

Our ref: NI1295 - Hyde Counter representation to LA03/DPS/0063

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Date: 4th December 2019

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Dear Sir/Madam,

**RE: COUNTER REPRESENTATION BY THE HYDE FAMILY TO
REPRESENTATION LA03/DPS/0063 – ANTRIM AND NEWTOWNABBEY
LOCAL DEVELOPMENT PLAN 2030**

We write on behalf of our client, The Hyde Family, in respect of the above-mentioned representation (reference LA03/DPS/0063) submitted by TSA Planning on behalf of Belfast International Airport, (hereafter referred to as 'BIA'), to place on record our counter-response to the same.

We acknowledge the strategic economic position of BIA but take issue with the proposed site specific policies proposed in the TSA submission on that grounds that adoption of these amendments would render the Plan unsound. We address those matters in the order in which they appear in the submission.

Paragraph 1.3 – Requirement for a Key Objective.

BIA suggests that the Plan should include a Key Objective 1: *"To provide for, safeguard and encourage the continued growth of business at Belfast International Airport and its safe and efficient operation in meeting the needs of the travelling public and freight."*

It is our considered view that the strategic importance of BIA is adequately addressed in Strategic Policy 1, specifically SP1.6 and associated policies specific to the proposed Strategic Employment Locations (SELs) and to BIA itself. Introducing such a Key Objective would be contrary to the overall strategy from which the Plan policies and allocations logically flow (CE1). It would result in confusion and incoherence.

Paragraph 1.4 – Proposed Change to Policy SP1.6

BIA propose a change to Policy SP1.6 *"to ensure the Regional Gateway status of the Airport is provided for, strengthened, safeguarded and protected."*

It is our considered view that the strategic importance of BIA is adequately addressed in the existing wording of Policy SP1.6 and associated policies specific to the proposed Strategic Employment Locations (SELs) and to BIA itself. We have no objection to appropriate policies that recognise and strengthen the Regional Gateway status of BIA. While we acknowledge the principle of safeguarding and protecting any SEL based on BIA from inappropriate development within the SEL, the use of *'safeguarded and protected'* in a strategic policy without any such further clarification and context could potentially fetter competition and set the Plan at odds with the SPPS which confirms that:

*“...the planning system operates in the **public interest** of local communities and the region as a whole, and encompasses the present as well as future needs of society. It **does not exist to protect the private interests of one person against the activities of another**, although private interests may coincide with the public interest in some cases” (emphasis added).*

This is of particular note with regard to airport car parking and the potential restriction in opportunity for third party airport parking providers if “safeguarding and protected” is afforded a narrow interpretation in combination with Policy SP 3.12. This issue is considered further below in relation to that policy.

Policy SP 2.5 – Strategic Employment Locations

Policy SP 2.5 identifies a number of strategically located industrial/employment sites that will be designated as SELs, including BIA. Policy SP 2.5 states that the precise boundaries of each SEL will be brought forward in the Local Policies Plan.

At paragraph 2.6, BIA proposes that the designated SEL boundary for the Airport should align with the current Airport Operational Area in order to facilitate the appropriate future development and growth of the Airport SEL that is centred on BIA. They argue that it is critical that the SEL *‘designation does not conflict with or have a negative development impact upon the Airport Operational Area or the operations of the airport therein.’* They also want flexibility to be built in to allow for expansion of airport operations into the SEL should the need arise.

In our considered view there is potential for policy conflict and inconsistency there in that some of the potential land-uses the Council would be seeking to promote and encourage in the SEL may not all be appropriate for inclusion with the Airport Operational Area. The BIA submission at paragraph 2.9 reinforces this potential conflict between the Airport Operational Area and the SEL.

In that context we respectfully suggest that the Council undertake their own analysis in respect of the logical boundary for the SEL which allows sufficient flexibility in land availability to accommodate appropriate investment and economic development that would not be suitable within the operational area of BIA.

In undertaking that assessment and analysis we suggest that the Council consider logical well-established boundaries including the A57 road and also consider sites carrying extant approvals for economic and transport related uses adjacent to the airport.

Policy SP 3.12 - Car Parks

In paragraph 2.11 BIA state that they support *“the introduction of a policy within the Plan Strategy to protect the Airport from the plethora of unauthorised off-site car parks situated in close proximity to BIA.”* (my emphasis).

Further in paragraph 2.13 BIA argue that *“it is incumbent upon the Council to deliver a robust car parking policy that will ensure all (my emphasis) car parking proposals are located within the Airport Operational Area to facilitate orderly and sustainable approach to development.”*

In terms of the proposed revised wording of the policy, they propose a blanket ban on car parking outside the airport.

BIA argue that operation of unauthorised car parks in close proximity to BIA is impeding the future sustainable growth of the Airport. They say that such *“car parks are characterised by their parasitical activity that brings little or no economic benefit and are detrimental to the Airport’s investment and growth strategy as revenue which could be used to attract new routes is lost to ongoing unauthorised activities”*

There is no doubt that there has been an historical issue with unauthorised car parking activities in the area around the airport. That is an enforcement issue and not an LDP policy matter.

We represent a car park provider operating close to the airport with the benefit of valid planning permission. BIA produce no evidence to support the assertion that such operators bring little or no economic benefit. Our clients’ operations make an important contribution to the local economy, sustaining more than 20 jobs. Those jobs and the socio-economic benefits that they deliver are a material planning consideration. The number of jobs may be modest by comparison to the overall numbers employed at BIA and by comparison the number of

car parking spaces capable of being accommodated in locations that meet current policy provisions are also modest by comparison to the capacity at the BIA. Logically therefore the impact on the viability of BIA as a Gateway and SEL is also modest.

Policy SP 3.12, and all other policy in respect of Transportation and Infrastructure, is not a regulatory tool to 'protect' a sole operator which would give BIA a manifestly unfair advantage over other potential lawful operators.

The proposal is contrary to soundness tests C1, C3 and CE2. In proposing this blanket ban, BIA have failed to take account of prevailing regional policy which states "*In preparing LDPs Councils must take account of the RDS 2035, the sustainable Development Strategy for Northern Ireland, the SPPS and any other policies or advice in guidance issued by the Department*" (SPPS 2015, paragraph 5.16) and by extension Paragraph 4.1 of the SPPS 2015; "*When plan-making and decision-taking, planning authorities must balance and integrate a variety of complex social, economic, environmental and other matters that are in the long term public interest*"; and paragraph 5.2 "*transparency, fairness and accountable decision-taking are fundamental to ensuring all interests are taken into account*" (my emphasis).

BIA argue that all existing and future car parking requirements, can be fully met within the Airport Operational Area. As an evidence base to support this assertion, they source a *recommendation* (my emphasis) from the Civil Aviation Authority. In considering this recommendation, BIA, by their own admission claim that other car parks available to passengers are "*in close proximity to BIA*" (referenced in Section 2.13 of the submission), therefore the car parks which BIA reference, would also align with the CAA's advice. The proposed amended policy would fail to take account of realistic alternatives.

Notwithstanding this, no empirical evidence was provided by BIA to project the level of car parking required to sustain anticipated future growth, other than a recommendation that airport car parking should be as close as possible to a passenger's departure destination. Such a 'recommendation' cannot be relied upon as a robust basis on which to formulate planning policy which would allow a single operator to dominate control of all future parking provision for passengers, removing any prospect of fair competition. In order for the Council to assess such an assertion properly it would be necessary for BIA to provide detailed long-term parking data for its current operations.

We refer the Council to a Report published by the Civil Aviation Authority in December 2016 entitled: 'Review of market conditions for surface access at UK airports – Final report' (Appendix 1). The Report focused the 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.

The Report concludes that:

- 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.
- Some aspects of this sector 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 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. This may serve to strengthen the position of the airport operator,

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as passengers are less likely to have bargaining power than airlines and retailers who engage in commercial negotiations with airport operators.

It is clear that the re-wording of this policy as proposed, is completely prejudicial to all other prospective competitors. We strongly oppose the proposed revised wording of this policy and we urge the Council not to adopt a site specific policy which in effect is an unjustifiable intervention in the operation of the free market by safeguarding the interests of a sole operator for no sound planning reasons. To this end, we submit that the proposed amendment of the policy would be in breach of Soundness Tests CE2 and CE4 in failing to consider reasonable alternatives completely removing any prospect of flexibility or choice to car park users and without a robust evidence base on which to base the assertions made by BIA.

Conclusions

The Councils' Draft Plan Strategy will establish strategic direction for the Borough by providing a level of certainty on which to base key development decisions within the area and will be the basis upon which to progress to the next stage, the Local Policies Plan. The Strategic Policies contained within the Plan Strategy should be both *realistic* and *deliverable*, as well as having a degree of flexibility to ensure that the objectives for the area can still be achieved.

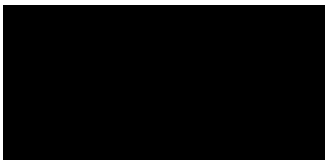
Having undertaken an analysis of representation LA03/DPS/0063, it is evident that the approach proposed by BIA in limiting the boundary of the proposed SEL to the operational area of BIA and the speculative amendments proposed to draft policies SP 3.12 and by extension SP 3.15 would render the Plan unsound for the reasons outlined above.

We reserve our right to make further representation to Antrim and Newtownabbey Local Development Plan on behalf of our client and we can advise that we wish to be heard orally at Independent Examination.

I trust the above is in order, however should you have any queries please do not hesitate to contact me.

Yours sincerely,

for RPS Group Limited



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APPENDIX ONE

Review of market conditions for surface access at UK airports – Final Report Civil Aviation Authority (December 2016)

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

CAP 1473



Published by the Civil Aviation Authority, 2016

Civil Aviation Authority,
Aviation House,
Gatwick Airport South,
West Sussex,
RH6 0YR.

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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.

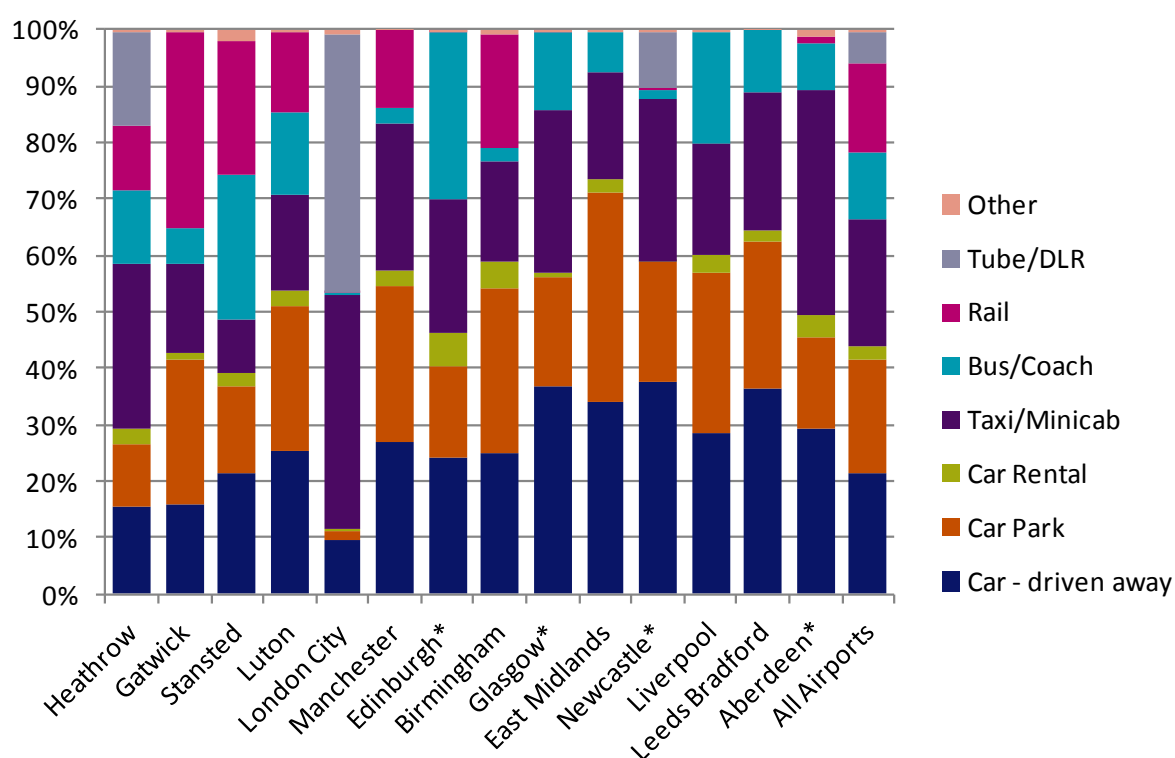
Summary of initial views

- 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

Airport stated that off-site car-park operators, car-park consolidators/distributors, independent bus and coach operators do not always have the overall best interests of the airport passenger in mind when designing their products and services. Bristol Airport considered that these other surface access operators are unlikely to sacrifice profitability (as an airport operator may be prepared to do) for a greater long-term goal. It is not necessarily a bad thing for airport operators to be involved in the provision of such services. They are more likely to see the broader benefits of providing good value high-quality options as it reflects positively on the overall airport user experience.

4.32 Edinburgh Airport stated that the surface access sector covers a number of products which compete for different customers in different circumstances. Edinburgh Airport illustrated this as follows:

- For passengers travelling to and from Edinburgh airport, there is a wide choice of modes of transport (such as tram, bus, and taxis) and transport modes operate to constrain each other and ensure competitiveness.
- Transport modes often include or make use of fixed public infrastructure, as a result the airport is not the only stakeholder that influences surface access.
- Edinburgh Airport needs to manage access for its growing number of passengers within the constraints of a finite resource for access to the airport - both inter-modally and intra-modally.
- Passengers include the cost of getting to the airport in assessing the cost of flying, and therefore that surface access charges by airport operators face strong competitive constraints from rival airport operators, alternative travel options, and potentially from passengers deciding not to travel.
- Edinburgh Airport seeks to allocate its limited capacity on a fair basis with a view to driving choice and quality in surface access options for passengers. Its policy is to engage with new surface access providers, and wherever possible to accommodate them within airport facilities.

- 4.33 Edinburgh Airport concluded that airport operators face strong competitive constraints including how they price and allocate surface access, from other airport operators, alternative travel options, and from passengers deciding not to travel at all.
- 4.34 Gatwick Airport considered that we could enhance our review by analysing the wider context within which airport operators operate. Gatwick Airport stated that it is important to recognise that the incentives on an airport operator are heavily influenced by the multi-sided platform nature of its business:
- An airport operator can only be successful if it simultaneously optimises the arrangements across products offered to aeronautical customers, retail customers and passengers (including surface access). Behaviour in one side of the market affects the other sides of the market (i.e. a passenger deterred from travelling by parking fees or awkward arrangements does not contribute to aeronautical income or retail).
 - In markets with these characteristics the welfare maximising prices offered to the different sides may not correspond to the marginal cost of supplying the service to that side, meaning that cost reflectivity is more complex to assess.
- 4.35 Gatwick Airport stated that while we have focused on surface access rather than all of an airport's operations, it is important that we recognise that these characteristics are important as they can substantially change how observed characteristics of a market should be understood, the way consumer detriment is analysed and the magnitude of competitive constraints present in the market.
- 4.36 Gatwick Airport stated that around London the airport catchment areas overlap significantly; as a result there is strong competition for passengers. However, Gatwick Airport does not identify where passengers come from, and does not differentiate access prices based on origin.

- 4.37 Gatwick Airport stated that our catchment area analysis for airports verified that the overlaps are very large based on actual usage (with the potential overlaps based on travel times being even more significant):
- 34 per cent of Gatwick Airport's passengers are drawn from districts that are in the catchments of all four of the largest London airports;
 - 12 per cent from districts that are in the catchment for Heathrow and either Stansted or Luton airports;
 - 18 per cent from districts where Gatwick overlaps with Heathrow airport only;
 - 22 per cent of Gatwick airport's passengers are from outside of Gatwick airport's catchment area; and
 - 13 per cent of Gatwick airport's passengers being drawn from districts where there is no overlap with another airport.⁸⁰
- 4.38 Gatwick Airport noted that similar conclusions were reached by the "exposure analysis" in the Competition Commission's BAA airports decision.⁸¹
- 4.39 Gatwick Airport suggested that it has a strong incentive to make it as easy for passengers to reach the airport from as a wide area as possible.
- 4.40 Gatwick Airport noted our statement that "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. In this event, airport operators may be able to raise access prices to passengers and surface access operators above competitive levels."⁸² Gatwick Airport considered that this appears to conflate two separate issues:
- An airport operator with market power in surface access may be able to leverage this market power – if there is an absence of competitive

⁸⁰ Catchment area analysis working paper, CAA, October 2011.

⁸¹ Competition Commission 'BAA airports market investigation' March 2009, which is available from: <https://www.gov.uk/cma-cases/baa-airports-market-investigation-cc>.

⁸² Paragraph 4.5 of our consultation.

constraints which makes an abuse possible, for example through excessive access costs or leveraging market power through potential exclusivity agreements with surface access operators.

- The impact of imperfect information on passenger choices giving market power to the airport operator - the data presented in our consultation suggested that passenger awareness of surface access options is high, with 65 per cent reporting themselves to be fully aware of the transport options and a further 31 per cent reporting they had some idea. This suggests that the probability of significant market power arising exclusively from a lack of information is low.

4.41 Gatwick Airport added that it is important to note that the two main surface access cases in the UK (Purple Parking and Arriva/Luton) have both been vertical in nature, while the existence of an information problem to the extent that it would materially impact on competition and therefore consumer outcomes, appears highly unlikely.

4.42 Gatwick Airport considered that care needs to be taken with comparisons between the ground handling sector and surface access sector.⁸³ Gatwick Airport noted that the current, heavily commoditised, state of the ground handling market (at least at larger airports) can lead to poor consumer outcomes, particularly in the form of flight delays, and baggage delivery performance. Gatwick Airport noted that some of the issues in relation to ground handling are similar to those already faced in off-airport car-parking i.e. a lack of accountability. For example, passengers may be unaware that the ground handling agent which delivers their baggage (or attaches the airbridge to the plane) work for the airline rather than airport operator and will therefore be reluctant to switch airline in response to poor service (incorrectly assuming that it is the airport operator which is at fault). A similar situation already exists in relation to “cowboy” car-park operators at many airports and there is a risk that applying market

⁸³ Paragraph 4.10 of our consultation.

opening measures similar to ground handling would make already challenging consumer issues worse.

- 4.43 Gatwick Airport stated that in assessing market power for different purposes,⁸⁴ we need to be mindful of the potential impact of our policies on economic regulation of airport operation services on other, complementary goods. Gatwick Airport suggested that if for example we set access prices in the aeronautical market below market clearing prices, then we will also artificially stimulate demand and potentially prices for complementary goods such as surface access.
- 4.44 MAG stated that the majority of airport operators in the UK are subject to relevant, effective competitive constraints by virtue of the fact that they operate in commercial environments in which they compete with other airport operators for the custom of airlines, passengers, surface access operators and providers of other retail and commercial activities. In particular airport operators are constrained by the countervailing buyer power exercised by airlines and transport operators using airport facilities, as well as the threat of passenger switching between airports.
- 4.45 MAG added that passengers' decisions as to which airport to use include the speed and convenience of travel to the airports in question, the price of surface travel options, previous experience of different airports, the destinations available and the frequency of services. MAG stated that it is incorrect to say that passengers generally take less notice of charges levied by airports on access (and that this might enable airport operators to raise charges above competitive levels), because it ignores the potential response of surface access providers who may reduce services from the airport altogether.
- 4.46 MAG stated that the research noted in our consultation document said that informed passengers will provide a strong degree of protection to passengers that are less well informed about their surface access options. These factors act as competitive constraints on airport operators and are

⁸⁴ Paragraph 4.12 of our consultation.

relevant to the decisions airport operators take about granting access to infrastructure and facilities. Defining the relevant upstream market should take into account these competitive constraints. MAG stated that there may be many situations where the relevant upstream market is broad enough to include the provision of facilities not only at the airport itself, but also the other airport operators that are competing with it. Where this is the case, MAG considered that the relevant downstream market should also include not only the onward transport services from the airport in question, but also the relevant onward transport services from competing airport operators that are included in the relevant upstream market.

4.47 MAG considered that only where an airport operator has a dominant position in the relevant upstream market could it have the scope to exercise sufficient market power to distort competition in the relevant downstream market or act independently of its customers. However, even then there should be no presumption about whether a position of dominance has an adverse effect on competition given that it may well have no material impact on consumers and, of course, the airport may not behave in an abusive manner notwithstanding that it has enough market power to enable it to do so.

4.48 Newcastle Airport stated that it is critical that policy and regulation enable airport operators to deliver good connectivity for the regions they serve. The UK economy, including regions like the North East, must compete within a global marketplace. Businesses require convenient access to key markets, headquarters, customers, offices, factories, conventions, etc. and will make their locational and investment decisions based on this. North East businesses therefore require flights to/from an airport within the North East region, whether direct or via a hub, rather than flights to/from a distant airport that must be accessed by a long drive or train journey.

4.49 Newcastle Airport stated that there is significant competition between transport providers in the North of England and South of Scotland, including airlines, airport operators, and rail and coach operators.

Newcastle Airport's approach to surface access is aimed at ensuring that Newcastle Airport remains competitive and is an attractive option to customers who have a numbers of alternatives available to them.

Our conclusions on competitive position of airport operators

4.50 IAPA considered that under CAA12 we could not regulate all of the airport's surface access facilities and that we could consider asking the government to amend these licensing powers. While the core area, as defined in CAA12⁸⁵, does not necessarily include all of an airport operator's surface access facilities, this does not stop an airport operator's operating licence having conditions that cover these facilities, if we consider that is appropriate.⁸⁶ The starting point is that CAA12 prohibits the operator of a "*dominant airport*" from levying charges for the use of its facilities without an economic licence issued by us.⁸⁷ An airport operator is considered dominant if we make a determination that the Market Power Test is met in relation to the airport or part of the airport (the airport area) and publish a notice of that determination.⁸⁸ Further details on the Market Power Test are set out in our Market Power Test Guidance.⁸⁹

4.51 Judgements of the courts in private action cases indicate that some airport operators may, by their nature, 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 which is very important, to the successful operation of road transportation services to and from the airport. We note that those cases involved both licensed airport operators⁹⁰ and unlicensed ones.⁹¹

⁸⁵ Section 5 CAA12.

⁸⁶ Sections 18 to 21 CAA12.

⁸⁷ Section 3 CAA12.

⁸⁸ Section 5 CAA12.

⁸⁹ Market Power Test Guidance, CAP 1433, August 2016, which is available from: www.caa.co.uk/CAP1433/.

⁹⁰ e.g. Purple Parking Limited and Meteor Parking Limited vs. Heathrow Airport Limited, available from: <http://www.bailii.org/ew/cases/EWHC/Ch/2011/987.html>.

⁹¹ e.g. Arriva The Shires Ltd vs. London Luton Airport Operations Ltd <http://www.bailii.org/ew/cases/EWHC/Ch/2014/64.html>.

However, in those cases the question of dominance was not tested; it was assumed for the purpose of the expedience of the trial.

- 4.52 The CMA's guidance on Abuse of Dominance⁹², states the European Court has defined a dominant market position as:

*"...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."*⁹³

- 4.53 An undertaking will not be dominant unless it has substantial market power. Market power arises where an undertaking does not face sufficiently strong competitive pressure.
- 4.54 Market power can be thought of as the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels. An undertaking with market power might also have the ability and incentive to harm the process of competition in other ways, for example by weakening existing competition, raising entry barriers or slowing innovation.
- 4.55 In assessing whether an undertaking is dominant, we consider whether that undertaking faces constraints on its ability to behave independently in the relevant market. The most important constraints are existing competition and potential competition. Other factors, such as the countervailing influence of powerful buyers, or regulation, can also be relevant.
- 4.56 We note that dominance itself is not an infringement of competition law. That said competition law prohibits conduct by one or more undertakings which amounts to an abuse of a dominant position in a market. These

⁹² Paragraphs 4.10 and 4.14 of CMA's Guidance 'Abuse of a dominant position' OFT402, which is available from www.gov.uk/government/publications/abuse-of-a-dominant-position.

⁹³ Case 27/76 United Brands v Commission [1978] ECR 207, [1978] 1 CMLR 429. This definition has been used in other cases.

prohibitions provide that conduct may constitute an abuse if, for example, a dominant business:⁹⁴

- directly or indirectly imposes unfair purchase or selling prices or other unfair trading conditions;
- limits production, markets or technical development to the prejudice of consumers;
- applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- makes the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

4.57 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 guidance, such an investigation would be carried out from first principles and each assessment would be case specific. The market definition in any future case could therefore be different than the wide bundle of airport operation services (AOS) that we used for the Market Power Determinations (MPDs) we undertook in 2014.⁹⁵

4.58 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.

4.59 We conclude that it may be prudent for airport operators to plan their engagement with surface access operators for the provision of facilities at

⁹⁴ Paragraphs 5.14 and 5.15 of CAP1235 'Guidance on the Application of the CAA's Competition Powers', May 2015, which is available from www.caa.co.uk/CAP1235.

⁹⁵ These market power determinations are available at <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Airport-Market-Power-Assessment/>.

the airport, on the basis that they *could* have a dominant market position in regard to access to surface access facilities under competition law. It is appropriate to remember that having a dominant position in a market under competition law is not illegal or an infringement of competition law, it is abusing a position of dominance that is illegal.

- 4.60 It is the responsibility of each business to satisfy itself that it is complying with competition law on an on-going basis. We recognise that a 'one size fits all' approach is not necessarily appropriate for competition law compliance and that the appropriate actions to achieve compliance may vary, for example depending on the size of business and the nature of the risks identified. Neither we nor the CMA will endorse or approve a business's compliance programme or give pre-approval to specific agreements or practices.
- 4.61 More information on compliance can be found in the CMA guidance 'How your business can achieve compliance with competition law'.⁹⁶

Exclusivity and discrimination

Initial findings from our consultation

Taxis and minicabs

- 4.62 Airport operators, from time to time, tender for firms to manage taxi ranks and/or to provide taxi services at the airport. Often, airport operators tender for a single preferred minicab (pre-booked) operator to operate directly from the forecourt. These tenders usually specify some quality standards expected from the service providers but we understand they may then be decided based on which firm can provide the best financial terms to airport operators.
- 4.63 Airport operators told us that it can be difficult to have more than one taxi firm operating from the airport forecourt, as it can lead to inefficient

⁹⁶ This guidance is available from: <https://www.gov.uk/government/collections/competing-fairly-in-business-advice-for-small-businesses>.

operations for taxi drivers (such as multiple queuing systems) and disorderly selling of services to passengers. Airport operators also noted that other taxi/minicab firms can also operate to and from the airport by dropping-off passengers as the general public does and/or by using airports' short-stay car-parks for picking up passengers. We consider that those alternatives may not always be good substitutes to a taxi rank arrangement, depending on the type of taxi/minicab service being provided.

- 4.64 Some airport operators have told us that they consider that their long-term car-parking "value product offerings" compete, to an extent, with taxi and minicab operators. The extent to which these two products are substitutable is likely to depend on the distance between the point of origin and the airport, and how long they intend to park at the airport (trip length).

Buses and coaches

- 4.65 Operators of scheduled services told us that some airport operators' tender access rights to bays or to the airport compound – sometimes for the provision of services to particular destinations – and award those rights to the bidders that pays the highest price. According to them, this is done even at airports where the coach station has significant spare capacity.
- 4.66 We have observed one case where a large coach operator provides both coach services to and from the airport and simultaneously manages the day-to-day running of the coach station on behalf of the airport operator. However, we have no evidence to consider at present that these management contracts are in any way putting other competitors in a disadvantageous situation.
- 4.67 Some airport operators have told us that they support financially specific bus and coach services to areas of strategic importance of their catchment that would otherwise not be commercially viable.

- 4.68 The way airport operators charge operators of bus and coach services varies from airport to airport. Often, there is an annual licence fee and a per movement fee. However, sometimes differentiation is made based on the size of the vehicle. One surface access operator we spoke with considered that a per-movement uniform charge levied at some airports puts them at a competitive disadvantage because they operate a differentiated business model with smaller vehicles. At some airports, the amount paid is partly or totally based on number of passengers carried. Representatives of coach operators considered that airport operators should be more transparent on how they construct their charges.

What we found

- 4.69 Our initial findings were that:
- There is some evidence of airport operators arranging access to surface access facilities and forecourt access with some level of exclusivity which they may or may not be able to objectively justify.⁹⁷
 - There is some evidence of differential treatment of surface access providers and in particular between the airport operators' own services and independent providers which airport operators may or may not be able to objectively justify.⁹⁸

Stakeholders' views

Other local government bodies

- 4.70 Transport for London (TfL) considered that the bus and coach sector warrants further analysis to highlight that it is a growing market, as well as the effect it has on driving mode shift from other areas.
- 4.71 TfL Taxi and Private Hire stated that it is vital that sufficient space is provided at all airports for taxis to rank, private hire vehicles (PHVs) to pick-up passengers with bookings, and also for taxis and PHVs to drop-off passengers. TfL wanted to explore the potential for fixed or capped fare

⁹⁷ See paragraph 4.18 of the Consultation.

⁹⁸ See paragraph 4.18 of the Consultation.

schemes for taxi trips to and from airports which could offer better value for money for passengers as well as certainty and also help everyone compete fairly against each other.

Airport consultative committees

- 4.72 STACC said that when National Express was both the operator of the rail franchise and the main coach operator between Stansted and London, the incentive for real price competition between coach and rail transport was less than it is now.⁹⁹

Travel industry trade associations

- 4.73 Scottish Passenger Agents Association (SPAA) considered that most airport operators will have contractual arrangements with transport providers which is acceptable providing that there is competition and transparency. SPAA considered that there should be competition between airport operators and other surface access operators to keep prices at competitive levels and the quality of service high, but this should not lead to the exclusion of new entrants.
- 4.74 SPAA understands that airport operators generally work with selected taxi operators and considered that the licensing of official taxi providers should be reviewed regularly and that the process should be totally transparent and fair. SPAA stated that passengers can pre-arrange cheaper journeys with mini-cab companies with pick-up normally in the car-park or designated pick-up areas. These arrangements are well understood by regular passengers.
- 4.75 SPAA stated that many airports hold an open tender and then award a contract to operate coaches into the airport such as Scottish Citylink, Lothian Buses/Airport Express etc. Some of these non-express bus links can be fairly tortuous such as the service that operates from Glasgow Gilmour Street which is promoted as an airport link but is a local service that goes all round the houses before reaching the airport.

⁹⁹ Abelio Greater Anglia is now the operator of Stansted Express.

Representatives of surface access operators and trade associations

- 4.76 The Confederation of Passenger Transport (CPT) stated that the issue of access for competing road services, bus and coach in particular, has been a topic for legal challenge several times in recent years, as noted in our working paper on relevant case law (CAP1370).¹⁰⁰ CPT expressed concern that there is still potential for the market to be distorted by the desire of some airport operators to use surface access as a means to maximise commercial revenue. CPT considered that this invariably leads to dominance by one or more operators at the expense of open competition and issues for consumers.
- 4.77 CPT said that the regulated airports of Heathrow and Gatwick both engage regularly with operators of scheduled and non-scheduled services and the cost based “single till” approach has served to contain costs at these locations. Although both are regarded as being “high-cost” locations, the access fees are not the highest when compared with some other airports around the UK and the charge structure is equitable and doesn’t favour or disadvantage any operator, whether a regular visitor or infrequent one.
- 4.78 CPT recognised that capacity is a major factor and that where this is limited, there have to be mechanisms to regulate demand but the process for this should be transparent and not simply offered to the highest bidder as a means of generating revenue for the airport. CPT considered that this does not encourage competition or investment in additional facilities.
- 4.79 CPT stated that charter coaches are among the “greenest” means of surface travel, offering a much lower level of emissions per passenger/ km travelled than any other means of transport. CPT considered that tendering which coach services can access the airport forecourt, has impacted on the choice of operator available to customers, thereby limiting competition. CPT noted that the general view within the coaching

¹⁰⁰ 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.

sector was that the motive for tendering was commercial rather than issues of security, which were often cited as the reason.

- 4.80 CPT suggested the model of a fixed cost of registering for a licence at an airport would disadvantage any operator who visits only a few times a year.
- 4.81 Independent Airport Parking Association (IAPA) noted some circumstances where, in their view, airport operators attempted to impose “excessive charges” for surface access facilities to independent parking operators. IAPA considered that, where practicable, surface access facilities (including for drop-off and pick-up) used by surface access operators in competition to airport operators should ideally be at a single location and, in any event should not be less convenient in any material respect for the customers of surface access operators.
- 4.82 The Licensed Taxi Drivers Association (LTDA) stated that terminal forecourts at Heathrow airport are absolutely lawless. In its view, insufficient enforcement of them has led to an anarchic and unruly situation with private hire drivers breaking byelaws by waiting and picking up passengers on the forecourts.
- 4.83 The London Cab Drivers' Club (LCDC) reported on what London taxi drivers (black cabs) deem to be the adverse effects of Heathrow Airport's failure to ensure a high level of law enforcement on the airport's forecourts and road network serving the forecourts:
- that a large number of passengers leave Heathrow airport after walking to a car-park to be picked up by minicab or private car; with a greater number being picked up on the forecourts in contravention of airport byelaws that forbid forecourt pickups;
 - that Heathrow Airport's failure to organise effective parking enforcement on the airport's forecourts, is deliberate and commercially motivated;

- that Heathrow Airport imposes unfair trading conditions on self-employed taxi drivers, by allowing minicabs to wait to pick-up passengers on the forecourts;
- that Heathrow Airport rigidly applies the user-pays principle to London taxi drivers, but not to the minicab companies that conduct business on Heathrow Airport's forecourts;
- that Heathrow Airport is in a dominant position from which it can control access to the airport's forecourts, car-parks and taxi ranks through byelaws. This should not be exempt from the effects of competition law;
- that Heathrow Airport acts as if it has the unfettered right to dictate to what extent if any, the minicab and parking byelaws should be enforced by Heathrow Airport police (Metropolitan Police);
- that on Friday 1 April 2016, Heathrow Airport announced that it was creating a minicab holding area¹⁰¹ on airport property (after negotiations with Uber), without consulting London taxi trade (black cabs). TfL took part in the negotiations with Heathrow Airport and Uber, but no one consulted the taxi trade about this; and
- that unidentified cars and minicabs unlawfully park on the forecourts, present a variety of security risks including the risk that they could be carrying explosives or weapons.

4.84 LCDC considered that the most effective way of reducing overall traffic congestion at Heathrow airport would be to overhaul the law enforcement terms of Heathrow's Police Service Agreement (PSA). LCDC stated that full scale enforcement of existing minicab and parking legislation, supported by an appropriate increase in policing costs paid by Heathrow Airport to the Metropolitan Police, would resolve most of the congestion problems caused by the airport being over-supplied with minicabs and out-of-town taxis.

¹⁰¹ Available at <http://mediacentre.heathrow.com/pressrelease/details/81/Corporate-operational-24/6309>.

Trade union

4.85 Unite the Union (Unite) stated that Heathrow Airport has introduced a number of unfair competition elements against taxis operating against the best interests of passengers. Unite considered that:

- Heathrow Express approaches arriving passengers' airside before they pass through the terminal and even on some flights; and that accurate information comparisons should be given to passengers on arrival and in on-board adverts in literature.
- Recently Heathrow Airport put forward proposals to introduce a private hire car-park, Authorised Vehicle Area, at Heathrow airport. The taxi trade accept that fair competition is essential for passenger choice. Unite is concerned over how Heathrow Airport's bye-laws will be implemented at the airport. In particular Unite cannot understand how a private hire vehicle can be allowed to enter Heathrow airport in "anticipation of a booking". The whole premise of these by-laws and the private hire car-park, the Authorised Vehicle Area, seem to be acting against fair competition. Unite considered that the wording should limit private hire access to those who have paperwork or a digital confirmation of a booking and those with fares already on board.

4.86 Unite 3023¹⁰² stated that on arrival at Leeds Bradford airport, the passenger is not given freedom of choice when wishing to choose a means of departing the airport via an 'official' Hackney carriage Black Cab as there is no taxi rank.

4.87 Unite 3023 said that:

- surface access information up to the end of 2007 was comprehensive and offered the travelling public both to and from the airport a great amount of choice and 'on-demand presence' facilities

¹⁰² Unite branch 3023 (Unite 3023) represent Taxi drivers based in the North East, Yorkshire and Humber region.

with a Hackney carriage taxi rank having been in situ since the end of 1947 when the airport started commercial flights;

- from 2007, the current preferred service provider, who initially tendered for the right to stand at the airport without any other competition, was brought in; and
- today, the travelling passenger has four options on arrival at Leeds Bradford - travel by bus; by private motor car (hire car included); by a privately booked taxi/minicab; or via the minicab service which operates from a portakabin on site. To use the minicab service on site, passengers must pre pay using postcodes (at rates which are much higher than a standard Hackney Carriage fare).

4.88 Unite 3023 stated that there is evidence supporting the lack of choice and freedom to choose an alternate 'on demand' service such as Hackney carriage black cabs at Leeds Bradford airport. However, Unite will advocate a policy of 'free and open' access across all areas of public transportation networks and airports factor into that also.

4.89 Unite 3023 stated that other airport operators do open up competition to other formats, such as Hackney Carriage black cabs, to give greater flexibility.

Airport operators

4.90 Luton Airport stated exclusivity and differential treatment have aired in the courts recently, and the law is now clear.¹⁰³ Both those cases were highly visible in the airport sector and as a result it is now much less likely that airport operators will use exclusivity or differential treatment that is not objectively justified. For example, Luton Airport is clear that it can no longer grant exclusive bus or coach concessions.

4.91 Luton Airport added that it runs commercial tenders for concessions for four car hire operators, one taxi/private-hire operator to use the taxi area

¹⁰³ Purple Parking Ltd and Meteor parking Ltd v Heathrow, 15 April 2011
www.bailii.org/ew/cases/EWHC/Ch/2011/987.html.
Arriva The Shires Ltd v London Luton Airport Operations Ltd, 28 January 2014
www.bailii.org/ew/cases/EWHC/Ch/2014/64.html.

(although other operators can use other facilities), and for the concession to use coach bays in the Central Terminal Area.

- 4.92 MAG described how it charges surface access operators for a variety of surface access facilities. It said some operators are appointed following an open commercial tender process. That is the case for private-hire taxi operators, scheduled coach operators and car rental operators. MAG stated that off-airport operators tend to pay standard prevailing rates to access short-stay car-parks and forecourts.

Recent developments

- 4.93 From the media and complaints, we are aware that recently Luton appointed Addison Lee to be the sole operator allowed to use Luton's taxi area.¹⁰⁴ According to the RMT taxi trade union, from 2012, Luton no longer have a taxi rank, and from July 2016, Hackney Carriages are no longer able to use the taxi area at the airport.¹⁰⁵ We have received complaints saying that the new arrangements lead to higher taxi fares to and from the airport. Luton Airport said that drivers from other firms could still pick passengers up from drop-off zones and car-parks, and the decision to award Addison Lee the contract was to ensure passengers receive the best service.¹⁰⁶
- 4.94 Recently a tender process for the provision of scheduled bus and coach services between Stansted and London resulted in a change of bus operators serving the airport, with two existing operators that lost out on the tender being excluded from the airport's Passenger Transport Interchange. In 2015, easyBus took legal action over the loss of its contract to use the Passenger Transport Interchange but was unsuccessful at challenging the way Stansted Airport interpreted its

¹⁰⁴ www.mynewsdesk.com/uk/ldnlutonairport/news/london-luton-confirms-addison-lee-as-its-personal-ground-transportation-provider-162760, www.luton-dunstable.co.uk/luton-airport-tells-taxi-drivers-that-contract-tendering-process-was-fair-and-open/story-29466509-detail/story.html.

¹⁰⁵ www.rmt.org.uk/news/rmt-taxi-drivers-to-protest-at-luton-town-hall/.

¹⁰⁶ www.prodrivermags.com/news/602-addison-lee-ousts-local-cabs-from-luton-airport.

byelaws.¹⁰⁷ We note that this was not a competition law case. In early 2016, Terravision took action over the loss of its contract to use the Passenger Transport Interchange.¹⁰⁸ The Terravision dispute was about alleged abuse of dominance which was settled out of court on a confidential basis.

Our conclusions on exclusivity and discrimination

- 4.95 Taxis, minicabs, buses and coaches are part of a range of surface access options available to consumers at airports.
- 4.96 From a consumer perspective, we agree that having a variety of business models competing at an airport is preferable. However, there may be good reasons why some restrictions may be objectively justified. For example, where space is very limited and expansion is uneconomic or where it is the only way to guarantee a good quality provision (such as a 24 hour provision). We encourage airport operators to continue to engage with surface access operators and jointly consider whether existing arrangements are the ones that best serve consumers.
- 4.97 Stakeholder comments that focused on the operation of taxi and minicab ranks and Authorised Vehicle Areas at Heathrow Airport, are matters that can be considered during the periodic reviews of the economic regulation of Heathrow Airport.
- 4.98 We consider that where airport operators grant exclusivity to a limited number of downstream operators or set Terms and Conditions to access airport facilities that can be seen as discriminatory, airport operators are more likely to be at risk of infringing competition law in this sector. This does not mean that tendering and differentiation is wrong. Instead, it is an area where airport operators should to be able to justify why their actions are necessary and in the interest of passengers or in the public interest.

¹⁰⁷ www.hertsandessexobserver.co.uk/easybus-boss-sir-stelios-locked-legal-battle/story-28191157-detail/story.html.

¹⁰⁸ www.hertsandessexobserver.co.uk/new-high-court-battle-stansted-airport/story-28562954-detail/story.html.

- 4.99 The High Court held, in 2014, that the operator of Luton Airport abused its dominant market position by granting a seven-year exclusive concession to National Express to operate buses between Luton Airport and central London.¹⁰⁹ The issue of dominance was not tested in the courts but rather it was assumed that airport operator was dominant in the upstream market.
- 4.100 We found that other tendering agreements of this sort may exist at other airports for a range of airport operations. In particular, we found that some airport operators tender for contracts for the provision of services where access to some facilities (bus bays, taxi ranks, etc.) is sometimes restricted to one or a limited number of suppliers.
- 4.101 A tendering process can be a good way to select a provider of a service that needs to be provided by only one operator for whatever reason (e.g. natural monopoly, health and safety or security). That said, by granting exclusive rights to one particular firm 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.
- 4.102 We note that the High Court found, in 2011, that Heathrow Airport Limited abused its dominant position in the provision of access to forecourts at its terminals by discriminating against its rival Purple Parking to stop its access to the airport forecourt. The Court found that the proposed change would have operated to the detriment of the consumer with the likelihood of higher and constrained prices for the forecourt service.¹¹⁰
- 4.103 Under competition law, airport operators may still have the ability to provide different facilities or charge different prices to different independent operators or between independent operators and their own operations. However, there must be objective justifications for treating

¹⁰⁹ Arriva The Shires Ltd v London Luton Airport Operations Ltd, 28 January 2014, [2014] EWHC 64 (Ch) at 16, <http://www.bailii.org/ew/cases/EWHC/Ch/2014/64.html>.

¹¹⁰ Purple Parking Ltd and Meteor parking Ltd v Heathrow, 15 April 2011 [2011] EWHC 987 (Ch) at 109, <http://www.bailii.org/ew/cases/EWHC/Ch/2011/987.html>.

different providers differently. In some circumstances it may be unfair to treat different operators equally. We consider that airport operators should be vigilant around not applying "dissimilar conditions to equivalent transactions" to surface access operators without objective justification, for example:

- charging different independent operators with similar surface access services differently;
- charging structures that do not take into account different usage of facilities by different operators, putting some in a disadvantageous competitive position;
- providing significantly better quality facilities to some operators over others without an objective justification; and
- bundling own or partners' surface access products with other airport services that only airport operators can provide (e.g. fast-track security).

Competition in downstream provision of car-parking

Initial findings from our consultation

- 4.104 Independent airport car-park operators provide competition to long-stay car-parking at the airport, which is likely to bring benefits to consumers in terms of value and choice. However, to do so effectively they require access to the facilities at or near the airport's forecourt (sometimes the airport's short-stay car-parks).
- 4.105 The extent to which there is competition from off-airport parking to on-airport parking varies considerably from airport to airport, in part as a result of historical ownership of land around the airport, geographical conditions and planning policies. Airport operators have told us, however, that, in general, they run or control over half of the long-stay parking capacity at or near their airports.
- 4.106 Airport operators have a number of tools at their disposal to control surface access at the airports, including legal instruments such as bye-

laws. They also, in some cases, appear to be pro-active in influencing planning policy, which may have the ability to restrict entry in car-parking markets and some airports are also at least partly owned by the local planning authority. Such view was put to us by representatives of independent airport parking operators.

- 4.107 Surface access is often an area where government policy can play its part in determining what is available. Notably, some large public transport investments (e.g. rail) may require a degree of government funding. Airport operators are also expected to contribute to projects that make their airport more attractive to consumers. However, we are aware that airport operators may see increased use of public transport as a threat to their own car-parking revenues.
- 4.108 In addition, the government may take steps to encourage the use of public transport more generally. We are aware that, in some instances, airport operators commit to targets to reduce car usage by passengers in return for planning permission that will be granted for airport expansion projects.
- 4.109 Generally, airport operators do not tend to make available their parking capacity to other providers. Independent operators usually have to find alternative facilities outside the airport perimeter with the required planning permission. They also have to pay airport operators to access the forecourt to transfer passengers for their onward journey.
- 4.110 Airport operators' websites in general do not refer to competing car-park operators. They consider that providing information about such services could also mislead passengers about the nature of the services provided. They also told us that they have some 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 other providers is the Gatwick Approved Operators Scheme.
- 4.111 Gatwick Approved Operators Scheme is aimed at ensuring passengers understand whether they are purchasing car-parking from operators that

have demonstrated they meet planning and security requirements, as well as high levels of service.¹¹¹ The scheme also provides clarity about the car-parking options available at Gatwick airport, regardless of whether they are run by the airport operator or by third-parties.

- 4.112 The Gatwick Approved Operators Scheme has other contractual arrangements that, as far as we understand, involve an agreement on prices paid by the approved operators to access the forecourt and on a discounted rate for these operators to access a specified area on Gatwick airport's short stay car-parks.

Government processes supporting planning at airports

- 4.113 This section sets out the various Government and local authority processes supporting planning at airports including Airport Surface Access Strategies (ASAS), Airport Master Plans (AMPs) and section 106 planning obligations. These tools are used to encourage the adoption and the setting of targets on use of public transport by passengers and other members of the public accessing airports and in doing so managing the impact of airport operations on the local environment and communities.

Airport surface access strategies

- 4.114 The Aviation Policy Framework published by the Department for Transport (DfT) in March 2013¹¹² recommended that airport operators produce ASAS and consult regularly with their Air Transport Forums (ATFs). It also provides guidance to airport operators on the preparation of AMPs.
- 4.115 The Government suggests that ASAS should include, among other things:
- analysis of existing surface access arrangements;
 - targets for increasing the proportion of journeys made to the airport by public transport by passengers and employees, cycling and walking;

¹¹¹ More information on Gatwick Approved Operators Scheme is available from: www.gatwickairport.com/parking/other-parking-options/operator-scheme/.

¹¹² Department for Transport 'The Aviation Policy Framework', March 2013, is available from: <https://www.gov.uk/government/publications/aviation-policy-framework> (annex B).

- consideration of whether freight road traffic can be reduced and how low carbon alternatives could be employed; and
 - short-term actions and longer-term proposals and policy measures to deliver on targets.
- 4.116 The Government recognised that different targets and proposals for meeting targets will be appropriate for different areas. This list is therefore not prescriptive or exhaustive.
- 4.117 The Transport Select Committee's Surface Access report¹¹³ considered that there is too little independent scrutiny of individual strategies and plans. It recommended that the Government consults on the institutional and governance arrangements needed to ensure airport operators are setting meaningful targets and being held to account for their performance. Any arrangement for greater scrutiny should provide the Government with an assurance that such targets and actions are aligned with the Government's own policy objectives on modal shift¹¹⁴.
- 4.118 The Government's response¹¹⁵ to Transport Select Committee's Surface Access report stated that it aims to promote greater use of public transport to airports as part of its overarching approach to a competitive aviation sector, putting passengers and airport workers needs at the top of the Government's agenda.

Air transport forums

- 4.119 The Government suggested that air transport forums (ATFs)¹¹⁶ should have three specific objectives:

¹¹³ The Transport Select Committee's Surface Access First Report of Session 2015–16, February 2016, is available from:
<http://www.publications.parliament.uk/pa/cm201516/cmselect/cmtrans/516/51602.htm>.

¹¹⁴ Modal shift is a term referring to a change between modes encompassing an increase in the proportion of trips made using sustainable modes.

¹¹⁵ '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/995/99502.htm>.

¹¹⁶ DfT 'Guidance on Airport Transport Forums and Airport Surface Access Strategies', July 1999, <http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/aviation/airports/guidanceonairporttransportfo2840>.

- to draw up and agree challenging short and long term targets for decreasing the proportion of journeys to the airport made by private car while increasing the share of journeys made by other modes including buses and coaches, trains and light rail, taxis and private hire vehicles, bicycle, walking and combinations of these modes;
- to devise a strategy for achieving those targets, drawing on the best practice available. Where appropriate, this should cover the management of traffic on local and trunk roads providing access to airports as well as promoting alternatives to the private car. The strategy should also include green transport plans to cover commuting and business travel for all employees based at airports; and
- to oversee implementation of the strategy.

4.120 ATF membership includes the airport operator (who should lead the forum) and a variety of stakeholders including local transport providers (e.g. bus, rail, coach, car hire), Local Authorities, passenger representatives, representatives from the Airport Consultative Committee, representatives airport employees, Local Highway Authority and Integrated Transport Authority and other interested groups.

4.121 The Government suggested that ATFs should meet at least twice per year, and engage proactively in dialogue with group members throughout the year. Costs relating to ATFs should be borne by the airport operator.

Airport master plans

4.122 Airport Master Plans (AMPs)¹¹⁷ provide a mechanism for airport operators to explain how they propose to take forward airport-specific proposals, designed to help inform the regional and local planning processes and facilitate engagement with a wide range of stakeholders. The Government envisaged that an AMP would provide a clear statement of intent on the part of an airport operator that will enable future development of the

¹¹⁷ DfT Guidance on the Preparation of Airport Master Plans July 2004, is available from: <http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/about/strategy/whitepapers/air/pwpa/guidanceonthe-preparation-of-air-master-plans-2004>.

airport to be given due consideration in local and regional planning processes.

4.123 AMPs do not have any statutory basis unless they are subject to the relevant plan making provisions in the Planning and Compulsory Purchase Act 2004. The absence of an approved master plan should therefore not be relied upon by local planning authorities as grounds for refusal to consider planning applications.

4.124 The Government anticipates that, in the case of most airport operators, AMPs will address the following 'core' areas:

- forecasts;
- infrastructure proposals;
- safeguarding and land/property take;
- impact on people and the natural environment; and
- proposals to minimise and mitigate impacts.

4.125 The Government recommended that the more ground covered in an Airport Master Plan and the more extensive the consultation which informed its preparation, the greater its value in informing future land use, transport and economic planning processes, and in supporting prospective planning applications.

Section 106 agreements

4.126 Planning obligations, also known as Section 106 agreements (based on that section of Town & Country Planning Act 1990) are private agreements made between local authorities and developers (including airport operators) that can be attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms. The land itself, rather than the person or organisation that develops the land, is bound by a Section 106 Agreement, something any future owners need to take into account.

4.127 Planning Obligations are used for three purposes:

- Prescribe the nature of development (for example, requiring a given portion of housing is affordable);
 - Compensate for loss or damage created by a development (for example, loss of open space);
 - Mitigate a development's impact (for example, through increased public transport provision).
- 4.128 A section 106 obligation can in particular restrict the development or use of the land in any specified way or require the land to be used in any specified way.
- 4.129 The Government's policy on the use of planning obligations is set out on the Planning Practice Guidance website.¹¹⁸ Local planning authorities must take this guidance into account in their decisions on planning applications and must have good reasons for departing from it.
- 4.130 According to the National Planning Policy Framework (NPPF)¹¹⁹, local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Planning obligations should only be sought where they meet all of the following tests:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 4.131 However, planning obligations will continue to play an important role in making individual developments acceptable.

¹¹⁸ See <http://planningguidance.communities.gov.uk/>.

¹¹⁹ Department for Communities and Local Government 'National Planning Policy Framework' March 2012, is available from: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>.

Airport byelaws

- 4.132 Local authorities and certain other bodies (including airport operators) have powers under various Acts of Parliament to make byelaws, which are essentially local laws designed to deal with local issues.¹²⁰
- 4.133 Byelaws generally require something to be done – or not to be done – in a particular location. They are accompanied by a sanction or penalty for non-observance. If validly made, byelaws have the force of law within the areas to which they apply. Offences against byelaws attract a penalty fine which can, at present, only be enforced through the Magistrates' Courts.
- 4.134 In England, most byelaws must be confirmed by the Secretary of State before they come into effect. That is the case for airport byelaws which are supervised by the Department for Transport. Byelaws are also a devolved matter to the UK Nations.
- 4.135 The rationale for confirmation by government is that byelaws create criminal offences and should therefore be subject to scrutiny by central government. Byelaws made and enforced by airport operators (most of which are in the private sector) rather than by local authorities may merit special consideration, as private companies are not accountable to the local electorate in the same way as local authorities. They also have legitimate commercial interests in the operation of the airports. As such the Government considers it is important that the Secretary of State for Transport retains the role in confirming byelaws. DfT has policy responsibility for byelaws relating to airports and other transport facilities and modes.
- 4.136 Airport byelaws are made under Part VI of the Airports Act 1986, Sections 63, 64 and Schedule 3. Some 40 or so airport operators in England, Wales and Scotland currently have byelaws allowing the airport operator to regulate the use and operation of the airport and the conduct of

¹²⁰ Information on byelaws available from:
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01817>,
<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/archived/publications/localgovernment/localauthoritybyelaws>.

persons while within the airport. They cover such matters as lost property, regulation of advertising, regulation of vehicular traffic in areas where road traffic enactments do not apply, including car-parking and areas where taxis may ply for hire. They may also be used to regulate behaviour, preserve order and restrict or prohibit access to any part of the airport. The DfT has a set of model byelaws to assist airport operators.

- 4.137 The enabling powers of byelaws are enshrined in some very old legislation; however this does not mean that the legislation is no longer of some use. Some Departments have developed alternatives to byelaws. These have a similar outcome in regulating unacceptable behaviour but have been developed to provide simpler, clearer and more flexible procedures. In particular, airport operators also have the option of regulating the activities of airlines, pilots and other air crew, through contractual Conditions of Use, rather than through byelaws. These can be enforced through surcharges as part of airport's user charging system, so are relatively easy to administer and avoid the Magistrates Courts.

Stakeholders' views

Local authorities

- 4.138 Crawley Council explained its role in granting planning permission for airport operators – both on and off-airport. Crawley Council's Local Plan Policy GAT3¹²¹ restricts provision of additional or replacement airport parking to within the airport boundary. Alongside this, the policy requires proposals for long stay parking (within the airport boundary) to be justified by a demonstrable need in the context of proposals for achieving a sustainable approach to surface transport access to the airport. Crawley Council considered that:
- this results in parking spaces being provided and managed in the most sustainable way, and

¹²¹ GAT3 is Crawley Borough Council Local Plan Policy Airport Related Parking.

- is commensurate with achieving greater public transport use and a reduction in the number and length of car journeys which has a positive impact on air pollution and traffic congestion.

4.139 Crawley Council stated that Gatwick's Approved Operator Scheme¹²² is a good example of how the airport is working with off-airport operators to improve the overall long stay parking service by providing information about tested companies which consumers should be able to trust.

4.140 Crawley Council noted that planning policy, the section 106 agreement and airport initiatives such as the Approved Operator Scheme show that it is possible to improve both the sustainability of the airport and the consumer experience but this does require some degree of control over forecourt and car-park access by the airport operator and also through the planning system, directing new provision to the most sustainable locations. In Gatwick Airport's case, these are within the airport boundary.

4.141 Crawley Council said that the section 106 agreement contains a number of legal obligations on the airport owners to meet the overarching surface access objective to ensure that the airport's passengers and employees have access to a range of travel options that meet their particular needs and so doing to:

- Reduce the rate of growth of trips by private car and taxi to and from the airport by encouraging greater use of public transport;
- Ease congestion by better traffic management and implementing strategic road improvements; and
- Manage on-site traffic emissions.

4.142 Crawley Council stated that surface access should be considered as a whole, encompassing the need for sustainable transport by encouraging non-car modes of travel in order to improve the sustainability of airport operators reducing air pollution and traffic congestion. It emphasised the benefits to be gained from having targets and measures in place to

¹²² See <http://www.gatwickairport.com/parking/other-parking-options/operator-scheme/>.

improve the sustainability of airports while still being able to serve the interests of consumers.

- 4.143 Horley Council stated that airport passengers using residential roads in Horley to park their cars is an issue for its residents. Horley Council considered that this has a greater impact on its local residents than other surface access issues.

Other local government bodies

- 4.144 TfL stated that while airport operators use car-parking in particular as a key source of revenue, there are other benefits from properly regulating car-parking, including addressing localised air quality, traffic congestion and trying to enable mode shift to other areas. There is also a case to be made in terms of safety and security for customers/passengers who choose to use guaranteed airport operators facilities, over third party operations potentially offsite from the airport.

Airport consultative committees

- 4.145 Gatwick Airport Consultative Committee (GATCOM) recommended that we take into account Gatwick Airport's commitments and obligations, which it has given to the wider communities around the airport, to achieve its challenging modal split target of 45 per cent of passengers and staff accessing the airport by public transport modes. As part of this GATCOM stated that Gatwick Airport has put in place a range of measures that incentivise passengers to use public transport.
- 4.146 Stansted Airport Consultative Committee (STACC) noted our comment that 'airport operators may see increased use of public transport as a threat to their own car-parking revenues'. STACC supported the Stansted Transport Forum objective to maintain public transport's share of travel to/from the airport at 50 per cent. This is in line with the local planning authority's goal and has been maintained in the recent past despite the significant increase in passenger numbers using the airport.

Travel industry trade associations

- 4.147 ABTA stated that it is important that car-parking charges are not so high as to encourage passengers to be dropped off and picked up by family and friends or use taxis or minicabs, thus making two return airport trips rather than one, thereby doubling their congestion and air pollution impact. Also, high car-parking charges may lead to passengers parking in nearby residential areas, to the inconvenience and disruption of the local community. A careful balance needs to be struck.

Surface access operator

- 4.148 Holiday Extras commented on the role of planning in airport parking markets, stressing the need to reform the wider planning regime for airport operators to facilitate the granting of planning permission for sufficient off-airport parking spaces to create effective airport parking markets. Holiday Extras stated that at every UK airport the airport operator has a majority of the authorised airport parking. At some airports, including Stansted and Bristol, the airport operator has a monopoly or virtual monopoly of authorised airport parking. For most surface access operators, use of on-airport facilities is essential for the operation of their businesses and off-airport facilities are not a viable substitute.
- 4.149 Holiday Extras considered that the primary requirement for competition is a planning regime which allows off-airport parking. Where the planning regime does not deliver sufficient off-airport parking for an effective market to operate, Holiday Extras suggested that the regulator should be able to create an effective market by either requiring airport operators to divest control of on-airport parking spaces or to have the ability to ensure that local planning allows for both on and off-airport car-park permissions.
- 4.150 Holiday Extras, as a consolidator of airport parking products for the airport parking industry, stated that it is especially concerned that airport operators should face competition in the airport parking market. Holiday Extras considered that where possible an adequate supply of both on and off-airport parking is the best way to achieve an effective airport parking market.

- 4.151 Holiday Extras provided three case studies where it considered airport operators' strategies have influenced local planning policy, which has been instrumental to restrict and prohibit the development of off-airport parking competition.
- Stansted airport – Holiday Extras told us that it is Uttlesford planning policy that proposals for car-parking associated with any use at Stansted airport will be refused beyond the airport boundaries. Holiday Extras estimated that the airport operator has approximately 92 per cent of authorised on- and off-airport mid- and long-stay parking spaces available at or near the airport. Holiday Extras also considered that all land which could be suitable, sustainable and viable off-airport parking is situated within Uttlesford district. These factors, according to Holiday Extras, give the airport operator a dominant position in the airport parking market.
 - Bristol airport – Virtually all authorised long-stay airport parking spaces at or near to Bristol airport are operated by the airport. At the same time the North Somerset local planning policy makes it very difficult for new car-parking developments outside the airport to be granted planning permission, given the protections for the rural and agricultural character of the area. There are instances where parking operators have started to provide airport parking services from sites that do not have planning permission. The local authority has been successful in taking enforcement action to stop such unauthorised parking activities.
 - Gatwick airport – Holiday Extras said most off-airport car-parking capacity around Gatwick airport is currently in Crawley. Other neighbouring authorities restrict the development of airport car-parking. In addition the Crawley Local Plan safeguards land in the vicinity of the airport for airport expansion. Holiday Extras also stated that “if the airport operator receives planning consent for a second runway; purchases the whole of the land safeguarded for expansion; and replaces on-airport parking lots as a result of the expansion

works, on-airport parking would account for circa 85 per cent of total authorised airport parking based on 2012 authorisations.”

- 4.152 Holiday Extras stated that the best way to achieve competition in airport parking markets is to ensure that there is an adequate supply of off-airport parking. It suggested that competition in car-parking should be part of government guidance on the preparation of AMPs, and encouraged in the NPPF.

Representatives of surface access operators and trade associations

- 4.153 The British Parking Association (BPA) stated that appropriate parking control is vital to ensure that parking facilities remain accessible and provide value for money, both for the airport operators providing access, and for the drivers accessing the airports. BPA want to make certain that parking management is undertaken fairly, reasonably and responsibly:
- BPA manages the Safer Parking Scheme and its registered trade mark Park Mark on behalf of the Association of Chief Police Officers. The scheme, for public and private operators’ car-parks, aims at reducing crime and the fear of crime in parking facilities. Safer parking status, Park Mark, is awarded to parking facilities that meet the requirements of a risk assessment conducted by the Police. Currently 194 car-parks at airports have the Park Mark accreditation.
 - BPA is developing the Professionalism in Parking Accreditation (PiPA) for individuals and organisations working in the parking profession. PiPA will reflect universal principles and individual sector requirements. Initially, PiPA was launched for the healthcare parking sector and will be exploring other sectors such as Meet and Greet and Local Authorities.
 - BPA has developed an Approved Operator Scheme with a Code of Practice for situations where parking on private land relies on trust and /or payment of fees and charges. The scheme has sanctions, (which includes expulsion) and an annual external audit of all members to ensure operators comply with the code.

- BPA has established Parking on Private Land Appeals service (POPLA) as a judicially independent service with an Independent Scrutiny Board guaranteeing independence.
- BPA has produced *A Guide to Parking* in conjunction with the consumer association Which?.¹²³

4.154 BPA considered that:

- There is an increasing use of online and mobile apps in parking, for example automatic number plate recognition which enables motorists to park for as long as they like and to make payment either on their return or online within, say, 24 hours.
- The Government can help motorists and landowners by establishing a standard setting body, accountable to Government to regulate parking on private land.

4.155 CPT stated that where airport operators have made the commitment to grow public transport's modal share of surface access, sometimes as a condition of planning applications for development, this doesn't appear to be linked to any accompanying guarantees or that there are any consequent penalties should it fall short. This is a major disincentive towards a positive result, particularly where there is a perceived or real threat to parking revenues.

4.156 The Chartered Institute of Logistics and Transport (CILT) stated that airport operators are required to produce ASAs, co-ordinating with surface access providers and other stakeholders through ATFs. These arrangements have built up a great deal of experience and knowledge of air passenger and staff transport requirements, and have worked well at large and small airports, achieving significant successes in making surface access journeys easier.

4.157 IAPA considered that the UK planning regime is one of the principal causes of airport operators having established (what IAPA considered to

¹²³ 'Which? Guide to Parking' September 2012, which is available from: www.britishparking.co.uk/News/2012-which-guide-to-parking-published/34782.

be) dominant positions in airport parking markets. They noted that the planning regime for airport development requires airport operators to prepare their own development plans in the form of AMPs and ASAS. The APF and the NPF require that planning authorities have regard to those documents when drafting planning policies and drafting planning decisions.

- 4.158 IAPA suggested that the airport planning process also has a role to play in ensuring that when transport hubs and other surface access facilities are planned or reconfigured they are designed to accommodate drop-off and pick-up facilities for both on and off-airport car-parking operators in a non-discriminatory basis.

Airport operators

- 4.159 Luton Airport stated that the only downstream mode in which it competes with third party operators is car-parking (including self-parking and Meet & Greet), and that its products are not bundled with any other airport services.
- Self-Parking at Luton Airport is competitive. There are currently three operators excluding Luton Airport. Luton Airport does not limit the numbers of operators to whom it allows access. Consumers are often invited to buy parking at the point of booking. The operator(s)' offer depends on the commercial arrangements between the airline/aggregator and their partners. In fact, one particular aggregator of ancillaries, such as parking, is extremely strong in the market and Luton Airport feels obliged to use them as an agent for selling its parking, in order to ensure Luton Airport is visible in the market at the point where the purchasing decision is most often made. Consumers who do not take up the offer at booking stage will generally do an internet search for parking providers. This too is very competitive, Luton Airport spends large sums on internet advertising in order to keep up with the level of presence of the third party suppliers (who may be selling their own spaces and/or taking a

commission on selling ours and those of others). Luton Airport owns less than 50 per cent of the spaces serving airport passengers.

- Meet & Greet currently has approximately 10-12 operators including Luton Airport. Luton Airport does not currently limit the number of operators, but reserves the right to do so if the number of operators expands to a level where the availability and efficient operation of short-stay parking could be impaired. Luton Airport's service occupies a 'premium quality' position in the market, whereas the third-party providers focus on a low cost of operation; thus Luton Airport does not compete on similar products. If a third party wished to offer a premium product that competed directly with Luton Airport, Luton Airport would offer the facilities to do so as far as operationally feasible with a commercial agreement/ framework. None has so far expressed an interest in this.

- 4.160 Bristol Airport is committed to increasing the use of public transport in line with its section 106 planning obligations and to maximise its facilities to accommodate transport access. In doing so, Bristol Airport cannot exceed the physical capacity of the existing infrastructure.
- 4.161 Gatwick Airport considered that there are circumstances where it is appropriate for airport operators to proactively influence local planning policy, for example to safeguard land for future expansion.
- 4.162 Gatwick Airport commented on the suggestions made to us¹²⁴ that airports could be "forced" to sell or lease long term parking spaces to a pre-defined threshold and potentially below market value. Gatwick Airport stated that absent any proven competition abuse this would effectively amount to an arbitrary transfer of property rights (and associated income) from the airport to another party, without any benefit to consumers. Gatwick Airport considered that applying such draconian measures could only become feasible as a structural remedy following an investigation

¹²⁴ On paragraph 3.30 of our consultation, we noted that Independent airport parking operators considered that at some airports there was a need for competition to be introduced by, for example, requiring airport operators to sell or lease parking spaces in excess of a stipulated market share.

under EA02, and even then, it would be highly unlikely to be either proportionate or practical.

- 4.163 Newcastle Airport considered that car-parking in particular is a very important source of income to itself and other regional airport operators. Regional airport operators generate proportionately less income from airlines than was the case in the past, so income from commercial activities such as parking has become increasingly important to support investment in both air services and facilities, and infrastructure.

Our conclusions on competition in downstream provision of car-parking

- 4.164 Car-parking at and around airports is a complex area, with a number of objectives including environmental, commercial, town planning, encouraging greater use of public transport, as well as ensuring a safe, secure and convenient service for consumers. There is a range of legal and government policy requirements that airport operators and surface access operators need to comply.
- 4.165 Improvements in public transport modes can be a source of competition and airport operators often play an important role in facilitating investment in public transport. However, the promotion of public transport modes should not be used as an excuse to creating barriers to entry to airport parking markets, since airport car-parking is likely to continue to play an important role in airport surface access in the foreseeable future.
- 4.166 We are encouraged by the debate and conversations that exist in this area from the BPA initiatives to the Gatwick Approved Operators Scheme.
- 4.167 We are mindful that as demand for car-parking grows, commercial initiatives to meet this demand will be developed including new operations and innovative business models.
- 4.168 Holiday Extras suggested that we ask the government to amend our powers so that we can assess the market power of airport operators in relation to car-parking and to enable us to economically regulate the

operation of car-parking at airports where we find there is market power. Given the findings of this review, we do not consider that legislative change is needed. We will continue to monitor developments in this area.

- 4.169 We note that it may not be appropriate for airport operators to require independent car-parking operators to disclose commercial information about their operations for the purposes of calculating charges to access surface access facilities, given that more often than not airport and independent parking operators will be in direct competition for long-term car-parking.

Car hire

Initial findings from our consultation

- 4.170 Car hire firms generally have a presence in the terminal building and require some road facilities at the airport. We noted that, unlike for some other modes, there tends to be a number of brands and providers supplying car hire services at each airport, which we consider to be an important driver of benefits to consumers in terms of choice and value.
- 4.171 According to data from the CAA Passenger Survey (see Figure 1), car hire accounts for a relatively small proportion of total surface access trips made by passengers. The survey also shows that this form of transport is primarily used by inbound passengers (those that do not originate in the airport's catchment). As a result, these passengers may use the airport more infrequently and generally be less aware of local operating conditions of car hire firms.
- 4.172 Which? told us that car hire is an area where they regularly receive complaints from members about the car hire they rent abroad. This may or may not be an indication of how foreign travellers' experience car hire in the UK. According to Which?, car rental companies can charge passengers for 'extras' that they may not want or need, and it is not always easy to understand what they are buying.

- 4.173 We consider that the extent to which car hire services compete with car-parking at the airport is quite limited, given the nature of the services and the type of users.
- 4.174 We have seen that at many airports car hire desks of on-airport car hire operators tend to be located near to each other, which we consider makes it clear to passengers what choices they have. In some cases the onward travel information desks also give the details of car hire operators who operate outside the airport's compound.
- 4.175 We understand that most car hire is pre-booked online through a multitude of channels, including airlines, travel agents, car hire firms' websites as well as aggregators' websites.

Stakeholders' views

Representatives of surface access operators and trade association

- 4.176 The British Vehicle Rental and Leasing Association (BVRLA) noted its work with the CMA which recently published a report into the short-term car rental market in the EU.¹²⁵ The CMA report summarised some of the consumer issues that have been raised and the steps that companies and customers can take to make the sector 'work better'.¹²⁶
- 4.177 BVRLA stated that customers have a right to clear and transparent information about their rental. It considered that its:
- mandatory Code of Conduct;
 - governance regime; and
 - free, no-obligation conciliation service;
- provide added peace of mind to customers.

¹²⁵ CMA report 'Short-term consumer car hire across the European Union (EU)', July 2015, which is available from <https://www.gov.uk/cma-cases/short-term-consumer-car-hire-across-the-european-union-eu>.

¹²⁶ We also note that the CMA's follow up work on car-hire comparison websites available at <https://www.gov.uk/government/news/drivers-to-benefit-as-cma-takes-action-on-car-hire-websites>.

- 4.178 BVRLA considered that car rental is a viable, often low cost and flexible alternative for both onward travel from airports and travel to airports. BVRLA stated that when airport operators make it difficult and expensive for car rental to work at their airports they are denying their customers easy access to this vital travel solution and these costs are passed on to their customers.
- 4.179 BVRLA suggested that surface access to airports could be improved by:
- Fair treatment – ensuring that car rental operators are treated fairly by airport operators by including certain clauses as standard in agreements between rental companies and airport operators. These cover abatement to minimum revenue guarantees in circumstances where passenger numbers decrease significantly and clauses ensuring that all car rental operators are treated equally by the airport operator.
 - Charges – ensuring greater transparency in the different charges covering facilities, utilities etc. which rental car companies pay to be an ‘on-airport’ operator and that airport operators justify their charges/increases to car rental operators so that car rental operators have a clear vision of where their money is being spent and that airport operators ensure the best deal is sourced for utilities.
 - Mode share – ensuring that airport operators promote car rental in the same manner as they do for other forms of onward transport, on their websites, in their literature and in their building.
 - Websites – ensuring that airport operators promote all on-site car rental partners in an equal and fair manner.
 - Tenant relationship – ensuring that airport operators work collaboratively with car rental operators to manage changes at the airport and improve the customer journey.
 - Licensing of off-airport operators – ensuring that all car rental companies that operate at an airport, or from an off-airport location, are required to enter into a licence agreement or permit with the airport operator so that they agree to comply with stated minimum standards in terms of level of service which could include: age of

rental vehicles, hours of operation, frequency of shuttle pick-up etc. This would ensure airport customer safety and protect airport operators from issues that could arise from unlicensed businesses operating as a car rental company on the airport property.

Our conclusions on car hire

- 4.180 Car hire is not in direct competition with airport operators as airport operators do not provide car hire directly. At most airports consumers have a number of competing car hire options to choose from. However car hire firms feel they have little bargaining power when entering into agreements with airport operators.
- 4.181 The CMA carried out a review of the UK car rental sector in 2014 to identify the main issues affecting consumers. Its report on short-term car hire in the European Union¹²⁷, in July 2015, identified a number of concerns and set out steps that companies and consumers can take to make the sector work better, and included the commitments that the 5 major car rental businesses made on certain practices. Following were the main areas of concern:
- a lack of transparency about the total price when making a booking, particularly when additional charges were only revealed to the consumer at the pick-up desk;
 - a lack of transparency of rental contract terms and conditions;
 - the way in which additional waiver and insurance products were sold by car rental companies;
 - a lack of transparency and potential unfairness of some car rental companies' fuel policies;
 - how vehicle damage was assessed and charged for and how disputes are dealt with; and

¹²⁷ CMA report 'Short-term consumer car hire across the European Union (EU)', July 2015, which is available from: <https://www.gov.uk/cma-cases/short-term-consumer-car-hire-across-the-european-union-eu>.

- additional payments being taken from the consumer's credit or debit card after the rental period without adequate prior notification, explanation or supporting evidence.

4.182 Commercial relationships between airport operators and car hire operators allow the airport operator to influence the quality of service provided and the level of transparency, which could have some benefits in protecting consumers. We encourage continue engagement between airport operators and car hire operators.

Rail

Initial findings from our consultation

4.183 At the largest UK airports rail is an important way that passengers use to get to and from the airport and is important in providing a competitive constraint to other modes. That is the view we heard from representatives of the bus and coach industry, for example.

4.184 However, not all passengers can, or would like to, use the train or similar transport modes for their surface access journeys. That is particularly true for those with a point of origin not well served by rail, for those travelling with lots of luggage, and those with mobility or other difficulties that hinder their use of public transport.

4.185 The government plays a key role in the rail sector which is also regulated by the Office of Rail and Road (ORR). The government provides strategic direction and funding to the railways and procures rail franchises and projects.

4.186 The ORR is the independent regulator for Britain's rail industry and monitor of Highways England. It is the economic regulator for railway infrastructure (Network Rail and High speed 1); the health and safety regulator for the rail industry as a whole – including mainline, metro, tramways and heritage railways across Britain; and the industry's consumer and competition authority. ORR also monitors Highways

England's management of the strategic road network – the motorways and main A roads in England. The ORR has concurrent competition powers with the CMA to enforce the competition prohibitions in CA98 and to make market references to the CMA under EA02.

- 4.187 Some of the issues raised by stakeholders (e.g. investment decisions, quality of rail services, ticketing) are not the direct responsibility of airport operators or are ones where airport operators only play a marginal role.¹²⁸ We note, in particular, that train operating companies need to comply with the franchise conditions set by government. Some airport operators told us that they often try to influence the requirements of the franchise (such as service quality requirements).
- 4.188 Therefore, we did not include the market structure issues of the rail sub-sector within the scope of this review, as this is an area where the CAA's ability to contribute will, necessarily, be quite limited. That said, we have some responsibilities in terms of allowing airport operators, subject to economic regulation (Heathrow and Gatwick), to invest in rail infrastructure projects. This is an area, taking into account our duty to protect passengers' interest, which we normally consider during regulatory reviews, in consultation with government and other stakeholders.
- 4.189 We note, however, that new infrastructure requires large investment. Also, many rail services require government subsidy to be sustainable. It is therefore rare for airport operators decide to fund rail projects without some form of government participation.¹²⁹
- 4.190 On the other hand, new rail links or changes to how rail infrastructure is managed also affects airport operators in other ways:
- they can make the airport more attractive to consumers (expand the catchment, better service to passengers);

¹²⁸ Airport operators are sometimes involved in rail services, for example Heathrow Express, and Birmingham Airports 'Air-Rail Link'.

¹²⁹ See, for example, <http://www.mediacentre.gatwickairport.com/press-releases/2015/transformation-of-gatwick-rail-station-secured.aspx>.

- they can "cannibalise" other surface access revenues. For example, some stakeholders told us that some airport operators may not be too cooperative with new rail infrastructure investment because they fear that it will affect their car-parking revenues.

4.191 The main issue which we have examined, which was raised by stakeholders, was around the transparency of rail options available to consumers to make their journey from or to the airport. London Travel Watch, for example, told us that the way some 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 services. They also considered that more of the services going to and from London airports should be included in common ticketing systems, and that passengers should be able to use London's Oystercard/contactless payment system to travel on the train.¹³⁰

Stakeholders' views

4.192 While the rail sector was outside the scope of our review, some stakeholders commented on the role of rail services in surface access.

4.193 We have noted below the comments that the stakeholders we consulted made. We are however aware that other stakeholders involved in the rail industry, mainly transport providers, such as train operators and infrastructure managers, were not engaged in this consultation and therefore their views are not included in this report.

Consumer watchdog

4.194 London TravelWatch stated that it is important that we look at the role of rail services to give a more complete picture of how consumers access airports now and how they could do in the future, the benefits of wider competition, and better surface links.

¹³⁰ More information on this can be found on London Travel Watch's report on airport surface access, available at http://www.londontravelwatch.org.uk/documents/get_lob?id=3894&field=file (PDF).

Representatives of surface access operators and trade association

- 4.195 The Confederation of Passenger Transport UK (CPT) said that although rail access falls outside the specific remit of this consultation, it wanted to highlight how it can affect the market for other transport services, principally bus and coach. In locations where rail is an alternative mode for passengers, it is widely held that this is usually the most visible option due to greater awareness of rail services against other modes, particularly bus and coach. Only if there is no rail option, it proves unsuitable or the customer is more thorough in their investigations (often driven by cost), do bus and coach seem to enter the equation.

Airline

- 4.196 Ryanair expressed concern that some public comments by MAG indicated that it might be willing to invest in Stansted Express. Ryanair considered that should MAG invest in Stansted Express the costs incurred must not affect airport charges at Stansted, or be included in any future Stansted regulatory asset base. In addition, Ryanair considered it was unclear why STAL had committed to work with bidders to improve the train service for “commuters”, given that STAL serves airline passengers and not commuters.

Airport operator

- 4.197 MAG considered that the review of surface access should include rail services to airports because the development and operation of the rail network has a significant impact on the competitiveness of different airport operators. In a competitive market, airports with fast, regular and reliable rail services will have a distinct advantage over airports with slow, irregular and unreliable services. It follows that if passengers and airlines are dissatisfied with the level of rail service at a particular airport, they will tend to express this by switching their custom to a rival airport that offers the services they want. As such, the development and operation of the rail network has a significant impact on the competitiveness of different airport operators.

- 4.198 MAG added that while it recognised that many of the issues with the rail industry are determined by wider government and regulatory policy, we have an important role to play in setting out how the interests of air passengers are affected by the quality of airport rail services and the actions that should be taken to address these issues. MAG considered that our views on these issues would be a valuable input for Government as it reviews both its aviation policy and rail investment priorities for the next control period over the course of the next year.

Our conclusions on rail

- 4.199 While the market structure of the rail sector was outside the scope of our review, some stakeholders considered that how well air passengers' interests are served by rail services to an airport can affect the market for other transport services, principally bus and coach.
- 4.200 While we have commented on what stakeholders told us, we aware that we did not hear from all other stakeholders involved in the rail industry. Other stakeholders involved in the rail industry, mainly transport providers, such as train operators and infrastructure managers, were not engaged in this consultation and therefore their views are not included in this report. We are aware that there is competition for the franchise of rail service provision, at regular intervals.
- 4.201 We agree with MAG that the availability and quality of rail services at an airport can have an effect on the competitive position of that airport. This can be relevant both for competitive assessments downstream (i.e. between different surface access operators) and for competitive assessments between airport operators as they compete to attract passengers and airlines.
- 4.202 We note Ryanair's comments on MAG's potential investment in Stansted Express. We also note that STAL is not currently subject to economic regulation.

Our conclusions on market structure

Dominance test

- 4.203 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 guidance¹³¹, such an investigation would be carried out from first principles and each assessment would be case specific. In particular, the market definition in any future case could therefore be different than the wide bundle of AOS products that we used for the Market Power Determinations (MPDs) we undertook in 2014.
- 4.204 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 tendering

- 4.205 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.
- 4.206 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.

¹³¹ See paragraph 2.7 of www.caa.co.uk/cap1235.

- 4.207 Case-law in this sector tells us that such behaviour can be an infringement of the Competition Act 1998 (CA98) Chapter II prohibition on abuse of a dominant position.¹³²

Discrimination

- 4.208 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.
- 4.209 Case-law in this sector tells us that such behaviour can be an infringement of the CA98 Chapter II prohibition on abuse of a dominant position.¹³³

Anti-competitive agreements between providers

- 4.210 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.
- 4.211 There is also a risk that trade associations may act as a conduit facilitating the sharing between competitors of sensitive and confidential information such as on pricing, market share and service levels.
- 4.212 Such arrangements can be an infringement of the CA98 Chapter I prohibition on anti-competitive agreements.
- 4.213 Where an airport has independent car-park operator(s) as well as the airport operators own car-parks, this can give rise to concerns if there is

¹³² See for example [2014] EWHC 64 (Ch) at 16, www.bailii.org/ew/cases/EWHC/Ch/2014/64.html.

¹³³ See for example [2011] EWHC 987 (Ch) at 109, www.bailii.org/ew/cases/EWHC/Ch/2011/987.html.

an agreement between the airport operator and the independent car-park operator(s) about price and/or services. In this regard, the CAA has recently found that East Midlands International Airport, and its parent company Manchester Airport Group, and Prestige Parking Ltd infringed the Chapter I prohibition of the Competition Act 1998 by participating in an agreement between (at the latest) October 2007 and September 2012 to fix the minimum prices that Prestige charged its customers for car parking services at the airport. To facilitate adherence to the price fixing agreement, the parties also exchanged sensitive pricing information between November 2010 and September 2012 and East Midlands International Airport also monitored Prestige's prices to ensure that it was complying with the terms of the agreement.¹³⁴

Retail Price Maintenance / Distribution channels

- 4.214 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).
- 4.215 In June 2016, the CMA published an open letter¹³⁵ 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.

¹³⁴ See <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Notice-of-investigation-under-the-Competition-Act-1998/>.

¹³⁵ See <https://www.gov.uk/government/publications/restricting-online-resale-prices-cma-letter-to-suppliers-and-retailers>.

4.216 The CMA letter highlighted some important competition law points on RPM:

- *“If you are a supplier:*
 - *You must not dictate the price at which your products are sold, either online or through other sales channels.*
 - *Policies that set a minimum advertised price for online sales can equate to RPM and are usually illegal.*
 - *You must not use threats, financial incentives or take any other action, such as withholding supply or offering less favourable terms, to make retailers stick to recommended resale prices.*
- *If you are a retailer:*
 - *You are entitled to set the price of the products you sell, whether online or through other sales channels*
 - *Suppliers are not usually allowed to dictate the prices at which you advertise their products online*
 - *If you have agreed to sell at fixed or minimum prices with your supplier, you may both be found to be breaking competition law.”*¹³⁶

4.217 Online distributors, surface access providers, and airport operators and relevant trade associations should review their practices and contractual arrangements to ensure they are not infringing the Chapter I prohibition on anti-competitive agreements.

4.218 It is important to remind all those involved the surface access that competition law prohibits:

- Conduct by one or more undertakings which amounts to an abuse of a dominant position in a market. These prohibitions provide that conduct may constitute an abuse if, for example, a dominant business¹³⁷:

¹³⁶ See <https://www.gov.uk/government/publications/restricting-online-resale-prices-cma-letter-to-suppliers-and-retailers>.

¹³⁷ Paragraphs 5.14 and 5.15 of CAP1235 ‘Guidance on the Application of the CAA’s Competition Powers’, May 2015, which is available from www.caa.co.uk/CAP1235.

- directly or indirectly imposes unfair purchase or selling prices or other unfair trading conditions;
 - limits production, markets or technical development to the prejudice of consumers;
 - applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
 - makes the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- Agreements between undertakings, decisions by associations of undertakings and concerted practices that have the object or effect of preventing, restricting or distorting competition. These prohibitions apply to agreements which, for example:
 - directly or indirectly fix purchase or selling prices or any other trading conditions;
 - limit or control production, markets, technical development or investment;
 - share markets or sources of supply;
 - apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and/or
 - make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Next steps

4.219 We do not consider we have, at this point in time, sufficient grounds for a Market Study under the Enterprise Act 2002 (EA02)¹³⁸ on the basis that

¹³⁸ 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

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.

- 4.220 We note 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.
- 4.221 While we do not propose to take further action at this time, as set out above, 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 dominance¹³⁹ and/or certain aspects of consumer law.¹⁴⁰
- 4.222 We have written an Advisory Letter to airport operators and other stakeholders involved in the surface access industry to advise remind about the application of competition and consumer law, and encourage them to review their practices to ensure they are compliant with competition and consumer law now and in the future.

consumers. More information on market studies, including on the possible outcomes that they may trigger, is available at: <https://www.gov.uk/government/publications/how-market-studies-are-conducted>.

¹³⁹ 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).

¹⁴⁰ 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.

Chapter 5

Consumer issues

Introduction

5.1 This chapter sets out our initial findings, what stakeholders told us about our initial findings and our conclusions on consumer information, distribution of car-parking and on issues related to passengers with disabilities and those with reduced mobility.

5.2 This chapter is structured by topic as follows:

- Consumer information;
- Distribution of Car Parking;
- Services for disabled passengers and those with reduced mobility; and
- Our conclusions on consumer issues.

Consumer Information

Initial findings

5.3 In the Consultation, we noted that it is possible that some passengers, particularly those that travel more infrequently, are not fully aware of changes in services at airports and, as a result, do not fully take into account some of the costs they will face at the airport (when they purchase their flights). Some consumer bodies (Which? and London Travel Watch) we had spoken with considered that there could be substantial consumer detriment in some cases.¹⁴¹

5.4 That said, we found that UK-based passengers, when asked through a survey, mostly say they are broadly aware of the options they have in

¹⁴¹ See paragraphs 3.12 to 3.20 of the Consultation.

getting to and from the airport. Our consumer research¹⁴² also suggests that around half of the passengers make their surface access decision during or before booking their flight tickets.

- 5.5 We also noted that even though airport operators tend to provide a fair amount of surface access information on their websites and on their onward travel information areas in passenger terminals, information is not always complete and, as a result of commercial arrangements made with some surface access operators, some surface access products may be better advertised to consumers than others. In particular, airport operators' websites in general do not refer to competing car-park operators.
- 5.6 Price comparison websites and other forms of online distribution can be a good way to help consumers compare services, increase transparency and competition between surface access operators. However they may also provide consumers with incomplete information which, in turn, can lead to consumers to believe erroneously that they are getting the best available price or product.

Consumer research

- 5.7 In June 2015, we published a consumer research report commissioned to Collaborate Research (a market research company) to assist in the development of our new strategic plan.¹⁴³ The research updated the evidence base on how consumers make air travel decisions, what information they use and value, and what if any gaps in provision there may be. This research contained some questions specifically about surface access to UK airports, and the results to those questions are reported below.
- 5.8 Part of this research consisted of a household survey of UK residents who had flown in the past 12 months with a sample size of 1,470 passengers. That is different from the total passenger population, which includes for

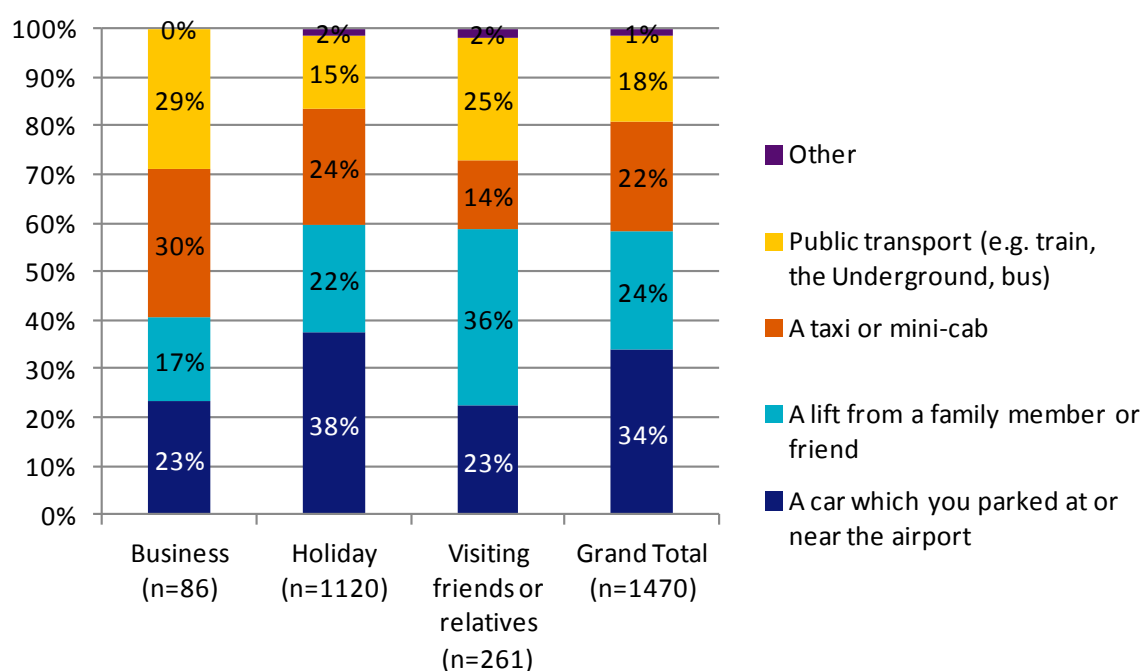
¹⁴² See paragraphs 3.68 to 3.78 of the Consultation.

¹⁴³ The report is available at <http://www.caa.co.uk/CAP1303>.

example foreign residents. Respondents were asked a series of questions on their transport to the UK departure airport on their most recent flight.

- 5.9 First, they were asked what mode of transport they used to get to their departure airport. Overall, the most prevalent transport mode was driving a car which was parked at or near the airport (34 per cent). This was followed by receiving a lift from a family member or friend (24 per cent), taking a taxi or mini-cab (22 per cent), or using public transport (18 per cent). Use of a private vehicle (either self-driven or as a lift) was more common for leisure than business flyers, while business flyers were more likely to have opted for a taxi or public transport.

Figure 2: Access mode by journey purpose



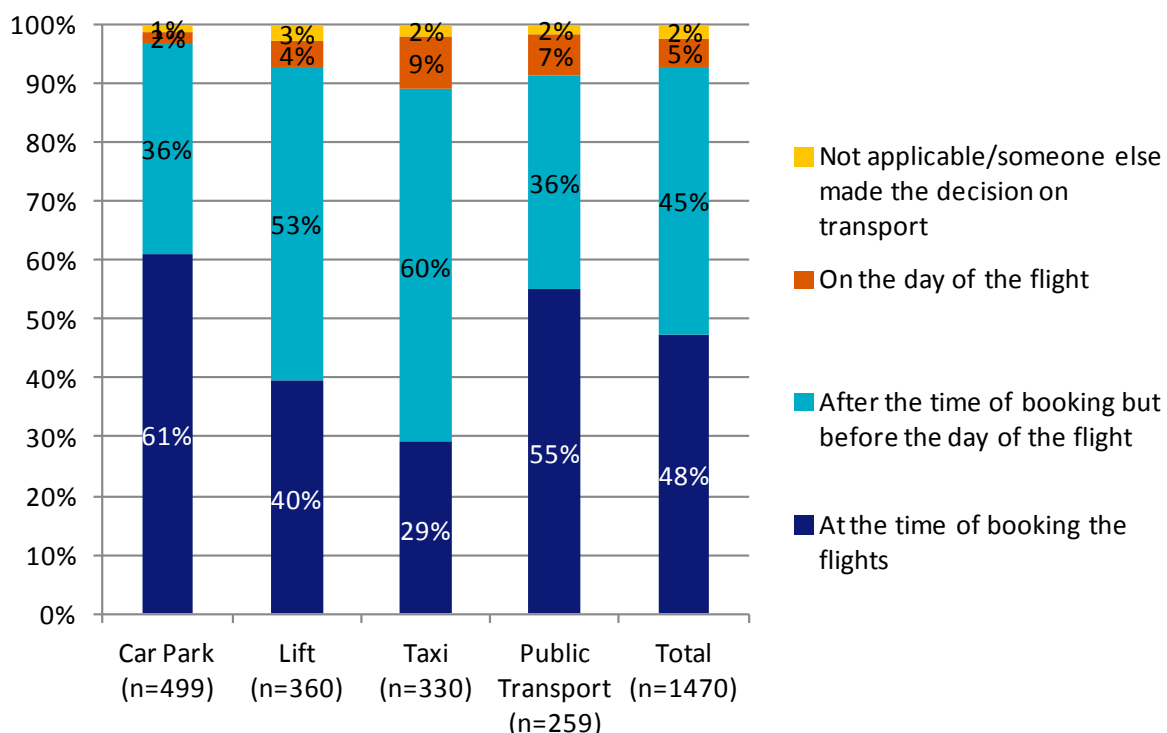
Source: Collaborate research

- 5.10 By airport (where there were more 50 survey responses): public transport use was higher for those departing from London airports, particularly Heathrow and Stansted. By contrast, use of private vehicles (self-driven or lifts) was higher in Bristol and Newcastle airports.
- 5.11 Demographics: those aged 16-24 are relatively more likely to have received a lift, those aged 25-44 to have used public transport, those aged 44-64 to have driven, and those aged 65+ to have taken a taxi.

When was the transport decision made?

- 5.12 Recent flyers were also asked when they made their decision to use this particular mode of transport.
- 5.13 Most made the decision on transport either at the time of booking (48 per cent), or sometime after the booking but before departure (45 per cent). Very few waited until the day of the flight (5 per cent). The proportions varied by transport mode as evidenced in Figure 3.
- 5.14 Domestic flyers were more likely than average to decide on their transport at the point of booking (56 per cent), medium to long-haul flyers to determine this sometime after but before the day of travel (50 per cent), and business flyers to have left this decision until the day of flight.
- 5.15 The timing of the decision to use a particular mode of transport differed depending on the mode used. People using public transport or car-parks were more likely to have made their decision at the time of booking their flight compared with those using a taxi or asking friends and relatives for a lift.

Figure 3: When was the decision made?

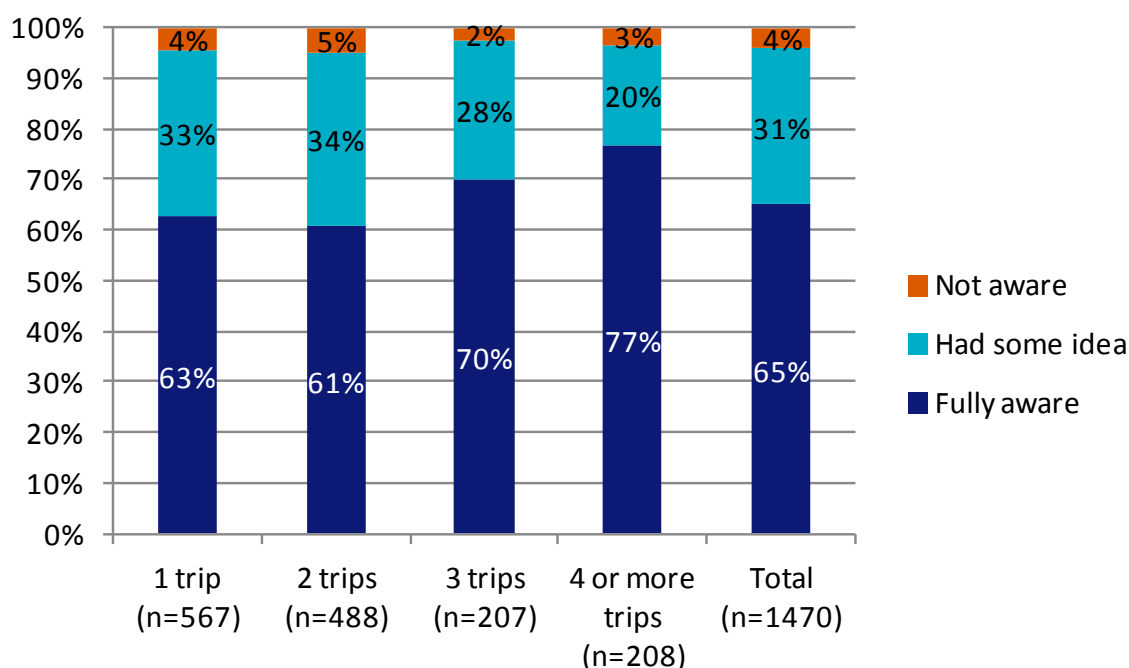


Source: Collaborate research

Awareness of transport options at the time of booking

- 5.16 Recent flyers were additionally asked whether they were aware of the transport options and their attributes at the time their flight was booked.
- 5.17 Almost two-thirds (65 per cent) said that they were fully aware of the transport options and their related attributes at the time of booking, and another three in ten (31 per cent) said that they had some idea. Only a very small proportion (4 per cent) admitted that they were not aware. Frequent flyers are, not surprisingly, significantly more likely to have been fully aware of their options.

Figure 4: Awareness of transport options/costs



Source: Collaborate research

Stakeholders' views

- 5.18 Comments and information that we received from stakeholders, prior to our consultation, were included in the initial views above. They have not been included in this section, however, their views and information have been incorporated into the final views section at the end of this section.

- 5.19 Some stakeholders representing consumers told us that the way some surface access premium services are marketed and distributed at airports means that passengers may end up purchasing more expensive services without being aware that there are cheaper alternatives for similar services.

Environmental group

- 5.20 GATCOM stated that access to information by passengers, with respect to surface access, is of key importance. GATCOM also considered that it is very important that information on airports' websites provide clarity. GATCOM's Passenger Advisory Group feels that there is a lack of clarity that the Gatwick Express is a premium service. It also feels that improvements could be made in the availability of information on bus service connectivity to Gatwick Airport's South Terminal. However, GATCOM also commented that in many respects the onus lies with consumers to undertake appropriate research to ensure they are getting the best value for their journey.

Consumer watchdog

- 5.21 London TravelWatch considered that:
- UK passengers are likely to be able to make better and more informed choices;
 - there must be a requirement on airport operators to provide clear, transparent and easy to find information;
 - regulation to limit advertising for surface access transport where this could be confused with information signage could generate benefits to consumers.¹⁴⁴
- 5.22 London TravelWatch stressed the importance of consumers' need for impartial consumer information.

¹⁴⁴ London TravelWatch considered that, for example, Heathrow Express and Gatwick Express advertising in the terminal could mislead passengers (particularly those unfamiliar with the UK transport system) into thinking that these expensive premium rate services were the only means of travel between these airports and central London.

Local authority

- 5.23 Crawley Borough Council said that Gatwick's Approved Operator Scheme is a good example of how the airport is working with off-airport operators to improve the overall long stay parking service providing information about tested companies which consumers should be able to trust.

Other local government body

- 5.24 TfL said that, in recent years, developments in information technology have enabled a greater level of information to be available to passengers. TfL supported the provision of information at all stages of the customer journey (from booking to destination) and the use of open source information to enable the development of third party applications. TfL noted that providing information about public transport modes (not only car-parking) was important in helping to achieve public policy objectives of encouraging modal shift to public transport.

Airport consultative committees

- 5.25 The Stansted Airport Consultative Committee (STACC) noted that some public transport fares can be quite complicated, particularly to those less familiar with the journey. STACC considered that communication and the provision of information on what is available is important to promote price competition between the different alternatives and for passengers to find the best value option to them.
- 5.26 The Heathrow Airport Consultative Committee (HACC) considered that infrequent travellers would be better served by improving airport websites to include all those who offer surface access in its various forms. HACC noted that it is possible for airport operators to request some basic operating standards before listing an organisation on its website. HACC noted that Heathrow Airport's leaflet does not include Heathrow Connect and that on its website Heathrow Airport gives greater prominence to Heathrow Express than to Heathrow Connect.¹⁴⁵

¹⁴⁵ Heathrow Airport Holdings operate Heathrow Express but not Heathrow Connect. Both are rail services.

Travel industry trade association

- 5.27 The Association of British Travel Agents (ABTA) considered it essential that airport websites are transparent and promote options equally because the passenger needs to be offered a choice. In its response, ABTA gave an example of incomplete information where Heathrow Airport's website, information desks and leaflets readily recommend Heathrow Express but not the rather cheaper Heathrow Connect (this option only appears on the second page after clicking on the train icon). They also gave examples of good practice including at Gatwick airport, where its journey planner webpages give equal prominence to Gatwick Express, Thameslink and Southern trains; Edinburgh's route map covering Lothian Buses and Edinburgh Trams; and British Airways' Highlife magazine, clearly showing the different choices available for passengers. They also considered that other ways of making information available to consumers is something that may merit further research.
- 5.28 The Scottish Passenger Agents Association (SPAA) stated that UK originating passengers are usually better informed than visitors who are more reliant on websites. SPAA therefore considered that it is essential that airport websites are transparent and promote options comprehensively and equally so that passengers can make the choices that best meet their needs. Airport operators should clearly state any charges that passengers would experience for different modes of transport, car-parking or drop-off. SPAA also considered that information also needs to be clear and simple and provided some examples of existing good practice.
- 5.29 SPAA stated that Scottish Airports cater for a very large amount of inbound visitors from all over the world, particularly in the summer months, partly for overseas and domestic holidaymakers but also for events such as the Edinburgh Festival/Edinburgh Tattoo etc. The arrival process is often their introduction to Scotland and it must be welcoming and informative.

Representative of surface access operators and trade associations

- 5.30 CPT noted that even though passengers may assume they are fully aware of their options, they, in fact, may not be aware of all the options available to them.
- 5.31 BVRLA said that airport operators are often seen as not promoting car rental in the same way that they do for other onward transport modes and this is visible, in some instances where there is poor or non-existent signage to car rental facilities and airport websites sometimes lack sufficient car rental information. BVRLA suggested that airport operators should promote all on-site car rental partners in an equal and fair manner and that car rental should be promoted in a similar way to other transport modes.
- 5.32 IAPA considered that airports are generally major pieces of national transport infrastructure and, therefore, airport operators should provide information on options for getting to and from the airports with contact details and links to websites with information on all authorised and reputable surface access operators including rail, coach, taxi and parking operators, whether based on or off- airport. IAPA considered that, unlike in other transport options, there is an obvious commercial reason for airport operators not wanting to provide information on independent parking operators. IAPA also distinguished between providing information on options and marketing activity of the airport operators' parking products, considering that the information should take precedence (more prominently displayed to passengers) over advertising.
- 5.33 The British Parking Association (BPA) noted that they provide various accreditation services to parking providers in the UK. Those include the Safer Parking Scheme (Park Mark) and an "Approved Operator Scheme" with a Code of Practice, a scheme of sanctions (which includes expulsion) and an annual external audit of all members to ensure operators comply with the code. BPA stated most parking operators providing airport parking have Park Mark and some are members of the approved operators' scheme.

Trade unions

- 5.34 Unite 3023 considered that Leeds airport website was misleading (particularly for first time visitors) in the way it suggested that the airport is served by train while the train station is located at a distance with passengers needing to use a link bus service.
- 5.35 Unite 3023 also considered that it was misleading that the official “taxi” provider at Leeds airport which is listed on the website is not a “Hackney Carriage Taxi (Black Cab)”. Prices charged by the official taxi provider can be higher than those charged by Hackney Carriages. Unite’s response implies that the fact that the lack of a taxi rank at the airport that can be accessed by Hackney carriages has reduced competition and consumer choice at the airport.
- 5.36 Representatives of Hackney Carriages at Heathrow airport said that Heathrow Airport is able to market its own services in a way that is not available to them, for example, by approaching passengers and having marketing airside. They also noted that misleading information is often provided to passengers when making cost comparisons between taxis and Heathrow Express and other services. Unite also mentioned that they would like to see taxi information desks reintroduced at Heathrow airport and, perhaps, a taxi pre-booking option on the airports’ website. Unite suggested that these could be paid for by a taxi entrance fee collected by Heathrow Airport.

Airport operators

- 5.37 Airport operators told us that they endeavour to provide passengers with clear, accessible and extensive information about their various travel options through a range of methods (website, kiosks, etc). Edinburgh Airport, for example, said that airport operators should, in so far as possible, offer neutral and transparent information which allows passengers to compare surface access services. They also said that there is no single source of complete surface access information (including price and comprehensive set of product characteristics). Airport operators noted that search engines can provide consumers with information about

the options available to passengers, irrespective of whether or not they are provided by airport operator.

5.38 Luton Airport considered that airlines, travel agents and aggregators' websites are where most passengers book their travel and that these websites often promote a limited range of options. In contrast, according to survey information available to Luton Airport, only 18 per cent of passengers referred to Luton Airport's website before their journey. Luton considered there would be little value to consumers in a policy requiring airport operators' websites to be a central or impartial source of information on airport car-parking. In contrast, Liverpool Airport considered that the airport website was the most popular source of information for airport users. Liverpool airport also said that its website had information on all forms of public transport and car-parking options in a clear and transparent way with various links through to more detailed information either from the airport or third party providers.

5.39 Edinburgh Airport expressed some concern that some price comparison websites may at times mislead passengers because:

- it may not be clear to passengers that the prominence of a particular parking product on a price comparison site may be determined by the commission paid by the parking provider or the presence of a financial interest a consolidator has in a car-park (for example where the consolidator also owns car-parks);
- price comparison websites may also give the impression that they cover the whole market when they may not; and
- price comparison websites sometimes use the airport name to imply that off-airport parking products are actually on-site.

5.40 Some airport operators told us that providing information about competing car-parking services could mislead passengers about the nature of the services provided. They also told us that they have some concerns over the standards of some independent parking operators in terms of security, safety and service quality provided to passengers. Edinburgh Airport said

they are unable to offer pricing and inventory information for offsite competitor car-parking, as they are for their own products.

- 5.41 Airport operators noted some evidence available on the high level of awareness shown by passengers of their options for travelling to airports. MAG noted that passengers accumulate knowledge and awareness of their options as they take more flights from particular airports and these informed consumers provide a strong degree of protection, through the competitive constraints they place on airport operators, to passengers that are less informed about their travel options.
- 5.42 MAG said that the most notable change in the last 5 to 10 years in airport car-parking has been the significant increase in the number of passengers which pre-book their parking online. MAG considered that this has brought significant consumer benefits but also recognised that it has the potential to disadvantage some groups of customers. MAG noted, however, that passengers without internet access can pre-book car-parking over the phone at the same rates as those available on the MAG website and through distributors.

Recent developments

- 5.43 Recently, a review of drop-off and pick-up charges by the RAC, a motoring organisation with more than 8 million members, put some focus on these charges.¹⁴⁶ The RAC recognised that “many airports provide a range of different parking options for drivers depending on how long they expect to stay” however it considers that “motorists need to be aware of the sky-high charges levied by some for parking close to the terminal” and therefore advise passengers to check the fees carefully before setting out and look for options to park a little further away from the terminal, if passengers are concerned that they may need to stay longer than the minimum period. However, the RAC also noted that “there will be a trade-

¹⁴⁶ See <http://www.mynewsdesk.com/uk/rac/pressreleases/the-sky-high-cost-of-picking-up-and-dropping-off-at-uk-airports-revealed-1515590>.

off in that other car-parks tend to be considerably less convenient and a lot further from the arrivals hall”.

Our conclusions on consumer information

- 5.44 Many stakeholders agreed that there are substantial categories of passenger demand that are less familiar with surface access products available at airports. However, when passengers make some effort to research their options they are able to find information. Many passengers report that they are reasonably aware of the options available to them, although many stakeholders considered that this is an issue that would merit further research.
- 5.45 That said, we agree with many respondents that airport operators should play a part in ensuring that consumers have access to a comprehensive and impartial set of information. Many passengers rely on the airport website to find out about the options that are available to them. We consider that it would be helpful to consumers if all reputable options to get to and from the airport were available from the airport operator’s website, irrespective of whether the airport operator has a commercial incentive for passengers to use that particular option or not. Airport operators may require that such surface access operators meet certain quality criteria or be certified in a certain way, in order to avoid the risk of passengers using untrustworthy operators.¹⁴⁷ Airport operators may also want to make clear that they do not provide or endorse all operators’ activities listed in their “information” pages. One example where the airport has been more active in communicating the availability of other providers is shown in the box below (Gatwick’s Approved off-airport parking Scheme).
- 5.46 We also consider that airport operators should be free to market their products as they see suitable, as long as that does not get in the way of passengers being able to find information on other available options.

¹⁴⁷ This could include accreditation schemes such as those run by the BPA or others schemes/criteria that airport operators would consider important to passengers.

Box 1: Gatwick's approved off-airport parking scheme

London Gatwick's approved off-airport parking scheme was introduced to offer Gatwick's passengers more confidence and guidance when choosing off-airport parking.

When travelling from Gatwick airport, Gatwick Airport strongly recommends either using one of the official Gatwick Airport car-parks (on the airport) or alternatively an approved off-airport parking supplier listed.

These suppliers are part of Gatwick's Approved Operator Scheme, meaning that they have adhered to both the Buy with Confidence (approved by Trading Standards) and the ParkMark approval processes. Gatwick Airport strongly advises against using any parking supplier who is not an approved off-airport parking supplier as these other companies may not have any industry accreditation.

This is run in partnership with the British Parking Association - every approved off-airport parking supplier is required to demonstrate that their parking facilities meet planning and security requirements.

Companies which are part of the scheme also have to prove they can provide a high level of professionalism and service. These companies are not owned or operated by Gatwick Airport and while it says it makes every effort to ensure that members of the Approved Operator Scheme comply with the law and rules surrounding the Trading Standards Buy with Confidence accreditation, Gatwick Airport says it cannot guarantee that their work will never give rise to a complaint.

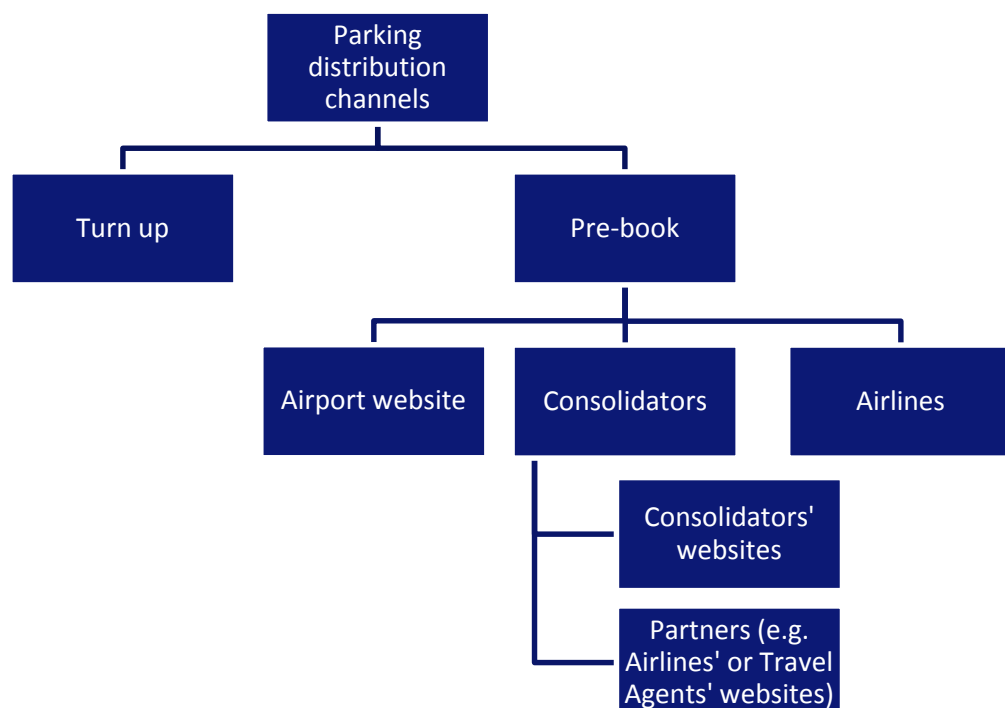
Distribution of car-parking

Initial findings

- 5.47 In our consultation we identified the distribution of airport parking as an issue that, like in other similar sectors of the economy (e.g. hotel booking industry), could raise some competition concerns. One of such issues was the way prices are set between providers and distributors. Another was whether the relationship established between airport operators and distributors was merely one of agency or, in some circumstances one between competitors, as some distributors are also the providers or sponsors of independent airport parking products.

- 5.48 Long-term car-parking (whether or not in long-stay car-parks) is now predominantly purchased online, as typically passengers can have much better rates from operators if they book in advance compared with turning up on the day without a prior booking.
- 5.49 The airport operator's car-parking can be distributed through the airport operator's own website but a large proportion of bookings are also made through third-party channels.

Figure 5: Illustration of distribution channels for airport parking



- 5.50 Online distributors (or consolidators) often demand a significant proportion of revenues in order to list parking products on the distributors' or their partners' websites. This suggests that when airport operators sell car-parking from their own channels they are able to generate a better profit margin from this part of their business, as they do not need to incur the significant costs of paying those intermediaries.
- 5.51 The largest distributors are seen by many airport operators as major players in the distribution of car-parking and a key determinant in placing/sustaining a successful car-parking product in the market. Their

substantial positions are seen to be a result of extensive deals some of them have with major airlines and travel agents for car-parking cross-selling. Some consolidators may have more relevant presences at particular airports, depending on whether they have off-airport parking operations near the airport or partnership agreements with the airlines established at the airport.

- 5.52 Consolidators, however, told us that most of those revenues gained through commission are used to generate internet traffic from search engines and social media, for example, as well as to pay their partners for sales originating on airlines and travel agents' websites. They have also told us that their business is not highly profitable.
- 5.53 Some airport operators have agreements for the distribution of their airport car-parking with a few airlines, even if those airlines also continue to use aggregators to sell airport car-parking. We were told that the direct airport operator-airline relationship seems to be less developed than the car-park operator – aggregator – airline relationship, but that the potential for this type of relationship to develop and become more frequent exists.
- 5.54 Online distributors of car-parking products told us that they are not allowed to offer discounts from rates set by airport parking providers except to members of closed groups (e.g. Groupon or previous customers of a distributor). They consider that this allows providers of car-parking to manage occupancy of car-parking capacity (yield-management) efficiently. They have also told us that they are aware of recent investigations by competition authorities on similar issues in other sectors.
- 5.55 Rail, bus and coach operators of airport surface access services also tend to distribute online through the common channels that are also used by other rail, bus and coach services. Airlines and airport operators sometimes have agreements with some of these operators to distribute their products in return for a commission.

Stakeholders' views

Airport operators

- 5.56 Heathrow Airport said it “does not influence or participate in any discussion with other surface access operators regarding the sharing of price information or information provision of cost. The price set by other surface access operators is an independent decision by that entity.”
- 5.57 Heathrow Airport added that “where Heathrow sells surface access options such as car-parking through third party distribution channels, this is priced accordingly with the prices that Heathrow would sell directly to the user.”
- 5.58 Gatwick Airport considered that there appears to be a significant degree of concentration among distributors of airport car-parking and that they are able to offer airlines arrangements covering multiple airports. According to Gatwick Airport, often airport operators have little choice but to make arrangements with those distributors as they would otherwise be severely limited in their ability to access airline sales channels, which represent a significant proportion of parking sales at airports. Gatwick Airport did not consider, however, that agreements where distributors act as agents to sell airport operators' parking on their behalf is likely to cause any competition concerns.
- 5.59 MAG said it engages with a variety of surface access partners to support the distribution of car-parking. MAG considered that these partners are engaged in an agent capacity on sales agency contracts. MAG considered that, as such, there is no transfer of commercial responsibility or liability to those partners and also they do not have the opportunity to influence MAG's cost management, pricing, capacity provision or product specification.
- 5.60 MAG stressed that there is no discussion or coordination between MAG and agents on issues such as pricing and capacity utilisation. MAG also added that “For those agents who use their own booking platform (as opposed to MAG's directly), commercial interaction is limited to MAG

providing a pricing file every hour which is automatically uploaded to their systems to support their selling of the product at the relevant price. This ensures that these agents sell car-parking at prices that correspond with MAG's own booking platform, and they only sell capacity when it is available to be sold."

- 5.61 Edinburgh Airport considered that there could be a potential conflict of interest in circumstances where consolidators both distribute the products of other parking providers and also have their own car-park capacity, as this may lead to risks of consolidators having access to information relating to their competitors which undermines effective competition. However, Edinburgh airport noted that such an issue is not relevant in their case because it is not served by a car-park run by one of the consolidators.
- 5.62 Edinburgh Airport considered that while consolidators increase transparency and competition, they also often have significant market power because large consolidators typically enter into a number of deals with airlines and travel agents, using their UK-wide distribution to lock in UK-wide relationships. Parking providers then enter into agreements with those consolidators in order to access these airline and travel agent markets.
- 5.63 Edinburgh Airport noted, however, that they have reduced substantially their reliance on third party intermediaries to sell on-airport car-parking, with 80 per cent of sales now taking place through their own website. This has allowed them to reduce prices for passengers by reducing the substantial commission costs associated with overdependence on these relationships. Edinburgh Airport said that large consolidators charge as much as 30 per cent commission. Instead, Edinburgh Airport sells parking via smaller consolidators, and through other channels. Finally, Edinburgh Airport stated that they have a policy of not entering into agreements which contain price parity clauses.
- 5.64 Luton Airport said that as any parking operator, it shares the availability of its parking inventory and its associated price with a third-party aggregator

who in turn shares that information with third party sellers including themselves.

- 5.65 Glasgow Airport said that they have contracts in place with a number of car-parking consolidators that charge a commission and take a direct pricing feed from their car-park booking engine.
- 5.66 Birmingham Airport considered that the role of distributors in the market should be reviewed. Birmingham Airport said that there are airports where the consolidator market share is very high resulting in high commissions paid by all car-park operators (on and off-airport) to the distributor. Birmingham Airport said that there are examples where consolidators or airlines have informed that they are uninterested in selling all inventory on offer because of better deals from other providers or exclusivity deals in place.
- 5.67 Birmingham Airport noted that online distributors often insist on car-parking pricing not being represented at lower prices by other distributors, i.e. they wish to always have the best price available in an open market. Finally, Birmingham Airport considered that there is also an issue of cross-subsidy on the part of distributors who also operate car-parking services, which has analogies to some of the concerns we are seeking to address about airport operators. Birmingham Airport considered that such an arrangement can lead to predatory pricing and discouraging “parking only” providers to enter the market.
- 5.68 Bristol Airport noted that it does not share pricing information with distributors other than that which is publicly available on the airport website, which it sets independently.
- 5.69 Newcastle Airport confirmed that they have a number of agreements with consolidators, travel agents and airlines that sell car-parking on its behalf. Newcastle Airport noted that there are no arrangements or agreements to share pricing or cost information with other surface access operators.

- 5.70 Liverpool Airport confirmed that “there is price parity with various third party distributors to ensure that the airport products are the same price on every website”.

Other stakeholders

- 5.71 Apart from airport operators, most respondents did not address this topic with great detail, as most are not aware of the commercial relationships between distributors and airport parking operators. Some stakeholders said, however, that we understood the issues related to the distribution of airport car-parking correctly.
- 5.72 Holiday Extras, the largest distributor of airport car-parking at UK airports, responded to the consultation but did not directly address this question in their response. It noted that it is important for it that airport operators face competition in downstream car-parking markets.
- 5.73 IAPA, who represents off-airport car-parking operators, some of which are also distributors of car-parking, did not directly address this question in its response.

Our conclusions on distribution of airport car-parking

- 5.74 Price comparison websites and other services provided by distributors of car-parking can be good for consumers because they increase the information set available for consumers and provide a valuable intermediation service in distributing car-parking. They offer airlines and travel agents the opportunity to market to consumers a large number of airport parking products. However not all products/services are necessarily available on an individual price comparison websites.
- 5.75 We understand that distributors of airport parking prefer a situation where there is competition between different providers of airport parking to one where the airport operator provides most long-stay car-parking capacity. We understand that some large distributors of car-parking are able to demand large commissions (as a proportion of revenues) in return for

listing the parking providers' products with their partners (airlines, travel agents and their own sites that rank highly with search engines).

- 5.76 There is evidence that airport car-parking operators (including airport operators) and distributors of car-parking often agree retail price parity, at least on open channels. There is also some evidence that sometimes distributors of car-parking are able to discount on open channel prices in closed-group channels (e.g. a closed group could be where someone that has bought an airline ticket or received a marketing email for being a previous customer of a firm).
- 5.77 As we noted in the consultation, this matter is of interest in other sectors of the economy. Our advice to industry continues to be that online distributors and surface access providers (including airport operators) should make sure they learn the lessons of competition investigations in analogous sectors of the economy and review their practices and contractual arrangements.
- 5.78 We note that the CMA recently published advice on RPM to suppliers and retailers¹⁴⁸ including a one page advice letter for retailers.¹⁴⁹ In the letter the CMA acknowledges the internet is an increasingly important channel for businesses to advertise and sell their products, as it opens up markets, provides customers with more choice and enhances price competition. However, the CMA clearly states that:
- only in very exceptional circumstances may it be lawful to specify retail prices; and
 - in the majority of cases, RPM is illegal because it constitutes a form of vertical price-fixing, preventing retailers from offering lower prices and setting their prices independently to attract more customers.
- 5.79 Finally we note that distributors are often also providers of car-parking products in competition with other providers whose services they also

¹⁴⁸ See <https://www.gov.uk/government/publications/restricting-online-resale-prices-cma-letter-to-suppliers-and-retailers>.

¹⁴⁹ See <https://www.gov.uk/government/publications/resale-price-maintenance-advice-for-retailers>.

distribute. This means that having real time access to each other's inventories and (published) prices risks coordination rather than competition between providers.

Services for disabled passengers and those with reduced mobility

Initial views

- 5.80 We did not explicitly cover services for passengers with disabilities in our consultation because that was the focus of a separate workstream. As explained in the Background section of Chapter 1, the CAA Consumer Panel urged us to consider disabled people and those with reduced mobility in the context of this review because surface access to airports is important to this group of passengers.

Stakeholders' views

- 5.81 While we did not explicitly cover services for passengers with disabilities or reduced mobility in our consultation we received some comments that were focused on the needs of and services available for passengers with disabilities. If we had included this in our consultation, we would have received comments from more stakeholders.

Travel industry trade associations

- 5.82 ABTA stated that there will always be times when it is not possible to take public transport to the airport and passengers need to either be dropped off at the airport or park their car. Public transport is not always suitable for passengers travelling with large pieces of luggage, child buggies and for Persons of Reduced Mobility who might be travelling in a wheelchair.
- 5.83 SPAA also stated that public transport is not always suitable for passengers travelling with a lot of luggage, with families which may include buggies and for Persons of Reduced Mobility who might be travelling in a wheelchair. Car-parking charges can be really high, particularly in proximity to the terminal which disadvantages passengers

of reduced mobility and families. A careful balance needs to be struck between the charging structures for car-parking at airports to ensure that prices are set at a level that does not result in passengers who do not have access to suitable public transport paying excessive charges. Adequate transport links to and from the terminal should be supplied with good frequency and allowing sheltered pick-up areas.

Trade union

5.84 Unite 3023 considered that at Leeds Bradford airport there is a lack of choice and freedom to choose an alternate 'on demand' service such as Hackney carriage black cabs, which is particularly important for those who travel with disabilities. Unite 3023 stated that approximately 60 per cent of its 537 vehicles are disability compliant under the Disability Discrimination Acts 1995 & 2005 and the Equality Act 2010. Unite 3023 suggested, based on anecdotal evidence from disability groups within Leeds, that the current minicab firm has less cars that are disability compliant.

Airport operators

5.85 To understand the views of airport operators, readers should refer to the airport operators' websites, our report on the assistance UK airports provide to those who are disabled people and those with reduced mobility¹⁵⁰ and the relevant page of our website.¹⁵¹

EU Regulation and our performance framework

5.86 Each year more than two million passengers with a disability or reduced mobility take flights in and out of the UK.¹⁵² Under EU regulations all disabled air passengers, who are departing from an EU airport or flying with an EU airline anywhere in the world, are legally entitled to this support, commonly known as special assistance.

¹⁵⁰ See <http://www.caa.co.uk/News/New-CAA-report-rates-airports-on-quality-of-assistance-for-passengers-with-a-disability-or-reduced-mobility/>.

¹⁵¹ See <http://www.caa.co.uk/Passengers/PRM/Passengers-with-disabilities-and-reduced-mobility/>.

¹⁵² Airport data returns to the CAA.

- 5.87 Under European regulations, airports and airlines must provide help and support to disabled people and those with reduced mobility, to better enable this group of people to travel by air.
- 5.88 Regulation EC1107/2006¹⁵³ ensures that disabled people and persons of 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 them 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)¹⁵⁴ imposes a duty on service providers, which in this case includes airport and surface access operators, to make reasonable adjustments.¹⁵⁵ It is also a requirement of the CAA¹⁵⁶ that airport operators 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, disabled passengers and those with reduced mobility for using a drop-off zone at the airport.
- 5.89 During 2015/16 we established a new performance framework for assistance to passengers with a disability or reduced mobility and worked with 30 of the busiest UK airports to assess each of them against a number of key measures. These measures included:
- How long passengers have to wait for assistance (both departure and arrival)
 - The levels of passenger satisfaction with the assistance provided, gathered from CAA passenger surveys and airports' own surveys

¹⁵³ See <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32006R1107>.

¹⁵⁴ See <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

¹⁵⁵ As defined in section 20 of EA2010.

¹⁵⁶ See <https://www.caa.co.uk/Our-work/Consultations/Closed/2014/Information-for-passengers-with-reduced-mobility/>.

- How much consultation airports had with disability organisations regarding assistance services, what consultation methods were used, if issues were addressed and what, if any, action was taken

- 5.90 We introduced the new framework in order to ensure there is a consistent and high quality service for disabled people and those with reduced mobility across UK airports. All 30 airports were assessed and given a performance rating of either very good, good, taking steps, or poor. Airports with performance ratings very good or good, and those that have 'taken steps' to improve performance, account for 97 per cent of all travellers that use the assistance service at airports.
- 5.91 In August 2016, we published a report that shows that overall UK airports provide a high quality of assistance to those who are disabled people and those with reduced mobility.¹⁵⁷

Our conclusions on services for disabled passengers and those with reduced mobility

- 5.92 People with disabilities, whether physical or non-physical, and those with mobility restrictions may find accessing airports difficult. Surface access operators such as train, bus, and taxi companies should be familiar with requirements of the 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 the EA2010 in so far as it relates to the design of airport building(s). However, in relation to surface access, and especially access to the forecourt by car (i.e. pick-up and drop-off areas), airport operators may not always be aware that their duty to make reasonable adjustments under the EA2010 extends to this area.

¹⁵⁷ See <http://www.caa.co.uk/News/New-CAA-report-rates-airports-on-quality-of-assistance-for-passengers-with-a-disability-or-reduced-mobility/>.

- 5.93 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 place¹⁵⁸ and whether these are reasonable, and the level of any penalty charges for overstaying¹⁵⁹; and
 - the information they publish on their websites in relation to this issue and in relation to car-parking and surface access more generally.

Our conclusions on consumer issues

Consumer Information

- 5.94 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, if they are not 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.
- 5.95 The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), require that consumers are not misled, treated aggressively, or otherwise acted unfairly towards. We recommend that airport and surface access operators ensure that they comply with the CPRs.¹⁶⁰

¹⁵⁸ For example, whether only a limited range of disabled people (e.g. Blue Badge holders) can access the forecourt by car for free.

¹⁵⁹ 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.

¹⁶⁰ 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>.

Marketing and distribution

- 5.96 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.
- 5.97 Price comparison websites or specialised online distributors can allow consumers to easily compare services and can increase transparency, leading to greater competition between providers of surface access services and air transport services. However, they may also provide incomplete information which can lead consumers to make sub-optimal choices.¹⁶¹
- 5.98 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 different transactional decision than they may otherwise have taken, this may breach the CPRs.
- 5.99 Airport and surface access operators should ensure that their practices comply with the CPRs.

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

- 5.100 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.¹⁶²

¹⁶¹ 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>.

¹⁶² More information on Gatwick Approved Operators Scheme is available from: www.gatwickairport.com/parking/other-parking-options/operator-scheme/.

- 5.101 We suggest that airport operators consider a form of accreditation for independent parking operators, similar to that offered by Gatwick Airport. While there is no legal requirement to accredit independent parking operators, doing so would allow for increased competition in the provision of car-parking services for consumers while reducing the risk of passengers experiencing a poor service. It would also allow airport operators to deal with reputational damage from off-site parking providers which operate without planning permission or which provide an inadequate service in terms of, for example, security. However, such accreditation should stop short of determining 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 mobility

- 5.102 People with disabilities, whether physical or non-physical, and those with mobility restrictions may find accessing airports difficult. Regulation EC1107/2006¹⁶³ ensures that disabled people and persons of reduced mobility (PRM passengers) 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)¹⁶⁴ imposes a duty on service providers, which in this case includes airport and surface access operators, to make reasonable adjustments.¹⁶⁵ It is also a requirement¹⁶⁶ that airport operators publish information on their websites on getting to the airport, including the arrangements for disabled parking at the airport

¹⁶³ See <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32006R1107>.

¹⁶⁴ See <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

¹⁶⁵ As defined in section 20 of EA2010.

¹⁶⁶ See <https://www.caa.co.uk/Our-work/Consultations/Closed/2014/Information-for-passengers-with-reduced-mobility/>.

(within the terminal boundary), and any specific rules for, or charges applied to, PRM passengers for using a drop-off zone at the airport.

5.103 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 PRM passengers. For their part, airport operators should be familiar with the requirements of Regulation EC1107/2006 as well as EA2010 in so far as it relates to the design of airport building(s). However, in relation to surface access, and especially access to the forecourt by car (i.e. pick-up and drop-off areas), airport operators may not be aware that their duty to make reasonable adjustments under EA2010 extends to this area.

5.104 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 place¹⁶⁷ and whether these are reasonable, and the level of any penalty charges for overstaying¹⁶⁸; and
- the information they publish on their websites in relation to this issue and in relation to car-parking and surface access more generally.

Next steps

5.105 We do not consider we have, at this point in time, sufficient grounds for an investigation under consumer law. We note however that not commencing an investigation does not stop us from doing so in the future.

¹⁶⁷ For example, whether only a limited range of disabled people (e.g. Blue Badge holders) can access the forecourt by car for free.

¹⁶⁸ 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.

- 5.106 We have written an Advisory Letter to airport operators and other stakeholders involved in the surface access industry to advise them about the application of consumer and competition law and where they need to take care in their business practices.

Chapter 6

Airport operators surface access principles

Introduction

- 6.1 This chapter sets out our proposed approach to the development of surface access principles, what stakeholders told us and our suggested way forward.
- 6.2 In the consultation document, we considered that airport operators, given their upstream position as providers of surface access facilities, needed to demonstrate more clearly that they had considered their legal responsibilities under competition and consumer law.¹⁶⁹ We therefore asked airport operators to develop and communicate how they would deal with a number of questions.¹⁷⁰
- 6.3 This chapter summarises airport operators' responses to those questions under each of the headings below. We also set out our views on how airport operators responded to these questions and encourage airport operators to continue the process of developing and communicating how they intend to take forward the key issues raised by this review. We consider that the communication of surface access principles helps to set expectations of future behaviour in this sector for airport operators and surface access operators.
- 6.4 Generally, only airport operators addressed the questions on airport operators' surface access principles – most other stakeholders did not respond.
- 6.5 We welcome the efforts made by airport operators to clarify and explain their approach to surface access at individual airports. We note that

¹⁶⁹ We have previously published a working paper entitled "National and European competition case law relevant to the aviation sector" that is available at www.caa.co.uk/cap1370.

¹⁷⁰ Questions a) to g) in pages 49 and 50 of the Consultation.

airport operators have and would like to continue to have a lot of discretion on how they structure commercial relationships with surface access operators and how they set charges and conditions of use for surface access facilities. We also note that airport operators' surface access strategies are influenced by a number of factors, which are important to bear in mind when interpreting airport operators' responses, namely:

- the need to make airports accessible to their customers;
- operational and security constraints;
- environmental constraints;
- planning obligations; and
- financial objectives.

6.6 This chapter is structured by topics for principles as follows:

- Facilities available at/near the airport and restrictions;
- Derivation of charges and differentiation;
- Consultation and provision of cost information;
- Issues on distribution of car-parking;
- Provision of information to consumers
- Free drop-off and pick-up facilities for consumers
- Approach for developing surface access principles; and
- Our conclusions on airport operators surface access principles.

Facilities available at/near the airport and restrictions

6.7 This section covers:

- the facilities made available for surface access and airport operators attitude to the development of facilities outside the airport perimeter; and
- how airport operators make facilities available for use by surface access operators and any restrictions airport operators place on the range of surface access operators or the type of services that can be operated at the airport.

6.8 Airport operators responded with a description of the facilities they make available at each airport, which varies from airport to airport. Typically, airport operators provide forecourt and car-parking facilities used by a multiplicity of surface access operators, including car rental, taxi and minicab, bus and coach, and off-site parking operators. They also tend to provide short-stay parking products to consumers and most long-stay car-parking spaces near the airport, which can be paid at point of use or pre-booked. Other facilities mentioned by airport operators included:

- Heavy/light rail and tram stations;
- Bus/coach stations;
- Dedicated Hackney and private hire taxi ranks;
- Car rental “villages” – sometimes linked with free courtesy buses;
- A variety of “long-stay” car-parks, normally served by free courtesy buses;
- Valet / meet and greet services (where the customer car is dropped/picked up close to the terminal building or short-stay car-park but the vehicle is then parked elsewhere by the parking provider); and
- Facilities for bicycles.

6.9 At the forecourt (typically the roads closest to the terminal), airport operators commented that security and safety considerations mean that they need to restrict vehicle access to the general public. Usually, only approved users – those with a licence from the airport operator – are allowed access to those areas. For example:

- Bristol Airport mentioned that Bus and Coach Operators are given access to forecourt, subject to security clearance and other regulations (such as airport byelaws).
- Birmingham Airport mentioned that forecourt area can be accessed by coach operators, licensed hackney carriages, chauffeur vehicles, public bus services and off-airport bus transport.

6.10 Some airports also have facilities designed to connect with rail (including underground and tram) modes. Sometimes such facilities are integrated

or at walking distance to the airport terminal, whereas in some other cases there are links (light rail or bus shuttles) provided by the airport operator or third parties.

6.11 Airport operators noted that they need to impose some restrictions to the usage of facilities of the airport to manage congestion. For example:

- Glasgow Airport says it has managed bus stand capacity previously through a tender process when, in 2015, five bus companies tendered for the dedicated stands located at the front of the airport reserved for the direct Glasgow to city centre route.
- Gatwick Airport's principles state that to manage congestion, pick-up by cars, taxis and minicabs is not allowed in the drop-off area of the forecourt.

6.12 Increasingly, at most airports, there is a paid ("premium") drop-off and pick-up service close to the terminal building (see Figure 6 below). We have observed that at some airports prices have increased post the introduction of drop-off charges with some airport charging as much as £3 for 10 minutes. Most airport operators' direct people wishing to pick-up passengers to the short-stay car-parks, which sometimes have a dedicated area for that purpose.

6.13 While some airport operators did not comment about the level of facilities provided by independent car-parking operators in the vicinity of the airport, we understand that the proportion of long-term car-parking spaces at or near each airport that is controlled by the airport operator varies substantially.

- It can be inferred from Bristol Airport's response that all the car-parks operating at/near Bristol airport with planning permission are operated by Bristol Airport. Bristol Airport stressed the need for planning law to govern off-airport operators and commented on the challenges posed by off-airport operators that operate without planning permission. It considered that it is not able to enter into agreements that grant special access to such operators.

- MAG recognised that off-airport parking operators have a role to play in helping to meet the needs of passengers. MAG also considered that airport operators have a responsibility to facilitate the operation of competing operators and to treat them reasonably and fairly in the way they are provided with access to airport facilities.
- MAG explained that the fact that there is limited off-airport car-parking capacity at Stansted airport is the result of planning policies designed to mitigate the impact of the airport's growth on its rural surrounding areas.
- Liverpool Airport noted that if the modal-share environmental objectives of the surface access strategies are to be met, local authorities must continue to control (i.e. deny planning permission) to off-airport parking providers.
- Luton Airport stated that independent car-parking operators provide 56 per cent of car-parking spaces used by passengers at the airport.
- Edinburgh Airport said that there is significant competition in the market for parking at Edinburgh airport.

6.14 Airport operators commented that they impose some restrictions and set some terms for how off-airport parking operators access the airport:

- Edinburgh Airport noted that unlike public (scheduled) buses, bus services operated by on and off-airport parking operators (including its own parking services) do not have permission to access the forecourt. Instead, they use a coach park that is quite close to the Terminal. Other charter coaches can also use this facility on a roll-up basis or seek commercial arrangements.
- Glasgow Airport noted that all off-airport operators “must enter into an agreement” with the airport. According to the airport operator, this allows them to ensure that all operators meet expected service levels and have the necessary local authority approvals for their activities. Such off-airport car-park operators have dedicated pick-up points in the forecourt area.
- Heathrow Airport noted that although it does not restrict third party surface access operators, these operators must comply with byelaws

and other commercial terms. All operators can use airport car-parks and commercial programmes and agreements are available to frequent users of the facility.

- MAG commented that, at each of its airports, off-airport parking operators and taxis can use the forecourts and car-parks. Where charges apply for these facilities, these are levied at the prevailing rate to all users. In some circumstances, commercial operators are exempted from some restrictions (such as the no return to drop-off facility within 30 minutes rule).

Derivation of charges and differentiation

6.15 This section covers:

- how airport operators derive charges for the use of facilities by surface access providers and to explain how these charges relate to costs or any other relevant factors; and
- whether the approach to charging leads to differentiation between different providers of surface access products or between segments of consumers. This is particularly important in areas where airport operators themselves compete with independent surface access operators.

Initial findings from our consultation

6.16 In the consultation, we initially concluded that it is not always clear how the charges for use of surface access facilities have been derived and whether they are related to costs.

6.17 In addition, we noted that airport operators may not always provide sufficient transparency on the cost of providing access to surface access operators and consultation on the charges paid by such operators.

6.18 Airport operators' ownership of most of the required facilities to operate car-parking services 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.

Stakeholders' views

Representative of surface access operators and trade associations

- 6.19 IAPA suggested that airport operators' charges to surface access operators should generally be based on the recovery of costs plus a reasonable return. According to them, this is justified by the special market conditions which apply where an organisation has significant market power in the upstream market. IAPA considered that airport operators should have to inform surface access operators of the historic and forecast costs and revenues associated with surface access facilities, as well as the system used to allocate costs to those facilities. IAPA suggested that similar provisions exist in the economic licence granted by the CAA to Heathrow Airport for the operation of the airport.
- 6.20 CPT noted that at airports where the basis of charging is transparent, the charges appear to be proportionately less than at those airports where the charging regime is less clear. CPT considered that the regulated airport operators, Heathrow and Gatwick, regularly engage with coach operators and, although both are regarded as being "high cost" locations, the access fees are not the highest when compared with some other airport operators around the UK. In additions, at regulated airports the structure is equitable and does not favour or disadvantage any operator.

Airport operators

- 6.21 Birmingham Airport said that initially the fee applicable to use the set down area was based on a cost of providing the facility per movement taking into account factors such as policing, security, lighting, access requirement, cleaning and administration of the licensing system. However, Birmingham Airport said that following consultation with users,

the prices it charges that do not cover its cost of providing and maintaining the facilities.

6.22 Bristol Airport said that they adopt a “flexible” charging mechanism because of their obligations, under planning law¹⁷¹, to promote public transport. Its response stated that:

- *Highly profitable bus and coach services that operate to and from the airport are charged more for access than local community services (...) or start-up services where the risk of commercial failure is high.*

6.23 Bristol Airport does not engage commercially with off-airport parking operators because it does not consider them to be legitimate partners as they operate from sites without planning permission, although they are allowed to use Bristol airport car-parks, like the general public.

6.24 Edinburgh Airport’s draft principles say that pricing of surface access facilities may take into account the costs of providing the service. However, it also considered that the pricing can provide a revenue stream to help fund the continued growth of the airport. Pricing should also take into account the “goal of 35 per cent public transport mode share”.

6.25 Edinburgh Airport said that it derives its charges for the use of surface access facilities from consideration of a number of relevant factors. It adopts a benefit sharing pricing model which also takes account of its commitment to achieving a goal of 35 per cent public transport mode share. Surface access providers benefit from the efforts of airport operators to grow patronage through aeronautical, infrastructure and resource development. In order to incentivise further investment the airport operator should share in this benefit. Furthermore, by setting a target for mode share the airport operator is encouraged to work with surface access providers to agree pricing structures that allow both parties to grow their business.

¹⁷¹ Agreement under section 106 of Town and Country Planning Act 1990 to promote public transport.

- 6.26 Edinburgh Airport said that the viability and sustainability of any service provided by a surface access provider should be a consideration in pricing. Thus pricing should take into account the commercial success or vulnerability of a service, any direct costs associated with infrastructure or resource investment required to provide the service, and any factors which may affect long term demand, capacity or service delivery in either a positive or negative way. If a service is not viable and/or sustainable an airport operator may wish to support the service for a social or business need, for example where a service is provided for the benefit of staff or a small number of airport passengers. Such support may be in the form of discounted pricing. Though in certain circumstances direct costs may be a relevant factor, Edinburgh Airport does not believe that a cost based pricing model is a viable or appropriate pricing strategy.
- Gatwick Airport's proposed principles state that it will seek to recover the full costs of these facilities from users, except to the extent that there are either broader objectives and/or phasing-in provisions. These principles also state that:
 - Gatwick Airport's own use of forecourt access will be priced on the same basis as other similar users
 - Prices for bus services may vary for different vehicle sizes where appropriate
 - Given that they play "an important part in the community", local hotel and guest houses hopper services may be set at lower levels
 - Gatwick Airport will not charge operators of local buses
- 6.27 Glasgow Airport stated that off-airport car-parking operators can pay per movement or enter into a commercial agreement with the airport operator. Glasgow Airport also stated that the coach park is free to use, whereas access to forecourt is licensed and a volume related fee is paid. The access to taxi rank is charged at £1.50 per departure.
- 6.28 Heathrow Airport said that prices for coach facilities and the taxi movement charge are cost reflective and consulted on with users.

- 6.29 Luton Airport said that it tenders for concessions for four car hire operators, one taxi operator, and for the use of express coach bays. Such tenders are evaluated on a commercial basis. Local bus operators are not charged. The shuttle bus operator to the train station is charged on a commercial basis. Off airport parking operators can use the short-stay car-parks and currently receive a 66 per cent discount on the public tariff for stays up to 15 minutes.
- 6.30 Luton Airport stated that consumers benefit from the single till approach: Charges for use of surface access facilities must be seen as part of the overall single till charging structure which has been very successful in providing consumer benefits. The dramatic expansion in the range of services available to passengers at very low prices has been a direct result of this charging model. Away from the 'big three' regulated airports, the airline-airport relationship is highly competitive – airport operators are not monopoly providers. Airlines require low aeronautical charges in order to start new routes at the edge of commercial viability. Furthermore they are generally highly mobile and look for the lowest aeronautical charges. Airport operators are in competition with each other to attract airlines, and therefore need to offer those low charges. The result of the single till model, in which an overall package of charges is geared towards lower aeronautical charges, has been an expansion of routes available to customers. For the same reasons, this allows airlines to operate with a low cost-base and therefore grow the market through low fares. This is a consumer benefit. If airport operators were required to set each individual charge on the basis of the cost of providing that specific service, aeronautical charges would rise and the benefits would be lost.
- 6.31 Luton Airport stated that the fact that ancillary charges are higher in this model, compared to a cost-based model, does not negate those benefits. Even if surface access operators were to pass those charges on to the consumer in the form of higher charges of their own, the consumer retains the choice of how to access the airport and with which operator, and lower-cost or free options remain available at Luton Airport for consumers who do not wish to pay a specific operator's charges. Put another way,

the single till model has allowed a shift away from costs that all passengers must pay (the aeronautical costs, passed on through air ticket prices) to a user pays approach where passengers can choose the option that best suits them.

- 6.32 Liverpool Airport noted that its surface access and car-parking charges take into account a variety of factors including the cost of providing the facilities, the need to encourage public transport and the need for the users of such facilities to contribute financially to the running costs of the airport.
- 6.33 MAG said that at its airports, car hire operators participate in commercial tenders to operate at the airport and pay fees as a proportion of revenues to the airport operator. Private-hire operators are also appointed following commercial tenders, while hackney cabs operators pay a flat departure fee at Manchester Airport.
- 6.34 Newcastle Airport said that passengers are heavily influenced by the headline cost of the airfare and that for regional airport operators the costs of surface access cannot be easily recovered via air fares. Newcastle Airport stated that if it were to try to transfer costs to airline customers then its expectation is that airlines would operate fewer services and connectivity would be reduced. This would damage both the airport and the regional economy. It would also mean that some passengers would pay for a service they do not want while for others it would become a free good and increase the demand for car-parking spaces which would then place additional costs upon Newcastle Airport's operation which would need to be recovered. Newcastle Airport considered that parking is an optional service which should be recovered from the user of such services.

Consultation and provision of cost information

- 6.35 This section covers:

- how airport operators consult with users on general charging principles and structures of airport services (access to facilities at or near the forecourt) required by surface access operators; and
- how they provide relevant information on the costs of providing such services.

- 6.36 Airport operators (e.g. Liverpool Airport) told us that they have routine engagement with surface access operators and they hold meeting with local “air transport forums” and “airport consultative committees” where surface access stakeholders (operators, passenger representatives and others) can raise issues related to charging principles and conditions for access to airports.
- 6.37 Glasgow Airport noted that the Airport Transport Forum meets twice a year, which includes representatives from those surface access operators that wish to participate. There is an opportunity to discuss Glasgow Airport’s pricing structures and agree service levels.
- 6.38 Most airport operators also highlighted that often charges are discussed with interested parties in the context of commercial negotiations. However, Bristol Airport told us that, as the airport grows and more requests for information are received, the airport intends to introduce a published tariff.
- 6.39 Edinburgh and Gatwick Airports committed to consult periodically with stakeholders on pricing, as appropriate. Birmingham Airport stated that it consults with users of surface access facilities and that it has provided information on costs in previous occasions. It noted that prices agreed with the main users of its surface access facilities were less than the cost of providing such facilities.

Issues on distribution of car-parking

- 6.40 This section covers:

- the extent of any agreements with other surface access operators and with distributors regarding the sharing of car-parking pricing information, the provision of information on costs, capacity management or any other practices
- how they ensure these do not allow undue coordination among competitors.

- 6.41 A full account of airport operators' views is given in the section on 'Distribution of car-parking' in chapter 5. Airport operators noted that they set prices for their car-parking products independently, taking into account prevailing market conditions. Airport operators use third-party intermediaries (acting as agents) to sell car-parking, which involves the transmission of pricing information that is already publicly available.
- 6.42 Some airport operators demonstrated that they consider this issue proactively. For example, Edinburgh Airport said it will maintain its existing policies with competition law compliance and it will ensure that all staff involved in either the management of airport surface access facilities or the sale of airport car-parking understand and abide by those policies.
- 6.43 Some airport operators confirmed that there are often arrangements to ensure that prices made available by third-party intermediaries on open internet channels are the same as those advertised by the airport. The implication of this is that third-party intermediaries cannot use a commission to sell discounted car-parking directly to consumers at least unless the consumer is part of some form of closed group (e.g. someone that has bought an airline ticket or received a marketing email for being a previous customer).

Provision of information to consumers

- 6.44 This section covers:
- airport operators' efforts to ensure that consumers have access to information about all options to get to and from the airport at the time

they need to make informed choices (both on the airport operators' websites and on onward travel kiosks); and

- insofar as it is the airport operators' ability to influence, those options are presented in a neutral and transparent way.

- 6.45 Airport operators have said their websites and other passenger information methods already provide good and comprehensive information to consumers, including on the prices and conditions of car-parks operated by the airport. They also mentioned that they provide information in the terminal (kiosks), at information points, through passenger assistance staff and extensive way finding signage.
- 6.46 They also considered that search engines can provide a lot of information on the off-airport car-parks available.
- 6.47 Some airport operators do not support the idea of having an obligation to promote rival off-site car-parks on their websites. They consider that consumers can find their information online effectively, through search engines, comparison websites and specialised distributors.
- 6.48 Airport operators noted the risks to them and to passengers of publicising surface access operators to passengers with which they do not have a commercial relationship, as they may be not be reputable operators and the airport can be seen to be endorsing them.
- 6.49 Birmingham Airport noted that consumers have demonstrated over time that it is sufficiently easy to find information about off-airport alternatives for car-parking by searching the internet. Birmingham Airport suggested that, when booking independent parking, passengers are not always aware that they are not buying it from the airport operator and can blame the airport for substandard services. They noted that the way off-airport operators market their services can be misleading to consumers.
- 6.50 Edinburgh Airport committed to provide surface transport information in the terminal and on their website to inform passengers of their options and, wherever possible, in such a way as to allow passengers to compare services both inter-modally and intra-modally. Edinburgh Airport also

committed to continue to provide details of its parking prices as well as details of its free facilities on the website. Gatwick Airport committed to provide unbiased onward travel information through the website and onward travel kiosks.

- 6.51 Glasgow Airport said its website and its passenger information desks provide information on all transport modes to and from the airport. However, off-airport car-parking information is not available from its website.
- 6.52 Heathrow Airport said that the options to access the airport are transparent and information is available to all users. Heathrow Airport informs passengers of their options through its website, information points, assistance staff and extensive way finding signage. Heathrow Airport noted that it does not control off-airport operators and encourages passengers to research such operators before using them.

Free drop-off and pick-up facilities for consumers

- 6.53 This section summarises what surface access options are available at no charge to consumers for the drop-off and pick-up of passengers, and what stakeholders told us about drop-off and pick-up.

Airport operator drop-off and pick-up services

- 6.54 Figure 6 below shows that a paid option to quickly drop-off and pick-up near the terminal building was introduced at most airports. We note that there are still free drop-off near the terminal at three of the four largest airports in the country (Heathrow, Gatwick and Manchester but not at Stansted). Operators of smaller airports noted the need for this type of surface access demand to make a contribution to the airport operators' revenues. Some airport operators justified the decision to introduce a fee to prevent severe congestion in free drop-off facility.
- 6.55 Drop-off fees and conditions vary by airport, even between airports belonging to the same group. MAG's forecourt drop-off is free at

Manchester airport but not at other airports in the group (including Stansted, which serves a similar number of air passengers). It provides free alternative drop-off points (not at the terminal forecourt) at Stansted and East Midlands but not at Bournemouth airport. The free of charge drop-off and pick-up facility was withdrawn at Bournemouth Airport to help support the airport re-development. MAG noted that the specific commercial and operational context for smaller airports does not practically support the parallel provision of free and chargeable options in close proximity to one another.

- 6.56 Some airport operators, but not all, indicated that they are likely to continue to provide a free facility for drop-off.
- 6.57 When airport operators supply free options they say that they make reasonable efforts to make sure its availability is publicised on their website, and in access road signage.
- 6.58 Gatwick Airport considered that it is inappropriate to group drop-off and pick-up together¹⁷² as they are fundamentally different and present different challenges. Drop-off generally involves the drop-off of a passenger by a private car (or taxi/minicab), which stops only very briefly before moving on with very limited dwell time. This is fundamentally different from pick-up activity which generally involves dwelling in the area (while waiting for the passenger being picked up). Gatwick Airport stated that experience at Gatwick and other airports has indicated that allowing pick-up activity on the forecourt causes substantial congestion and health and safety issues, with knock on impacts on local traffic, public transport as well as emergency service access. Gatwick Airport therefore direct pick-up activities to use Gatwick airport's car-parks. Gatwick Airport added that this approach was supported by the 2011 Government South East Airports Taskforce recommendations. Gatwick Airport also observed that the ability of airport operators to more strictly enforce dwell time rules on the forecourt is limited by the lack of secondary legislation enabling civil

¹⁷² Gatwick was referring to paragraph 3.21 of our consultation.

parking enforcement, leaving charging as one of the few practical tools available to manage congestion.

Figure 6: Summary of drop-off charges by airport operators that responded to our consultation¹⁷³

Airport	Drop-off at forecourt	Free option not at forecourt	Pick-up
Heathrow	Free	-	In short-stay car-parks – paid
Gatwick	Free ¹⁷⁴	-	
Stansted	£3 for 10 minutes at forecourt	From Mid-stay car-park and free shuttle bus (every hour)	
Manchester	Free		
Luton	£2.5 for 10 minutes	From Mid/long-stay car-parks with free shuttle bus.	
Edinburgh	£1 for 5 minutes / £3 for 10 minutes	From long-stay car-park for 10 minutes. Free buses available (every 10 minutes, journey 2 minutes).	
Glasgow	Free drop-off, but plans to introduce a drop-off fee in 2017 to be paid by private cars, taxis and private-hires.	Available in long-stay car-park with free shuttle service. (20 minutes)	
Birmingham	£1 for 10 minutes drop-off area	Free drop-off for 15 minute period with 10 minute walk or shuttle bus to terminal	In short-stay car-parks – paid
Bristol	£1 for 10 minutes	Bristol said that a free drop-off and pick-up was installed (at a cost of £250k) but not used, even though it was advertised. The airport discontinued the free option.	
Liverpool*	£2 for 20 min for drop-off or pick-up; Free for Blue Badge Holders	Yes (for 20 minutes) with 10 minutes walking distance	
Newcastle*	£1 for 10 minutes	Yes, from Medium term car-park, for 15 minutes	
East Midlands*	£1 for 10 minutes	Yes, from JetParks car-park with a free shuttle bus.	
Bournemouth*	£3 for 30 minutes		
Doncaster Sheffield*	£1 for 10 minutes, right outside terminal.	Free at short-stay car-park for 15 minutes	

* Airports with less than 5 million annual passengers.

¹⁷³ This includes all airports with above 5 million annual passengers plus some smaller airports that chose to respond to the consultation. Airport operators with an asterisk served less than 5 million passengers in 2015.

¹⁷⁴ Commitment to continue to provide free drop-off and pick-up facilities in long stay car-parks. Leaves open the possibility of introducing paid drop-off.

Other stakeholders' views

Travel industry trade association

- 6.59 The Scottish Passenger Agents Association (SPAA) considered that many airport operators have seen passengers arriving by private car as a revenue opportunity, and several are charging quite large amounts simply for drop-off or collection with charges frequently applied to taxis as well as to private vehicles. SPAA considered that it is essential that any drop-off facility costs should be kept to a minimum for passengers arriving by private car/taxi. The facilities must be within walking distance of the terminal so that they can get quickly into the airport to start their air journey. It is not acceptable that the free drop-off is only in a car-park away from the terminal and then the passenger must take a bus to the terminal. SPAA stated that if any charges are levied that the cost and the time limit must be clearly visible and the additional costs for exceeding the time limit be clearly displayed and not be excessive.
- 6.60 SPAA noted that pick-up areas vary with some airport operators offering up to 15 minutes free parking in short-stay car-parks immediately adjacent to the terminal with marked and reserved areas. This offers an undercover dry area to transfer passengers and luggage and much less stress for drivers than arriving too early and driving round the airport for 10 minutes to avoid being given a ticket. Although drivers might think their pick-up will just take a few minutes, it frequently entails a longer wait. It's quite likely that many drivers would exceed the 15 minutes and be charged anyway. The airport operator is unlikely to lose out in parking fees and stands to gain from good public relations and a less congested forecourt. SPAA would like us to review the enforcement of the time vehicles spend in the drop-off area.

Representative of surface access operators and trade association

- 6.61 The Independent Airport Parking Association (IAPA) said that surface access operators depend upon access to airports and drop-off and pick-up facilities on airport forecourts for their businesses. IAPA said airport

operators, however large the airport, will (with virtually no exceptions) own airport roads and airport forecourts and have a monopoly on the access to and use of drop-off and pick-up facilities at their airports. IAPA stated that the airport roads and forecourt are essential facilities without which they could not operate. IAPA also said that airport operators have a monopoly on the access to and the use of drop-off and pick-up facilities at their airports. IAPA considered that, there is a particular danger that airport operators will abuse their position to benefit their own parking business.

- 6.62 IAPA considered that the most effective way for us to control airport operators conduct in relation to surface access drop-off and pick-up facilities and charges for such facilities, would be through licensing powers in CAA12.

Approach for developing surface access principles

Airport operators

- 6.63 Some airport operators developed or are consulting users on surface access principles. Other airport operators responded to the questions we put to them on the consultation.

Representative of surface access operators and trade association

- 6.64 IAPA said that while it welcomed our suggestion that airport operators develop statements of principles. However, it considered that we have limited powers to enforce against breaches of statements of principles unless we can invoke the licensing powers under CAA12.
- 6.65 IAPA considered that the principles statements should state that:
- charges for the use of surface access facilities should be derived on a cost recovery basis plus a reasonable return;
 - airport operators should share information on costs and revenues of surface access facilities with users;

- surface access facilities should be allocated to independent surface access operators in similar or non-inferior conditions to those available for airport operators' own surface access products; and
- airport operators should provide information on options for getting to and from the airport and with contact details of all authorised reputable surface access operators including rail, coach, taxi, and parking operators whether based on- or off-airport.

6.66 IAPA also asked us to give consideration to asking airport operators to make their principles statements contractually binding between airport operators and surface access operators, with dispute resolution mechanisms.

Other stakeholders

6.67 Some other stakeholders were supportive of the development of good practice principles and of the CAA continuing to pay due attention to this important part of air travel markets, including to further research the issues raised by the consultation.

Our conclusion on the approach for developing surface access principles

6.68 While IAPA considered that the principles statements should have more operational details, a commitment to share information on how charges are set and that the principles should be legally binding; these suggestions go beyond our proposals. We intended the principles would explain the airport operator's approach to operating their surface access facilities which would enable them to demonstrate that they had effectively considered their legal responsibilities under competition and consumer law.

Our conclusions on airport operators surface access principles

- 6.69 We requested airport operators, as part of their submission to the consultation¹⁷⁵, to develop and communicate good practice principles that reflected previous jurisprudence in the sector and demonstrated that they had considered their legal responsibilities under competition and consumer law, particularly given their upstream position as providers of surface access facilities.
- 6.70 Most airport operators considered that their current behaviour was already compliant with competition law and mostly in the passenger interest. In addition, a lot of what we heard from airport operators rests in commercial negotiations or as a result of tendering processes designed by airport operators. Even though commercial negotiations are an important mechanism of engagement with users, we note that surface access operators will have little power to influence the outcomes of such negotiations.
- 6.71 That said, airport operators have considered and communicated their approach on the various issues we put to them. Edinburgh and Gatwick Airports drafted their response to these questions in the form of commitments and we are aware that Gatwick Airport consulted stakeholders on those. We welcome the work that airport operators have undertaken so far in developing principles and encourage them to continue the development process following this review.

Facilities available at/near the airport and restrictions

- 6.72 Access to areas closest to the terminal (forecourt) is often restricted to a set of approved operators. Many airport operators noted the need for operators to comply with security and safety requirements. Alternatively, the public, and other operators, whether or not with commercial

¹⁷⁵ Airport operators' submissions are available on the review's webpage (<https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Review-of-market-conditions-for-surface-access-to-airports/>).

agreements with the airport can use short-stay car-parks near the terminal building

- 6.73 There are often commercial agreements with car-rental, taxi and minicab operators to use reserved areas of car-parks or other facilities allocated for such purposes. Often, there are also facilities reserved for bus and coach operations and for operators of bus services used to access off-airport parking facilities.

Derivation of charges and differentiation

- 6.74 IAPA suggested that there are provisions in Heathrow Airport's licence that require it to inform surface access operators of the costs and revenues associated with surface access facilities, as well as the system used to allocate costs to those facilities; and that this requirement should be applied to all airport operators. Heathrow Airport's licence condition C2¹⁷⁶ requires that Heathrow Airport inform us, and users of Specified Facilities,¹⁷⁷ about how Heathrow Airport allocates its costs to the Specified Facilities, its pricing principles, and reasons for any differences between the actual revenue and the forecast for the Specified Facilities.
- 6.75 Heathrow Airport has an economic licence and associated provisions as a result of our determination that Heathrow Airport is the operator of a dominant airport.¹⁷⁸ We do not consider that all airport operators should have the same requirements on them in terms of transparency. If we made a determination that another airport operator was the operator of a

¹⁷⁶ Licence granted to Heathrow Airport Limited (latest version) which is available from: www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Economic-licensing-of-Heathrow-Airport/.

¹⁷⁷ Specified Facilities are: check-in desks; baggage systems; services for PRMs; staff car-parking; staff ID cards; fixed electrical ground power; pre-conditioned air; airside licences; waste, recycling and refuse collection; taxi feeder park; heating and utility services (including electricity, gas, water and sewerage); facilities for bus and coach operators; common IT infrastructure; and HAL contribution to the funding of the Heathrow Airline Operators Committee.

¹⁷⁸ CAA12 prohibits the operator of a "dominant airport" from levying charges for the use of its facilities without an economic licence issued by us - Sections 3 and 5 CAA12.

dominant airport, we would, as required by CAA12, consider the appropriate licence conditions for it.¹⁷⁹

- 6.76 From the responses received from airport operators it appears that at some airports, but not all, regular/frequent users of car-parking have discounts to tariff for use of car-parks.
- 6.77 Some airport operators set their charges to some facilities on a cost recovery basis; some are governed by a published tariff set independently by the airport operator, whereas in most instances, pricing is governed by commercial agreements between airport operators and surface access operators.
- 6.78 There is some differentiation, with airport operators claiming a variety of reasons for such differentiation. Most airport operators say that their approach to derive charges is not necessarily cost related. In some cases airport regulation requires that charges are justified in terms of cost.
- 6.79 We note that differentiation of commercial terms is generally acceptable unless they have been imposed by a dominant firm and it has an anti-competitive effect. When an airport operator competes directly with or has a financial interest in some surface access operators, there may be a greater risk of unjustified differentiation being seen as anti-competitive.
- 6.80 Regardless of how airport operators charge for access to their facilities, and how the surface access operator charge for their services, the consumer still retains the choice of which airport to use, how to access the airport and with which operator. Also lower-cost or free options remain available at most airports for consumers who do not wish to pay a specific operator's charge.
- 6.81 It is not a requirement under competition law that charges are cost reflective. Rather, they should not be considered unfair or discriminatory under competition law.

¹⁷⁹ Section 18 to 21 CAA12.

Consultation and provision of cost information

- 6.82 Airport operators seem to have a pragmatic approach to consultation with users. We encourage airport operators to regularly consult with and explain to users of surface access facilities the basis for the levels and changes of charges levied for the use of such facilities.

Provision of information to consumers

- 6.83 We encourage airport operators to ensure that consumers have access to information about all options to get to and from the airport at the time they need to make informed choices (both on the airport operators' websites and on onward travel kiosks); and insofar as it is the airport operators' ability to influence, those options are presented in a neutral and transparent way.

Free drop-off and pick-up facilities to consumers

- 6.84 We encourage airport operators to continue to provide a free facility for drop-off and to make reasonable efforts to ensure its availability is publicised in their website, and in access road signage.

Appendix A

Summary of competition and consumer law

Competition law – what is prohibited?¹⁸⁰

1. The Competition Act 1998 (CA98) prohibits anti-competitive agreements between businesses. In particular, you must not:
 - agree to fix prices or terms of trade, for example agreeing price rises with your competitors;
 - agree to limit your production to reduce competition;
 - carve up markets or customers, for example agreeing with a competitor that you will bid for one contract and they will take another; or
 - discriminate between customers, for example charging different prices or imposing different terms where there is no difference in the circumstances of supply.
2. Any agreement that prevents, restricts or distorts competition is covered (not just the types of agreement listed above). An agreement could be formal (such as legally-binding contracts) or informal (such as unwritten ‘gentlemen’s agreements’). CA98 mainly applies to agreements between businesses with a significant combined market share. But even the smallest businesses need to avoid getting involved in anti-competitive agreements, such as cartels.
3. Cartels are the most serious form of anti-competitive agreement. They are agreements between businesses not to compete with each other e.g. on price, discount levels, credit terms or in respect of particular customers or in particular areas. Cartel agreements can often be verbal and may be hard to uncover.

¹⁸⁰ Relevant guidance includes [CAA competition powers guidance](#), [CMA guidance on cartels and anti-competitive agreements](#), and [CMA guidance on abuse of dominant position](#).

4. There are a number of signs that may indicate a cartel is operating. These include suppliers that:
- raise prices by the same amount at around the same time;
 - offer the same discounts or have identical discount structures;
 - quote or charge identical or very similar prices;
 - refuse to supply a customer because of their location; or
 - use give-away terms or phrases, such as 'the industry has decided margins should be increased' or 'our competitors will not quote you a different price'.
5. We and the CMA can also assess whether an agreement may affect trade between EU member states.

Abuse of a dominant position in a market

6. CA98 also prohibits abuse of a dominant position in a market.
7. This mainly applies to businesses that have a large market share, usually 40 per cent or more. Other factors taken into consideration in determining whether a company is dominant include the number and size of competitors and customers and whether new businesses can easily set up in competition.
8. These prohibitions provide that conduct may constitute an abuse if a dominant business:
- directly or indirectly imposes unfair purchase or selling prices or other unfair trading conditions;
 - limits production, markets or technical development to the prejudice of consumers;
 - applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
 - makes the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or

according to commercial usage, have no connection with the subject of the contracts.

Penalties

9. We and the CMA have extensive powers to investigate suspected breaches of competition law and take action. Penalties can include fines of up to 10 per cent of a company's annual worldwide turnover. Also, directors can be disqualified, given an unlimited fine or even imprisoned.
10. In addition to any penalty imposed, customers and competitors may be able to privately sue companies that break the law for any losses they have suffered due to the anti-competitive actions.¹⁸¹

Leniency

11. A business which is or has been involved in a cartel may wish to take advantage of the benefits of the leniency programme (as set out in CMA guidance¹⁸²), prompting them to approach the CAA with information about its operation.
12. By cooperating with the CAA, a business could qualify for total immunity from, or a significant reduction in, any financial penalties and other sanctions that the CAA can impose if we decide that there is a breach of the Chapter I prohibition and/or Article 101 of TFEU.

Consumer Law

13. 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

¹⁸¹ Further guidance on CA98 penalty calculation can be found at www.gov.uk/government/publications/appropriate-ca98-penalty-calculation.

¹⁸² The CMA's guidance on 'Leniency and no-action applications in cartel cases' (OFT1495) is available from: www.gov.uk/government/organisations/competition-and-marketsauthority.

an Enforcement Order from the courts. Guidance on the CAA's approach to enforcement of consumer legislation can be found on our website.¹⁸³

Passengers with a disability or reduced mobility

14. Regulation EC 1107/2006 concerning the rights of disabled people and those with reduced mobility (referred to hereafter as 'the Regulation') provides a set of rights that apply when departing from, and returning to, UK airports and also on board all flights from the UK and, if a European airline, to the UK. The aim of the Regulation is to ensure that such people have the same opportunities for air travel as those of others, in particular that they have the same rights to free movement, freedom of choice and non-discrimination.
15. In relation to airport operators, the requirements of the Regulation deal mostly with the assistance that airport operators are required to provide to disabled people and people with reduced mobility to help them move around the airport and embark and disembark the aircraft (usually through a contracted service provider). The Regulation also obliges airport operators to set "quality standards" for the assistance provided to disabled people and those with reduced mobility.

Information and transparency

16. The Air Services Regulation (ASR)¹⁸⁴ 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).
17. 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),

¹⁸³ See "Guidance on Consumer Enforcement", available at www.caa.co.uk/CAP1018.

¹⁸⁴ Further information about the ASR can be found at www.caa.co.uk/cap1015.

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 unavoidable and foreseeable charges, including airport operator charges.

Unfair commercial practices

18. Broadly speaking, if you are treating consumers fairly then you are likely to be complying with the CPRs. However, if you mislead, behave aggressively, or otherwise act unfairly towards consumers, then you are likely to be in breach of the CPRs and may face action by enforcement authorities. In other words the CPRs are about how you act in relation to your consumers when going about your business.
19. The CPRs apply to any act, omission and other conduct by businesses directly connected to the promotion, sale or supply of a product (the definition of which includes services) to or from consumers; whether before, during or after a contract is made. A sufficiently close connection with the supply of a product or services to consumers may fall within the scope of the CPRs, even if you do not deal directly with consumers.
20. The CPRs consist of:
 - a general duty not to trade unfairly by acting contrary to the requirements of professional diligence so as to distort the average consumer's decisions in relation to the product or service. This can be broadly understood as failing to act in accordance with acceptable trading practice a reasonable person would expect
 - prohibitions of misleading and aggressive practices. Examples include withholding material information from consumers so as to impair their ability to make an informed choice, or coercing a consumer into making a decision
 - 31 specific listed practices that are considered to be unfair in all circumstances and are therefore, banned. Examples include falsely stating that a product will only be available for a very limited time and therefore depriving consumers of sufficient opportunity or time to make an informed choice. Other banned practices include, various

prohibitions dealing with abuse of approval schemes, refusing to leave a consumer's home when asked to do so, and operating or promoting a pyramid scheme.

21. In regard to aviation, 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.¹⁸⁵

Comparative and misleading advertising

22. The Business Protection from Misleading Marketing Regulations 2008 (BPRs) came into force on 26 May 2008. They implement the Comparative and Misleading Marketing Directive (MCAD) which is aimed at harmonising legislation across the European Union relating to advertising which misleads traders.
23. The regulations also set out the conditions under which comparative advertising (advertising which identifies a competitor or a competitor's product) is permitted. This allows traders to understand what their obligations are when advertising their products or services to traders in other Member States.
24. The BPRs prohibit advertising which misleads traders. They set out what conditions are acceptable in relation to comparative advertising and require code owners (traders and bodies responsible for codes of conduct or monitoring compliance with such codes) not to promote misleading advertising and comparative advertising which is not permitted.
25. The BPRs replace the requirements set out under the previous Control of Misleading Advertising Regulations 1998 (CMARs) not to use advertisements which mislead other businesses or which are not

¹⁸⁵ Further information on the CPRs is available from:
<https://www.gov.uk/topic/competition/consumer-protection>

permitted by comparative advertisements. Therefore, if your business was compliant with CMARs, it is likely to be compliant with the BPRs.

26. In general terms an advertisement can be considered misleading if it, in any way, deceives, or is likely to deceive, the trader to whom it is addressed or reaches and if, by reason of its deceptive nature, it is likely to affect their economic behaviour. If the advertisement misleads consumers and causes, or is likely to cause, them to take a different transactional decision than they may otherwise have taken, this may breach the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).
27. An advertisement is comparative if it either explicitly or implicitly identifies a competitor or goods or services offered by a competitor. Comparative advertising is allowed, but only if it is not misleading and meets certain other conditions, which are set out within the regulations.

Issuing contracts

28. You have a legal duty not to use unfair terms in the contracts you have with consumers.
29. Most standard terms are covered by the unfair contract terms legislation. In practice this means:
- certain terms are excluded - for example, 'core' terms which set the price or define the product or service are exempt provided they are in plain language
 - terms do not have to be in writing
 - types of term that may be found unfair include disclaimers which seek to limit liability for: death or injury, delays, faulty or mis-described goods, and unsatisfactory services
 - other common unfair terms include: those that deny the consumer full redress, impose unfair penalties, loss of prepayments, and allow businesses to vary the terms after the contract has been agreed.

30. Consumers can complain about unfair contract terms to their Local Authority Trading Standards Services, to CAA, the CMA, the Information Commissioner, Which? and the Financial Services Authority.
31. We and other enforcers have powers to stop businesses using unfair terms or recommending the use of such terms in contracts with consumers.

Selling online or at a distance

32. If you sell to consumers online, or sell at a distance by another method such as digital TV, mail order, phone or fax, then the Distance Selling Regulations may apply to you.
33. In general you are required to:
- give potential customers certain information in advance, such as your name and address, the goods you are selling or the services you are providing, the price (including all taxes), delivery cost, delivery arrangements, and customers' right to cancel
 - send customers an order confirmation giving information such as your postal address and cancellation arrangements
 - allow customers a seven working-day cooling-off period during which they can cancel their contract with you.
34. There are some exceptions to the regulations.¹⁸⁶

¹⁸⁶ For more information visit: <https://www.gov.uk/topic/competition/consumer-protection>.

Appendix B

Consultation questions

Questions to airport operators	
a	Which surface access facilities from the airport's portfolio of assets are made available and their attitude to the development of facilities outside the airport perimeter.
b	How they make available facilities that can be used by surface access operators and an explanation of any restrictions to the range of operators or the type of services that can be operated at the airport.
c	How airport operators derive charges for the use of facilities by surface access providers and to explain how these charges relate to costs or any other relevant factors and, in particular, if these lead to differentiation between different providers of surface access products or between segments of consumers. Particular attention should be provided to areas where airport operators themselves compete with independent surface access operators.
d	How airport operators consult with users on general charging principles and structures of airport services (access to facilities at or near the forecourt) required by surface access operators and how they provide relevant information on the costs of providing such services.
e	The extent of any agreements with other surface access operators and with distributors regarding the sharing of pricing information, the provision of information on costs, capacity management or any other practices and how they ensure these do not allow undue coordination among competitors.
f	Their efforts to ensure that consumers have access to information about all options to get to and from the airport at the time they need to make informed choices (both on the airport operators' websites and on onward travel kiosks) and, insofar as it is the airport operators' ability to influence, those options are presented in a neutral and transparent way.
g	Details of any surface access options that are available at no charge to consumers that allows for the drop-off and pick-up of passengers.

Questions to all stakeholders	
h	Have we identified the key issues on market structure within the scope of this review?
i	Have you any views and/or evidence on the market position of airport operators in the provision of airport services used to access the airport?
j	Have you any evidence or views on how well informed consumers are of their airport surface access options and on what is most important to passengers in accessing an airport? Is this an area that merits further research?
k	Have we identified the key issues related to the distribution of airport car-parking? Do you have any views on what, if anything, would improve outcomes to consumers?
l	Have you any views and/or evidence on how the information set that passengers have when choosing between airport surface access products could be improved for consumers?
m	Have you any views on our proposed way forward and, in particular, the development of good practice principles by airport operators?

Appendix C

Glossary

Term	Definition
ABTA	Association of British Travel Agents
ASAS	Airport Surface Access Strategy
AMP	Airport Master Plan
ATF	Airport Transport Forum
AOA	Airport Operators Association
AOS	Airport Operation Services
ATS	Air Traffic Services
BPA	British Parking Association
BVRLA	British Vehicle Rental and Leasing Association
CAGNE	Communities Against Gatwick Noise and Emissions
CPT	Confederation of Passenger Transport UK – representatives of the bus and coach industry
CILT	Chartered Institute of Logistics and Transport
CA98	Competition Act 1998
CAA	Civil Aviation Authority
CAA12	Civil Aviation Act 2012
CMA	Competition and Markets Authority
CPRs	The Consumer Protection from Unfair Trading Regulations 2008
DfT	Department for Transport
EA02	Enterprise Act 2002
EA2010	Equalities Act 2010
GATCOM	Gatwick Airport Consultative Committee
HACC	Heathrow Airport Consultative Committee

IAPA	Independent Airport Parking Association
LACC	London (Heathrow) Airline Consultative Committee
LTDA	London Taxi Drivers Association
LCDC	The London Cab Drivers' Club
MPD	Market Power Determinations
ORR	Office of Rail and Road
Q6	The 6 th periodic review of economic regulation for Heathrow and Gatwick that came into effect in 2014
RPM	Retail Price Maintenance
SPAA	Scottish Passenger Agents Association
STACC	Stansted Airport Consultative Committee
TfL	Transport for London