700 organisations in the parking and traffic management sector throughout the UK and Europe. It has 144 members managing parking on private land and 250 local authorities.
- British Vehicle Rental and Leasing Association (BVRLA) is the UK trade body for companies engaged in the rental and leasing of cars and commercial vehicles. Its members operate a combined fleet of 4.5 million cars, vans and trucks.
- Confederation of Passenger Transport UK (CPT) is the trade association of the bus and coach industry, representing over 1,000 operators including large group operators of bus and coach services and numerous SME companies.
- Chartered Institute of Logistics and Transport (CILT) is a professional institution embracing all transport modes whose members are engaged in the provision of transport services for both passengers and freight, the management of logistics and the supply chain, transport planning, government and administration.
- Independent Airport Parking Association (IAPA) is a trade association representing the UK's independent off-airport parking industry.
- London Taxi Drivers Association (LTDA).
- The London Cab Drivers' Club (LCDC).
- **Trade unions**
 - Unite the Union (Unite), is the UK's largest trade union with 1.42 million members across the private and public sectors. The union's members work in a range of industries including transport, manufacturing, financial services, print, media, construction, local government, education, health and not for profit sectors.
 - Unite branch 3023 (Unite 3023) represent Taxi drivers based in the North East, Yorkshire and Humber region.
- **Airport Operators Association**

- Airport Operators Association (AOA).
- **Airport Operators**
 - Birmingham Airport Limited (Birmingham Airport).
 - Bristol Airport Limited (Bristol Airport).
 - Edinburgh Airport Limited (Edinburgh Airport).
 - Gatwick Airport Limited (Gatwick Airport).
 - Glasgow Airport Limited (Glasgow Airport).
 - Heathrow Airport Limited (Heathrow Airport).
 - Liverpool John Lennon Airport Limited (Liverpool Airport).
 - London Luton Airport Operations Limited (Luton Airport).
 - Manchester Airports Group (MAG) owns and operates four UK airports – Manchester, Stansted, East Midlands and Bournemouth Airports.
 - Newcastle International Airport Limited (Newcastle Airport).
 - Robin Hood Airport Doncaster Sheffield (Doncaster Sheffield Airport).

2.5 We also received comments from stakeholders in meetings we held with them. Stakeholders we met were:

- **Consumer groups**
 - Transport Focus
 - London TravelWatch
 - Which?
- **Surface access industry**
 - CPT (buses and coaches)
 - easyBus
 - British Parking Association
 - Independent Airport Parking Association
 - Purple Parking
 - Holiday Extras
- **Airport operators**
 - Heathrow Airport Limited
 - Gatwick Airport Limited

- Manchester Airports Group (MAG) owns and operates four UK airports - Manchester, London Stansted, East Midlands and Bournemouth.
- Birmingham Airport Limited
- Edinburgh Airport Limited
- Glasgow Airport Limited
- London Luton Airport Operations Limited
- Bristol Airport Limited
- **Others**
 - Office of Rail and Road (ORR)
 - Competition and Markets Authority (CMA)
 - Department for Transport (DfT)

Chapter 3

Policy and legal framework

3.1 In this chapter, we set out how this review fits within the more general airport operation regulatory regime. We explain our competition powers, information powers and consumer law enforcement powers. We also discuss wider government policy objectives with respect to surface access.

3.2 This chapter is structured as follows:

- Our statutory duties and strategic objectives;
- Regulatory considerations;
- Competition law considerations;
- Consumer law considerations; and
- Our information duties under CAA12.

Our statutory duties and strategic objectives

3.3 We have a statutory duty to promote competition, where appropriate.⁴⁹ We believe that competition⁵⁰ between airport operators and between different surface access operators is the best way to keep surface access prices at competitive levels and quality of service high. We expect all service providers should face strong incentives to offer services at a price and quality to attract consumers to use their services.

3.4 Likewise, we expect that consumers will take reasonable steps to make themselves aware of the costs of travelling when they are planning their journeys. We do not see our role to be systematically involved in such decisions. That said passengers can spend fairly large amounts of money getting to/from the airport and on car-parking. In some cases, these can

⁴⁹ Section 1 (2) of Civil Aviation Act 2012.

⁵⁰ Competition could be both inter-modal (e.g. between different modes of transport) and intra-modal (e.g. between different providers of the same service).

be greater than the charges paid by airlines to use the airport. We therefore want to ensure that companies are aware of their obligations to comply with competition and consumer law.

Regulatory considerations

Licensed airport operators (Heathrow and Gatwick)

- 3.5 At the licensed airports, Heathrow and Gatwick, revenues from commercial activities are currently regulated indirectly. A projection of those revenues, including charges from surface access, is often taken into account with a view to reduce aeronautical charges paid by airlines (known as the single till).⁵¹
- 3.6 This approach means that these airport operators have an incentive to over-achieve commercial revenues (i.e. beat the projected revenues) within the regulatory period. However, under the current regulatory approach we may take any over-achievement into account when forecasting commercial revenues and setting charges for subsequent regulatory periods. This means that any over-achievement is likely to result in future reductions in regulated charges paid by airlines, and therefore lower fares for passengers.
- 3.7 In addition, currently, there is an expectation, stemming from the licence conditions for Heathrow Airport Limited, that charges for using "specified facilities" (some of which are used by surface access operators) should be set in relation to costs, and that charges, costs and revenues of such facilities should be transparent to users.⁵²
- 3.8 During the last Q6 review (on the economic regulation of Heathrow and Gatwick airports), we made a commitment to investigate road and

⁵¹ We note that the current regulatory regimes of Heathrow and Gatwick are quite different, with Gatwick currently having a more flexible licence-backed commitments rather than a formal RAB-based price-cap. However, in both cases, an assessment of forecast commercial revenues was important to inform our regulatory decisions.

⁵² See charges for other services section of Heathrow's licence (from page 90), available at www.caa.co.uk/cap1151.

forecourt access at licensed airport operators.⁵³ This sector review fulfils that commitment.

3.9 When dealing with any particular issue at licensed airport operators, we are required to consider in individual cases whether using competition law, to deal with particular issues, would be more appropriate than using our economic licence enforcement powers.⁵⁴

3.10 We could consider amending economic licences during the course of their periodic reviews by taking into account the evidence available to us at that time. Alternatively, if we find sufficient evidence for more immediate action, we can decide to modify conditions of an airport operator's economic operating licence during the course of the existing regulatory period through the available licence modifications mechanisms.

Other airports

3.11 Other UK airports are not, currently, subject to economic regulation. They have more commercial freedom to set airport charges and can choose whether to use the single till when doing so. However, in practice the single till is commonly used as airport operators seek to attract airline customers by offering competitive prices.

3.12 Although these airport operators are subject to a lesser degree of regulatory oversight, they are still subject to competition and consumer law, as well as some aviation specific requirements. In particular, because of the nature of the service provided, there may be elements of their services where airport operators may be considered to be dominant and therefore have a special responsibility under UK and EU competition law not to allow their conduct to impair competition.⁵⁵

⁵³ [Economic regulation at Heathrow from April 2014: Final Proposals](#), [Economic regulation at Gatwick from April 2014: Final Proposals](#), paragraph 2.42 to 2.45 of [Economic regulation at Heathrow from April 2014: notice of the proposed licence](#).

⁵⁴ By virtue of the Enterprise and Regulatory Reform Act 2013.

⁵⁵ Article 102 of Treaty on the Functioning of the European Union (TFEU) and section 18 of the Competition Act 1998.

Sector specific regulations

- 3.13 The Airport Charges Regulations 2011 (ACRs)⁵⁶ 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 airport charges. The ACRs cover operators of all airports handling over 5 million passengers and provide airlines with a number of protections. More information on the ACRs can be found on our website⁵⁷, along with our 'Guidance on the application of the CAA's powers under the Airports Charges Regulations 2011' (CAP1343).⁵⁸
- 3.14 Airports (Groundhandling) Regulations 1997 (AGRs) transpose the European Groundhandling Directive into UK law.⁵⁹ 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 third-party groundhandlers that operate at the airport. The AGRs also constrain airports with more than 1 million passengers if they want to restrict the number of self-handling airport users. 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, transparent and non-

⁵⁶ The airport charges directive can be found at: eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0012

The airport charges regulations can be found at: www.legislation.gov.uk/ukxi/2011/2491/contents/made

⁵⁷ More information on the ACRs can be found at: www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Airport-charges-regulations/

⁵⁸ CAP1343 – 'Guidance on the application of the CAA's powers under the Airports Charges Regulations 2011', is available from www.caa.co.uk/CAP1343

⁵⁹ Airport Groundhandling Regulations – The airport groundhandling directive can be found at: eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31996L0067

The airport groundhandling regulations can be found at: www.legislation.gov.uk/ukxi/1997/2389/made

discriminatory criteria. We must investigate alleged breaches of the AGRs. More information on the AGRs can be found on our website.⁶⁰

Competition law considerations

- 3.15 The CAA has both sectoral and competition law powers in relation airport operation services (AOS) and air traffic services (ATS).⁶¹
- 3.16 We are one of the sectoral regulators in the UK with certain concurrent⁶² competition law powers.⁶³ We have concurrent competition powers with the CMA⁶⁴ under the UK and EU competition prohibitions in respect of the supply of ATS and the provision of AOS.⁶⁵
- 3.17 This means that, alongside the CMA, we can apply and enforce the UK⁶⁶ and EU⁶⁷ competition law prohibitions, which prohibit anti-competitive agreements and abuses of a dominant position.
- 3.18 We also have powers under the Enterprise Act 2002 (EA02) to undertake market studies and to make market investigation references to the CMA for a more detailed investigation in regard to AOS and ATS.

⁶⁰ More information on the AGRs can be found at: www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Airports-Groundhandling-Regulations-1997/

⁶¹ By virtue of the Transport Act 2000 (TA00) and the Civil Aviation Act 2012 (CAA12).

⁶² The arrangements by which the CMA and the sectoral regulators apply competition law in the regulated sectors are often known as 'concurrency' arrangements. The arrangements for cooperation between the CMA and the CAA are set out in our memorandum of understanding with respect to competition law, available from <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Competition-powers/>.

⁶³ 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). NHS Improvement 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.

⁶⁴ 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).

⁶⁵ It may be that in the circumstances of a specific case that the CAA may also exercise its competition law powers concurrently with the Office of Rail and Road (ORR).

⁶⁶ Under the Competition Act 1998.

⁶⁷ Under Article 101(1) and Article 102 of TFEU.

- 3.19 ATS generally consist of air traffic control while the aircraft is cruising as well as when aircraft take off and land at airports.⁶⁸
- 3.20 AOS are defined as⁶⁹ 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.
- 3.21 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.
- 3.22 AOS do not include:
- air transport services for the carriage of passengers or cargo by air;
 - air traffic services; or
 - services provided in shops or as part of other retail businesses.
- 3.23 Typically, AOS are provided by the airport operator. They include facilities for car-parking, but not all car-parks. Therefore, some aspects of airport

⁶⁸ 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.

⁶⁹ Section 68 of CAA12.

access and car-parking fall within our competition law powers, and some do not. However, all aspects of surface access and aviation (as well as the rest of the economy) fall within the competition law powers of the CMA.

3.24 Further details on our competition law powers are set out in Appendix A.

Consumer law considerations

3.25 In addition to the competition law powers above, we have powers to enforce a range of consumer law including European legislation and consumer protection legislation covered by Part 8 of EA02 as set out below. We consider taking enforcement action when it would be in the collective interest of consumers to do so. Remedies available to us include seeking undertakings to comply with the legislation and/or seeking an Enforcement Order from the courts. Guidance on the CAA's approach to enforcement of consumer legislation can be found on our website.⁷⁰

Information and transparency

3.26 As 'information and transparency' is a key area of interest of this review, it is notable that the Air Services Regulation (ASR) sets out (amongst other matters) a number of legal obligations relating to the display of prices for air services. These obligations are designed to complement the more general consumer protection measures in the Unfair Commercial Practices Directive, which is implemented in the UK by the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

3.27 The ASR contains provisions relating to the pricing of air tickets and seeks to improve price transparency by clarifying that the final price to be paid includes all applicable fares, charges (including airport operator charges), taxes and fees. Airlines, and all those selling air services, are required to display a final price that is inclusive of, and gives details of, all

⁷⁰ See "Guidance on Consumer Enforcement", available at www.caa.co.uk/cap1018.

unavoidable and foreseeable charges, including airport operator charges.⁷¹

Trading fairly

- 3.28 The CPRs require businesses to provide material information to passengers and not to mislead either by act or omission – in taking action it is necessary to prove that had the information been available the consumer would have been likely to have made a different transactional decision.
- 3.29 Further details on our consumer law powers are set out in Appendix A.

Our information duties under CAA12

- 3.30 Section 83 of CAA12 places a duty on us to publish, or arrange for the publication of, information and advice, in order to help users of air transport services compare different services.
- 3.31 In order to publish information using our CAA12 powers, we must have regard to the principle that the benefits of doing so should outweigh any adverse effects.
- 3.32 We currently publish information for passengers on the charges made for some services at the airport; this includes airport development fees, plastic bags, drop-off and pick-up fees and fast track security lanes.⁷² Our information duties, therefore, can be suited to address issues of transparency of aviation related issues for the benefit of consumers.

⁷¹ Further information about the ASR can be found at www.caa.co.uk/cap1015.

⁷² This information is available from <https://www.caa.co.uk/Passengers/At-the-airport/Airport-charges/>.

Chapter 4

Market structure

Introduction

- 4.1 This chapter sets out our initial findings, what stakeholders told us and our conclusions on the market structure for the UK surface access sector.
- 4.2 This chapter is structured by topic as follows:
- Competitive position of airport operators;
 - Exclusivity and discrimination;
 - Competition in downstream provision of car-parking;
 - Car hire;
 - Rail; and
 - Our conclusions on market structure.

Competitive position of airport operators

Initial findings from our consultation

- 4.3 Passengers have a number of ways to get to and from UK airports. The downstream sector (provision of surface access to consumers) is therefore seen as broadly competitive in most cases. However, not all the ways of getting to and from the airport are perfect substitutes to each other. Intra-modal competition (e.g. different car-parking operators) is likely to be a stronger form of competition. That said inter-modal competition (e.g. travelling by car or going by train) also plays an important role in delivering good outcomes to consumers.
- 4.4 The vertical nature of the airport surface access market – in which airport operators provide access to forecourt facilities which are then used by surface access operators to provide services to passengers – has the potential to give rise to a situation where competition is affected. This

raises some concerns as to whether airport operators have the means and the incentive to restrict competition.

- 4.5 In particular, airport operators' ownership of most of the required facilities to operate a parking service and their ability to control the way in which different transport modes access the airports, provides an opportunity to charge most if not all segments of passenger demand for arriving or departing the airport. This means that even if the surface access sector downstream is competitive, airport operators may be able to introduce and to increase charges generally for accessing the airport.
- 4.6 Airport operators want their airports to be attractive for passengers and for airlines to be willing to use their facilities. Airlines choose airports based on the potential demand for their services available at that airport (taking into account passenger choice) compared with other ways of deploying their aircraft.
- 4.7 Passengers will choose between airports based on some combination of:
- the flights available at the airport (route network, timings, quality, reliability of airlines);
 - the cost and convenience of getting to the airport; and
 - services available at other airports.⁷³
- 4.8 It could be argued that passengers will choose airports predominantly based on the flights available and how far they need to travel, and generally take less notice of charges levied by airport operators on access directly or indirectly. In this event, airport operators may be able to raise access prices to passengers and surface access operators above competitive levels. This could mean that even though an airport operator may not have a dominant position in relation to aeronautical services provided to airlines, it could be dominant in the surface access facilities element of airport operation services.

⁷³ See for example Figure 11 of a previous consumer research report by the CAA, available at <http://webarchive.nationalarchives.gov.uk/+/http://www.caa.co.uk/docs/5/Passenger%20survey%20results%20-%20FINAL.pdf> (PDF).

- 4.9 Under such a market definition, it follows that airport operators generally are present in both the upstream (access to the airport) and downstream (services to get to the airport) levels of the surface access sector. As such, the airport operator provides third parties access to facilities that are necessary for them to supply surface access services to passengers, whilst at the same time competing with those third parties in the downstream market. This may mean that airport operators have incentives to favour their own services when granting access to facilities needed by their rivals.
- 4.10 Judgments of the courts in private action competition cases also indicate that some airport operators by their nature may be deemed to hold a dominant position upstream by virtue of controlling access to the airport's facilities. As such, an airport operator can be a dominant supplier of an input required, or very important, to successfully operate road transportation services to and from the airport. We note that those cases involved both licensed airport operators⁷⁴ and unlicensed ones.⁷⁵ However, in those cases the question of dominance was not tested. Rather, dominance was assumed for the purposes of the expedience of the trial and was not challenged by the relevant airport operator.
- 4.11 As a result of the above, we concluded that airport operators could have a dominant position in a relevant market defined as the upstream provision of surface access facilities or forecourt access.
- 4.12 We also noted that, in the groundhandling sector where similar issues regarding the vertical structure of the market may arise, legislation at European level was required to encourage the development of competition.⁷⁶

⁷⁴ e.g. Purple Parking Limited and Meteor Parking Limited vs. Heathrow Airport Limited, available at <http://www.bailii.org/ew/cases/EWHC/Ch/2011/987.html>.

⁷⁵ e.g. Arriva The Shires Ltd vs. London Luton Airport Operations Ltd <http://www.bailii.org/ew/cases/EWHC/Ch/2014/64.html>.

⁷⁶ See, for example the Commission's groundhandling page at http://ec.europa.eu/transport/modes/air/airports/ground_handling_market_en.htm.

Stakeholders' views

Consumer watchdog

- 4.13 London TravelWatch stated that airport operators have a significant influence on the level and affordability of surface access travel options available at their airports. London TravelWatch considered that the degree of influence airport operators have allows them to generate income other than the charges levied on airlines using the airport; and maintaining high costs of public transport to airports will (in its view), have a negative impact on other aspects of airport operation, such as air quality and efficient operation impeded by congestion on the road network in and around airports.
- 4.14 ABTA considered that competition between airport operators and between different surface access operators is the best way to keep prices at competitive levels and quality of service high.

Travel industry trade associations

- 4.15 Scottish Passenger Agents Association (SPAA) considered that road and rail projects have a major part to play in passengers getting to the airport for many of its members and their passengers in Scotland, and that these should have been identified and considered in this review.
- 4.16 SPAA agreed that there should be competition between airport operators and different surface access operators to keep prices at competitive levels and quality of service high, but this should not lead to the exclusion of new entrants. According to the SPAA, public transport to an airport is:
- not always possible, leaving many passengers with the need to either be dropped off at the airport or park their car; and
 - not always available on a 24 hour basis at some airports, leaving passengers, arriving late in the evening or departing early in the morning, and airport staff, working early or late shifts, no alternative but to use private transport.

Representatives of surface access operators and trade association

- 4.17 The Chartered Institute of Logistics and Transport (CILT) stated that before forecourt management and better public transport, passengers were subject to congested forecourts and poor quality of service because of uncontrolled parking and waiting. Better public transport was in part justified by some of these poor conditions. It therefore urged us to consider very carefully any proposal which enables greater access to the least sustainable modes (e.g. private-car particularly for drop-off and pick-up which involve multiple journeys to the airport). Much of the good work achieved by airport operators, transport operators and other stakeholders could be easily undone by a misplaced ambition to provide more choice for passengers.
- 4.18 IAPA stated that CAP1370⁷⁷ summarised private competition cases where airport operators have been found to have abused their dominant position in the upstream facilities market thereby adversely affecting competition in downstream markets. The abuses found include, protecting their own road access products from competition and extracting higher charges from surface access operators for use of forecourt facilities.
- 4.19 IAPA stated that where an airport operator abuses competition law in relation to the provision of surface access that the MPT would be likely to be met if surface access facilities were provided in the “core area” of an airport.⁷⁸ IAPA considered that for us to have more effective enforcement powers relating to surface access, we could seek an amendment to CAA12 to include all car-parks, coach parks and bus stations in the airport area definition and request that the Secretary of State make regulations providing that the following areas are “core areas” of an airport:
- the forecourt of a passenger terminal;
 - a qualifying car-park;

⁷⁷ CAA Competition Working Paper: a discussion of national and European competition case law relevant to the aviation sector, CAP1370, January 2016, which is available from www.caa.co.uk/CAP1370.

⁷⁸ An airport cannot pass the market power test unless all, or some, of its core area is dominant (as defined in CAA12).

- a coach park /bus station;
- an airport access road.⁷⁹

4.20 Alternatively IAPA suggested that it may be possible to amend the definition of “core area” by providing that it includes any airport area where surface access facilities are provided. Surface access facilities could be defined to include drop-off and pick-up facilities.

4.21 IAPA noted that the “core area” of an airport does not include the use of one or more of the airport roads, the forecourt of a passenger terminal, a qualifying car-park and bus/coach station. IAPA considered that this meant that for this category of airport operation services (AOS), we could not regulate using our CAA12 licensing powers, and instead that we would need to rely upon our competition law powers. IAPA considered that it would be preferable if we had the option of using licensing powers to regulate in relation to all AOS if this was more appropriate than relying on our other competition law powers.

Airport operators association

4.22 AOA said that aviation needs to have the capacity to grow in order to ensure the UK is connected to international economies. For aviation to be able to grow, people need to be better connected to airports by surface access, including transport such as rail and highways. Surface access needs to provide accessible choices so that passengers continue to benefit from aviation and the economy can benefit from increased passenger numbers and improved connectivity.

4.23 AOA considered that our focus on the competitive conditions for road access was too narrow. Instead it considered the review should consider all modes of surface access to an airport as well as considering the overall competitive environment in which airport operators exist and the effective competition that provides.

⁷⁹ Not all of these are part of the core area (as defines in CAA12).

- 4.24 AOA stated that a defining feature of UK airports is that most operate in the private sector and as such they operate in a highly competitive environment, across all facets of their business. For example, at most airports, due to the power exercised by airlines, there is often significant downward pressure on the charges the airport operator can levy on airlines. This means that airport operators rely disproportionately on non-aeronautical income streams in order to offset costs in other parts of the business. Despite these constraints and to avoid the threat of airlines or passengers switching between airports, airport operators' must continue to deliver high levels of private investment in infrastructure and a positive experience for consumers at their airports.
- 4.25 AOA said that as it is difficult to consider one mode of transport in isolation from others; any study of the competitive environment around surface access must also take account of the need for airport operators to accommodate the access needs of a range of different consumers. While passenger's choices as to which airport they use is strongly influenced by the speed and convenience of getting to the airport, suggesting that passengers might take less notice of access charges levied by airport operators, allowing airport operators to raise prices artificially, is misguided. AOA stated that:
- at most airports, effective competition exists, especially between different modes of surface access transport; and
 - by raising access charges, airport operators run the risk of surface access providers reducing their services or withdrawing from the airport altogether.
- 4.26 AOA considered that while passengers may or may not be indifferent on whether they pay for airport services through their airfare or through the price of their surface access product, the headline cost of the airfare is a key determinant for passengers. For many airport operators, especially at regional airports, it is likely that any attempt to transfer costs to the airline customers would result in airlines operating fewer services, which in turn would lead to reduced connectivity.

Airport operators

- 4.27 Birmingham Airport stated that it is important that not just price of surface access options is compared but also the service and product provided, convenience, security, journey time etc.
- 4.28 Birmingham Airport considered that airport operators have a higher cost base than most downstream providers whose sole existence relies on the ability of the airport operator to continue to invest in its marketing to drive airline growth which in turn increases the consumer catchment for the downstream provider who can then gain an advantage. Birmingham Airport stated that it does seem fair that relative charges are in place to access airport facilities and these are set at rates in consultation with operators and those that use the facilities which are reasonable and fair.
- 4.29 Bristol Airport questioned if there is sufficient understanding of the commercial pressures and the commercial model within which regional airport operators operate. Providing consumers with more choice is a positive step providing it does not have a negative commercial impact on airport operators which could ultimately reduce the airport operator's ability to maintain and grow routes and services.
- 4.30 Bristol Airport questioned if there is sufficient understanding about how different each airport is (particularly outside London) and how a 'one size fits all' solution may possibly be counter-productive. With a significant reliance on car-parking, Bristol Airport operates a 24/7 bus transfer from the terminal forecourt to the various car-parks. Congestion on the forecourt is a limiting factor in the feasibility of having numerous large buses: 2 of its own car-park buses on the forecourt is circa 60 per cent of the safe forecourt capacity.
- 4.31 In terms of the market position of airport operators in the provision of airport services, Bristol Airport considered that all regional airport operators have a desire to improve access. The ability to operate in a commercial manner and not be restricted unduly by additional rules and regulations on top of those that already exist is an important factor. Bristol