

Joint letter from the Competition and Markets Authority and the Civil Aviation Authority to airport operators

Dear Airport Operators,

The Competition and Markets Authority ('CMA') and the Civil Aviation Authority ('CAA') are jointly publishing this open letter to remind airport operators of their responsibilities and obligations under competition law.¹

The CMA has recently received intelligence to suggest that some UK airport operators might not always be complying with competition law. The CAA is aware of this intelligence and shares the CMA's serious concerns about the possibility of competition law breaches in the sector.

The CMA and the CAA acknowledge that the Coronavirus (COVID-19) pandemic and the impact of the conflict in Ukraine (including fuel costs, rerouting and macroeconomic environment) have resulted in extraordinary pressures and uncertainty for the aviation sector. In difficult times, it may seem tempting to reduce uncertainty by sharing confidential information with competitors. However, sharing and receiving such information may be illegal under competition law. Giving a competitor insight into your future commercial strategy may reduce competition, leading to increased prices and reduced service or choice. This is unfair to customers (both airlines and end consumers), many of whom have also faced and continue to face significant challenges due to the pandemic and other cost pressures.

Your legal responsibilities

The Airport Charges Regulations 2011 ('the ACRs') set out a framework requiring large airport operators² to consult with their customers on proposed changes to airport charges. The ACRs require airports to provide transparency on key aspects of how airport charges are derived and to consult with customers in defined timescales. While it is appropriate to consult publicly before modifying your airport charges, you must not either share additional information or discuss with other airport operators your pricing or competitive strategies. Even though the ACRs will

¹ The CAA has concurrent powers with the CMA to enforce competition law in relation to air traffic services and airport operation services.

² An airport is subject to the ACRs in a particular calendar year if more than five million passengers used the airport in the calendar year two years before. Due to the effects of the covid-19 pandemic, airports' passenger numbers for 2020 and 2021 were atypically low, which means that the number of UK airports subject to the ACRs in 2022 and 2023 has been substantially reduced.

not apply to many airports in 2023, we consider that it continues to be critical for airports to consult users and abide by the general behavioural principles included in the ACRs, particularly as the aviation industry recovers from the sharp traffic downturn seen during the pandemic. For further information, please see the [CAA's webpage and guidance on the ACRs](#).

We are aware that many airports will have undergone significant staffing changes as a result of the extremely challenging circumstances of the last few years. With the recovery now well underway, it may be an opportune moment to review your competition compliance policy and ensure that all your current staff have received appropriate training. We should make clear, however, that neither the CMA nor the CAA consider changes in staff or lack of awareness to be mitigating factors for companies that breach competition law. It is your responsibility to ensure that your business complies with competition law. This includes ensuring that your staff know what they can and can't do, including the types of issues that they should not discuss with competitors.

Consequences of breaking competition law

If the CMA and the CAA receive further intelligence of suspected competition law breaches in this area, those involved may face formal enforcement action. As you will be aware, there can be serious consequences for businesses that break competition law. These include:

- fines of up to 10% of a business' worldwide turnover;
- director disqualifications of up to 15 years;
- criminal prosecutions of individuals directly involved;
- private damages actions; and
- significant and long-lasting reputational damage.

We recommend that you seek independent legal advice if you think that you or your business may be affected by the topics covered in this letter.

Compliance advice

For further information, please see the CMA's [short guide to competition law risk](#) and ['cheating or competing?' campaign materials](#). You may also find it helpful to review the [CMA's blog](#) on the competition law risks of sharing information with competitors.

How to report concerns

If you know you have been involved in cartel activity such as price-fixing, bid-rigging or market-sharing arrangements, [the CMA cartel leniency policy](#) could protect your

company and its directors and employees from significant penalties, director disqualifications and criminal prosecution.³ If you have information to suggest that a colleague, competitor, supplier, customer or any other business is involved in a cartel or otherwise breaking competition law you can call the CMA cartels hotline on 020 3738 6888 or email: cartelshotline@cma.gov.uk.

The aviation industry is hugely important to the UK economy, and healthy competition will ensure that it stays that way. Please take the time to review your practices and ensure that you and your employees are complying with competition law.

Yours sincerely

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³ The CMA and sectoral regulators operate a 'single queue system' for leniency applications in regulated sectors. This means that all applications for leniency should be made to the CMA. Provided the conditions for leniency are met, an application to the CMA will secure the applicant's place in the leniency queue with any relevant sector regulators.