

Aviation 2050

Response from the Competition and Markets Authority

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1. Executive Summary and Background

Executive Summary

- 1.1 The Competition and Markets Authority (CMA) welcomes the opportunity to respond to the government's Green Paper on its new aviation strategy, 'Aviation 2050 – the future of UK Aviation' (the Green Paper). CMA officials have met with the Aviation Strategy team within the Department for Transport (DfT) several times and have provided written advice on slot allocation which was published alongside the Green Paper in December 2018.¹
- 1.2 In this response we emphasise the importance of the following points:
- (a) **Regulatory frameworks should encourage and facilitate competition, which will mean better outcomes for passengers and the economy.** There are aspects of current domestic regulation which are unclear. Internationally, although it may be more difficult for the UK to influence regulation, consumer and passenger outcomes still need appropriate focus in negotiations of bilateral and multilateral agreements. Most pressingly, there is a clear need to ensure that competition isn't artificially restricted or distorted through 'open skies' agreements that may exclude some airlines from operating services and ultimately limit the benefits of competition from reaching passengers.
 - (b) **We support the government's proposal to clarify the scope of 'airport operation services' under the Civil Aviation Act 2012.** The current definition was designed to mirror the Civil Aviation Authority's (CAA's) regulatory powers but has created uncertainty in relation to the scope of the CAA's concurrent competition powers. Further expansion of the CAA's concurrent competition powers might not give rise to significant benefits due to the international nature of enforcement cases.
 - (c) **There is a clear case to reform the slot allocation mechanism to maximise efficient use of scarce capacity and promote competition between airlines.** Without reform to the current system, the potential benefits arising from competition for new capacity at Heathrow may be lost. While some improvements can be made to the administrative system and to promote secondary trading, in the short term, these won't deliver

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767230/cma-advice-on-impacts-of-airport-slots.pdf. See also subsequent blog: <https://competitionandmarkets.blog.gov.uk/2019/03/18/why-were-advocating-the-case-for-change-in-airline-slots/>

the same benefits as a market-based allocation. An auction mechanism will promote competition between airlines and generate benefits for passengers, businesses, airports and the wider economy.

- (d) **Surface access and wider transport policy needs to be considered alongside aviation.** Aviation policy cannot be developed in isolation from national infrastructure and public transport. Different transport modes can compete with aviation but can also drive competition between airports, while integrated travel can improve the consumer experience.
- (e) **There is scope to improve the passenger experience and embedding protections is a step forward.** Passengers experience uncertainty when travelling by air. When things go wrong, passengers need the certainty that they will be protected, and this is especially the case for passengers with additional needs. Where consumer protections are introduced these should be applicable to passengers of all airlines and at all airports in the UK. And, critically, these provisions need to be effectively enforced.

1.3 Aspects of our response on slot allocation and consumer protection may require further work depending on the legal and regulatory frameworks in place in light of the nature of the UK's withdrawal from the EU.

Background

- 1.4 The CMA is the UK's primary competition and consumer authority. We work to promote competition for the benefit of consumers, both within and outside the UK. Our aim is to make markets work well for consumers, businesses and the economy.
- 1.5 Legislation is currently before Parliament that would mean that, on the UK's withdrawal from the EU, the CMA will become the responsible body for state aid. In the event of a 'no deal exit', the CMA will have oversight of state aid in the UK, from the date on which the UK leaves the EU.²
- 1.6 The CMA, including through its predecessor bodies, has extensive experience of engaging with and understanding the aviation sector across a broad range of casework, spanning mergers, markets and enforcement.³ Past cases have

² In the event of a transition or implementation period defined in a withdrawal agreement, the European Commission will continue to receive and assess notifications from UK aid grantors. In that scenario, the CMA will take on its new role only at the end of the implementation period. If there is no withdrawal agreement, the CMA will take on its new role immediately.

³ Details are set out in appendix A.

focused on airports, airlines and a range of ancillary services; we have examined agreements between airlines, investigated how digital platforms can help consumers book flights and imposed remedies to help ensure that airports compete vigorously. Independent estimates of the benefits of our work on breaking up BAA, from increased passenger numbers, improved connectivity and choice of and downward pressure on fares, will total around £870 million by 2020.⁴

- 1.7 In 2018 the CMA approached the DfT to offer assistance in developing the UK's aviation strategy. We subsequently provided advice to the DfT on the allocation of slots which was published alongside the Green Paper.⁵

Our response

- 1.8 The rest of this document sets out the CMA's views, evidence and advice to the DfT. We discuss in order:

- (a) government's proposals for reforming regulatory frameworks both internationally and domestically (section 2);
- (b) aspects of the Green Paper which may affect competition (section 3);
- (c) detailed arguments on the need for reform to the slot allocation system (Section 4);
- (d) how surface access to airports can affect competition and consumers; and
- (e) how to enhance the passenger experience through the government's proposed Passenger Charter and the CMA's observations on other consumer issues.

- 1.9 The most detailed part of our response to the Green Paper is on the allocation of slots, section 4. In the other sections we use the CMA's expertise and perspective as the UK's primary competition and consumer authority to provide suggestions to government on how it can develop aviation policy. We will continue to engage with government, particularly DfT, as it develops and refines its policy proposals.

⁴ <https://www.gov.uk/government/news/cma-report-shows-benefits-of-baa-break-up>

⁵ Advice for the DfT on competition impacts of airport slot allocation: Competition and Markets Authority report https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767230/cma-advice-on-impacts-of-airport-slots.pdf

2. Regulatory framework

2.1 In this section we set out our views on issues explored in the Green Paper relating to both international and domestic regulatory frameworks. We first discuss international frameworks around air services agreements and interchange before considering the scope of domestic regulation.

International

2.2 The CMA supports efforts to reduce barriers to entry and expansion in the aviation sector. We support the government's proposals to work internationally to move to a performance-based regulatory framework. This should give sufficient flexibility to ensure that innovation is not impeded, while passengers and businesses continue to have confidence in aviation services.

2.3 We recognise that the UK's ability to deliver unilateral change is limited and that reform will be dependent on achieving agreements on a bilateral or multilateral basis. However, in international negotiations, we urge the government to be live to any potential impact on competition and on passengers as consumers.

2.4 The nature of the UK's withdrawal from the EU will determine which aspects of regulation the UK is able to change directly, particularly with regard to consumer protection. We note that the government is already negotiating new international agreements and extensions to existing ones.

2.5 We comment on air services agreements and 'interchange' in turn below. We discuss proposals on removing restrictions on the operation and ownership of airlines in section 3.

Air services agreements

2.6 An air services agreement (ASA) provides the framework for authorising the operation of air services between the signatory countries. Although bilateral ASAs are still signed, multilateral ASAs have become increasingly common. Air services agreements can benefit passengers by facilitating international air routes to and from the UK.

2.7 ASAs may, however, contain restrictions on the number of carriers authorised to operate a route. They may also determine which points between the signatory countries may be served by the designated carriers. Historically, many ASAs also regulated capacity in terms of weekly/monthly seats, number of frequencies and size of aircraft.

- 2.8 'Open skies' agreements such as that between the EU and the US are now more common than ASAs. Open skies agreements are much less restrictive and typically allow airlines to fly between any point in the signatory countries, to operate without restrictions on the number of flights, the aircraft used, or the routes chosen, to set fares freely and have unlimited rights to enter into codeshare arrangements.⁶ However, even in open skies agreements, some restrictions on flights may remain due to airline ownership rules – for example, EU airlines cannot operate domestic services in the US.⁷
- 2.9 We note the importance of airlines, businesses and passengers having confidence that particularly following the UK's withdrawal from the EU, flights to and from the UK will continue without disruption. However, when making and implementing new agreements, or extending those in place, we encourage government to continue to work towards reaching agreements that do not place unnecessary restrictions on competition. Agreements that restrict the ability of airlines to operate on particular routes and to compete on commercial terms will stifle entry and innovation and may lead to UK air passengers paying higher fares. While we recognise the complexity of international negotiations we recommend that the government ensures that such agreements do not unduly restrict competition between airlines, regardless of domain or ownership.
- 2.10 It is important that competition is able to flourish, as this can benefit the consumers and businesses that rely on these services, for example through lower fares or higher service standards. A key enabler of effective competition comes from ensuring that barriers to entry for new operators are no higher than necessary. We therefore advise government to consider how best to negotiate and implement agreements in a way that ensures that entry barriers are no higher than necessary to help drive competition both for those in the market and those that may wish to enter, to the benefit of consumers, businesses and the economy.

⁶ Codeshare arrangements are where one airline operates a flight, but one or more other airlines also separately markets the flight under their own operator designator and flight number.

⁷ We note the UK's 'open skies' agreement with the USA <https://www.gov.uk/government/news/uk-and-us-agree-new-open-skies-arrangements>

Interchange

- 2.11 We recognise the potential economic benefits of simplifying interchange⁸ between airlines and we are supportive of developing a regulatory framework that reduces burdens while maintaining confidence in aircraft safety.
- 2.12 However, in moving to a framework that could increase the levels of interchange, care needs to be taken that such interchanges are not used to create or manage de facto airline alliances.⁹ There is a risk, for example, that airlines may seek to operate a combined fleet, transferring aircraft between a closed group of airlines as operational needs arise.¹⁰
- 2.13 Simplifying interchange means that airlines will have more flexibility to loan and borrow aircraft for short periods. This could bring benefits to passengers; for example, where there are problems with a certain type of aircraft, the airlines could switch another in on a route, allowing passengers to fly. However, it is not clear from the Green Paper whether the interchange will come with, for example, a change of branding on the aircraft, or how the interchange will be communicated to, or affect passengers. Where branding is not changed, there is also a risk that passengers will be confused by who is providing a given flight which may also have consequences when seeking redress.
- 2.14 Any liberalisation of interchange needs to consider impacts on passengers and include requirements on communication with passengers and additional rights for passengers to amend bookings without penalty.
- 2.15 Liberalisation of interchange may have relevance to any arrangements in the event of airline insolvency. There may, for example, be greater scope for an administrator of an airline to allow another 'rescue operator' to use the existing fleet to repatriate passengers on a short-term basis.¹¹

⁸ That is, the short-term leasing of aircraft.

⁹ As noted in section 3 we do not see alliances as necessarily leading to a lessening of competition but we are live to the potential for them to do so.

¹⁰ Airlines may however still seek to differentiate their service from others. The potential detriment would necessarily be subject to the conduct of airlines, including, for example, pricing practices or managing capacity across airlines.

¹¹ The rescue operator might be a cooperating commercial airline, a coordinating body or regulator. Appropriately designed, this could potentially simplify repatriation, while avoiding additional liabilities to the failed airline and the administrators retaining control of key assets. Where airlines have leased their aircraft, this would necessarily be subject to the underlying terms of any lease and the right to repossess by the lessor.

Domestic

2.16 We now set out our observations on any potential change in the scope of the Civil Aviation Authority's (CAA) powers.

The role of the CAA

2.17 The CAA has concurrent powers with the CMA to undertake competition enforcement cases (under the Competition Act 1998 and Articles 101 and 102 of the Treaty of the Functioning of the EU) and market studies (under the Enterprise Act 2002) in relation to two areas of the aviation sector:

- (a) airport operation services (under the Civil Aviation Act 2012, which conferred concurrent competition powers from April 2013); and
- (b) air traffic services (under the Transport Act 2000, which conferred concurrent competition powers from April 2001).

2.18 The CAA does not have concurrent powers in relation to airlines and competition between airlines. Further, while the CAA has a statutory duty to promote competition, contained within the Civil Aviation Act 2012 and the Transport Act 2000, these duties are limited in scope.¹² The duty in the Civil Aviation Act 2012 relates to the CAA's regulation of dominant airports' provision of airport operation services. The duty in the Transport Act 2000 relates to CAA's regulation of air traffic services.

2.19 The Green Paper sets out the scope for an enhanced role for the CAA in the monitoring of airline services and competition, 'giving it the scope to intervene in some way if problems arise in the future, even if there are no current concerns'.¹³ The CMA welcomes the opportunity to contribute to this important discussion as the government's thinking evolves.

2.20 The CMA works closely with the CAA on a range of competition issues. Under the concurrency arrangements, the CMA supported the CAA's investigation into car parking at East Midlands Airport, which found that East Midlands Airport, its parent company (Manchester Airports Group) and Prestige Parking had infringed competition law. The CAA also provided support to the CMA's investigation into London Heathrow's agreement with the Arora Group for the lease of Arora's Sofitel hotel at Terminal 5. Both parties formally accepted that this was a breach of competition law and removed the pricing restriction, with

¹² [Section 1\(2\)](#) of the Civil Aviation Act 2012 and [section 2\(4\)](#) of the Transport Act 2000.

¹³ Paragraph 3.62, Aviation 2050 – the future of UK Aviation", Department for Transport.

London Heathrow agreeing to settle the case and pay a £1.6m fine.¹⁴ In both cases, the CMA and CAA shared competition law and sector expertise, including through the secondment of staff.

- 2.21 More widely, the CAA and CMA work together informally to promote competition for the benefit of passengers. For example, both agencies discuss ways in which to widen awareness of competition law and ensure compliance, the use of regulatory tools (such as the Airport Charges Directive), competition in specific markets (eg ground-handling) and the competition aspects of future challenges facing the sector.¹⁵ The CAA also supports the CMA's merger work in the airport sector. Expertise is also shared through the UK Competition Network. We also work closely together on consumer protection issues.
- 2.22 We support the government's proposal to clarify the scope of 'airport operation services' under the Civil Aviation Act 2012. The current definition was designed to mirror the CAA's regulatory powers. However, it has created uncertainty in relation to the scope of the CAA's concurrent competition powers.
- 2.23 For example, section 67 of the Civil Aviation Act 2012 makes provision about what is included in the definition of an airport for certain parts of the Act. Construction of these definitions can mean that the CAA's jurisdiction over otherwise very similar businesses or activities located on or around an airport's estate is unclear, without detailed legal assessment which may lead to arbitrary exclusions. For example, section 67 states:
- A car park is a qualifying car park if: (a) it is part of a passenger terminal that forms part of the airport; or (b) it has pedestrian access to such a terminal.
 - An airport does not include a hotel, unless that hotel is situated in a passenger terminal that forms part of the airport; and
 - An airport does not include a bus station, tram station or railway station.
- 2.24 If the CAA is considering launching a case using its concurrent powers, it may therefore not be clear if it has jurisdiction. For example, it may be unclear whether a car park of concern is in jurisdiction dependent on how 'pedestrian

¹⁴ See [CMA website for more detail](#).

¹⁵ The CMA's annual concurrency reports are published on our website and describe the CMA's work with the CAA in detail.

access' to the terminal is interpreted¹⁶ or if it is located at a hotel or station close to the airport. This creates uncertainty for the authorities, businesses and consumers.

- 2.25 We do not, however, consider that there would be material benefit in extending the CAA's concurrent competition powers to the airline sector unless there is a commensurate increase in the resourcing of the CAA's competition teams. Competition enforcement cases in the sector are often global in nature and have traditionally been led by the European Commission in conjunction with relevant international authorities (for example, the US Department of Transportation in relation to transatlantic airline alliances). In light of EU Exit, the CMA expects to undertake these cases in relation to the UK and has been developing its expertise of competition in the airline sector. In contrast, the CAA does not have a large team of competition economics or law specialists. As described below, in October 2018, the CMA opened an investigation into the Atlantic Joint Business Agreement between American Airlines, members of International Airlines Group (British Airways and Iberia) and Finnair.
- 2.26 The CAA is supporting the CMA's work in the airline sector, including through economic expertise and access to relevant data. Given the global nature of investigations, the extensive resources required, the limited capacity of the CAA's competition team and the fact that the CAA already provides input to the CMA's work, there would be little merit in extending the CAA's concurrent competition powers to airlines at this time.¹⁷ We would, however, urge the government to liaise with the CAA to examine whether there would be benefit in the CAA having additional powers in relation to its airline licensing function and consumer work.

¹⁶ For example, would the presence of a pavement that allowed unfettered access to the terminal be sufficient regardless of distance, or is a dedicated grade separated covered walkway necessary to be within the CAA's jurisdiction.

¹⁷ We also note that should the CAA be granted additional regulatory oversight of airline services, any additional role in relation to the allocation of slots may give rise to an increased risk of a conflict of interest in either providing advice or in the administration of slot allocation and any subsequent competition or markets assessment.

3. Competition

3.1 In this section we discuss proposals in the Green Paper which may affect competition in the aviation sector. We first briefly discuss the proposed public service obligation (PSO) criteria before moving onto policies which may affect competition between airlines, then airports and then the aerospace sector.

Proposed Public Service Obligation Criteria

- 3.2 The government proposes to continue to provide policy support for lifeline services that connect regions through the use of public service obligations (PSOs).
- 3.3 While PSOs can be used to ensure and protect transport links between some regions of the UK and hub airports, care is needed in their use. PSOs can potentially distort competition between airlines and airports. In particular, PSOs may, on purely financial terms, be an inefficient allocation of capacity. Any such allocation of scarce capacity at airports to PSOs therefore needs careful consideration.
- 3.4 The proposed policy of expanding PSOs to support routes into large UK airports other than London Heathrow may be a more efficient use of existing, underutilised capacity, while allowing passengers the ability to continue their onward journey even if that requires an additional connection.¹⁸
- 3.5 We welcome the government's proposed framework that includes consideration of potential distortionary effects. We recommend that in guidance or as part of the framework, the PSO assessment includes an examination of the impact on competition, both between airlines and airports.¹⁹

¹⁸ For example, a PSO imposed from an underserved location to a larger regional hub airport might facilitate either a direct onward connection or connections to a number of other large hub airports.

¹⁹ We note that under the current EU system for state aid, there are detailed rules and guidance on the assessment of PSOs to airlines, that seek to ensure a balance between delivering objectives of common interest (ie public policy objectives) and the distortion of competition. Although we flag the potentially distortive effects of PSOs, nothing in our response should be read as indicating or implying any position on any future proposals or decisions the government may choose to make that may need to be assessed under the state aid regime.

Competition between airlines

3.6 Below we discuss policy issues which may affect competition between airlines. We discuss the efficient allocation of slots at airports to airlines in section 4, below.

Mergers, alliances and joint ventures

- 3.7 Over the past 20 years, airline cooperation has increased, including through the establishment of global alliances. No airline is able to serve every destination its customers require with its own aircraft. Additionally, relatively few city pairs can generate sufficient consistent demand on a daily basis to sustain non-stop services.²⁰ Airlines face specific constraints arising from ASAs and national rules on ownership, which have the effect of restricting organic growth in foreign markets and/or growth through mergers and acquisitions.²¹
- 3.8 To meet the demands of customers, many carriers have sought commercial partners to help them provide greater network coverage and increased service options. Cooperation between airlines – which may be bilateral or multilateral – ranges from arm’s length cooperation, such as interlining, to advanced joint ventures in which prices and capacity are jointly set.
- 3.9 The CMA notes the body of academic research into airline joint ventures and that the European Commission and US Department of Transportation have published relevant papers.²² On the basis of this literature, we consider that airline cooperation can potentially offer benefits to passengers by, for example, offering a wider range of direct and connecting destinations, higher service frequencies, improved scheduling and wider frequent flyer benefits. However, there remains a significant risk that such cooperation may weaken competition on certain routes. The impact of such agreements is likely to be affected heavily by the degree of cooperation, the terms of the agreement and

²⁰ While there are many daily services, these are a fraction of the total number of possible routes. [Transatlantic airline alliances: competitive issues and regulatory approaches](#), A report by the European Commission and the US Department of Transportation, 16 November 2010, paragraphs 13-15.

²¹ For example, an EU airline cannot operate domestic services in the US and a merger between a US and UK airline would not be possible under existing ownership rules. Similarly, the EU has imposed ownership rules.

²²

For example, see: Calzaretta, Eilat and Israel, ‘Competitive effects of international airline cooperation’ (Journal of Competition Law and Economics, 2017); ‘Pricing by International Airline Alliances: A Retrospective Study Using Supplementary Foreign-Carrier Fare Data’, Brueckner and Singer, February 2019; [EC’s decision on the Joint Venture agreements between British Airways, American Airlines and Iberia](#).

the nature of competition on individual routes. The CMA therefore assesses the competitive impact of each case on its merits.

- 3.10 As noted above, we are currently conducting a review of the competitive impact of the Atlantic Joint Business Agreement in anticipation of the expiry in 2020 of commitments offered by parties to the EC in 2009.²³

Airline ownership

- 3.11 Current rules restrict access to international traffic rights based on the nationality and control of the airline owner. The government proposes to modernise these rules, shifting the focus away from nationality of ownership and control, to focus on a company's primary place of business when determining an airline's access to international traffic rights.
- 3.12 We are supportive of this proposal as it should, in the medium to long term, increase the number of airlines able to provide international services and particularly in the event of increased airport capacity.²⁴ As presented, the proposals should reduce barriers to entry and expansion into international services and increase the ability of airlines to access capital to finance their operations.
- 3.13 As recognised in the Green Paper, the benefits of air transport liberalisation over the past four decades are vast. The nature of the UK's withdrawal from the EU may affect which airlines are able to serve the UK as a result of existing or future ownership regulations or ASAs.²⁵ Any reduction in the number of airlines able to fly to or from the UK is likely to reduce competition, leading to increased fares or reduced quality or innovation in airline services.

Air Passenger Duty

- 3.14 The CMA does not have evidence on the impact of Air Passenger Duty (APD). We recognise the desire of the UK government and the devolved administrations to improve connectivity across the UK and improve the commercial viability of certain routes. Subject to the scope of any variation in APD and how it is implemented across the nations of the UK, there is a risk of

²³ <https://www.gov.uk/cma-cases/investigation-of-the-atlantic-joint-business-agreement>

²⁴ On the assumption that such airlines are able to obtain appropriate slots.

²⁵ See earlier section on ASAs for more detail.

distorting competition.²⁶ The CMA is happy to engage with the government on any future policy proposals.

Competition between airports

- 3.15 In the Green Paper there is a presumption that London Heathrow will remain the UK's principal international hub. This is also reflected in the Airports Commission's decision to support an additional runway at London Heathrow, which considered competition as part of its assessment.
- 3.16 The government accepted the independent Airports Commission's conclusion²⁷ on the need to increase capacity in the South East of England by 2030 by constructing one new runway. The government supports a new northwest runway at London Heathrow, through the designation of the Airports National Policy Statement (NPS).²⁸ The Green Paper reiterates this support but also notes that some of the fastest growth in passenger numbers is at airports outside of the South East.
- 3.17 As noted in the Green Paper, there may be a demand case for additional capacity from 2030.²⁹ Given the complexity and long timescales to deliver airport expansion, the government should consider how airport operators and owners can develop their own investment and development plans for long-term growth, to facilitate competition between airports in the medium-to long term.
- 3.18 There are significant social and environmental impacts associated with airport expansion that the planning framework needs to balance against the commercial desires of the aviation sector and the potential benefits to passengers. While this potential conflict needs to be managed, airport owners need the flexibility to plan for future capacity to facilitate future competition with other airports.
- 3.19 In developing any future Airports National Policy Statement, the government should consider carefully how it manages competition between airports.

²⁶ For example, reducing APD in Scotland may give airports in Scotland a competitive advantage over airports in the North of England. We note however that the Scottish government is choosing not to pursue any change in APD at present.

²⁷ <https://www.gov.uk/government/publications/airports-commission-final-report>

²⁸ <https://www.gov.uk/government/publications/airports-national-policy-statement>

²⁹ The Green Paper reiterates the Airports Commission finding that while there may be a demand case beyond 2030, there is not necessarily a corresponding environmental or commercial case for further expansion of airports.

Specifically, if any future national decision³⁰ is made on whether additional capacity through additional runways should be approved, the government should include an assessment of the impact on competition. This is particularly the case where approval of expansion of one airport would necessarily preclude the expansion of another.

- 3.20 We support the National Infrastructure Commission including airport capacity in its future national infrastructure assessments to inform any planning for airport expansion.

The aerospace industry

- 3.21 The Green Paper expresses the desire to address barriers to aviation-related exports through bringing businesses, particularly SMEs, together.
- 3.22 The CMA recognises the growing importance of SMEs to the aerospace industry and their importance for the economy as a whole. Our focus on advising government to adopt policies and regulation that allow competition to flourish is grounded in open markets that invite and facilitate challenge. In working together, smaller firms may be able to exert greater competitive pressure on large incumbents, driving competition and innovation, leading to better outcomes both in the UK and internationally. However, in facilitating the development of consortia, the government should be mindful that members of those consortia may also be competitors in adjacent or other markets.
- 3.23 The CMA and the OFT before it has issued guidance on compliance with competition law for trade bodies and professional associations. This may be relevant to any forum that brings businesses across the aerospace sector together.³¹

³⁰ This may be through the findings of an Airports Commission or through a planning application from an airport operator.

³¹ For example "[Trade associations: are you complying with competition law?](#)", March 2018, "[Dos and don't for trade associations](#)", September 2014 and "[Trade associations and professional/self-regulating bodies and competition law: OFT408](#)", December 2004 (as adopted by the CMA Board), Joint ventures and competition law <https://www.gov.uk/government/publications/joint-ventures-and-competition-law-dos-and-donts> April 2018.

4. Reforming slot allocation

- 4.1 The CMA welcomes the government's objective to reform the current system of slot allocation and administration.
- 4.2 In this section, we respond to the government's proposed reforms, focusing on the measures to enable competition, efficiency and setting out the case for change. In the final part of this section, we provide views on the proposed changes to the administrative system.

Effective competition

- 4.3 The Green Paper sets out a range of options to introduce 'effective competition',³² from changing the rules of the current administrative system to introducing market-based allocation mechanisms. We continue to believe that a market-based approach to allocating slots at capacity-constrained airports is the only approach that will substantially increase allocative efficiency in slot use. Changes to the current administrative allocation mechanism would likely only result in marginal benefits and would continue to place responsibility on an administrator when those choices would be better made by market forces.
- 4.4 Before examining the proposed reforms in more detail, we consider that the government would benefit from clarifying what it wants to achieve by reforming the current slot regime.³³ We believe that reforming slot allocation with an objective of maximising efficient use of scarce capacity would lead to more effective competition, and this should be the principal objective underpinning the reform agenda.

Relationship between slots and competition

- 4.5 Slots are an essential input into air transport passenger services. As explained in the following paragraphs, restrictions on the ability of airlines to access slots (both in terms of the number of slots an individual airline holds and total number of available slots) has implications for competition, at three different levels: downstream 'Origin and Destination' (O&D) routes; at a network level; and upstream slot holdings.

³² Green Paper paragraph 3.57.

³³ The government's primary objective for the allocation of newly released slot capacity is to facilitate effective competition between airlines to create efficiency. It also has secondary objectives to: improve domestic connectivity, though protecting slots to support at least 14 domestic routes; and improve connectivity to international destinations that are currently unserved or underserved. See paragraph 3.52 of the Green Paper.

- 4.6 **O&D routes:** Restricting airlines' access to slots at attractive times at congested airports prevents them from offering a range of services. This may limit their ability to attract passengers; for example, a small or medium-sized carrier may find it difficult to attract 'time-sensitive' passengers if its limited slot holdings mean that it cannot increase frequencies or provide 'peak time' services. The competition concerns are likely to be exacerbated if there is limited airport substitutability, ie where flights from alternative, less congested airports are not close substitutes. This issue is particularly pertinent for London Heathrow, where there are routes with high demand and where flights to the same destination from other airports may not be a competitive constraint, particularly for time-sensitive passengers or those connecting to other flights. Overall, the lack of slot availability is likely to restrict the ability of small and medium-sized carriers to enter and/or expand and offer services in competition with incumbent carriers at capacity-constrained airports.
- 4.7 **Networks:** the current administrative allocation mechanism has made it difficult for a second network carrier to establish a significant presence at London Heathrow because they cannot get a sufficient portfolio of slots. The detriment to competition and efficiency is two-fold. On the demand side, passengers have access to a smaller number of network carriers at a hub airport, which means that a competing network is less able to exercise a competitive constraint on the 'hub' carrier (IAG at London Heathrow);³⁴ and limit the extent to which various airlines can expand the range of destinations they serve. On the supply side, network carriers which are unable to access sufficient slots may be unable to benefit from the same economies of scale and scope, for example by offering a greater number of connecting options.
- 4.8 The proportion of slots held by network carriers at their hubs may impact on their ability to not only compete with other airlines operating at that hub, but with other network carriers at competing hubs. The extent to which flights from different European hubs compete with one another will vary. They are most likely to be considered substitutes for indirect long-haul flights for passengers not located near a hub (for example, Newcastle to Singapore via Amsterdam, Paris or Dubai), and for short haul routes to or from regional airports where direct services are not available (for example, Liverpool to Bergen). They are least likely to offer substitute services for passengers within a hub's catchment area who wish to make a direct journey.

³⁴ A 'hub' carrier is a network carrier which uses an airport as a 'hub'. IAG is the only network carrier that has sufficient slot holdings to be able to use London Heathrow as a hub.

- 4.9 **Slot holdings:** Control of access to congested airports is essentially devolved to airlines already holding slots. Existing airlines can either use the slot themselves or release the slot for use by another airline.³⁵ The current system has led to a low turnover of slots because airlines are not incentivised to trade or release slots because they fear they may not be able to get the slot back again in the future.³⁶
- 4.10 If there is limited substitutability between airports, then airlines that want to enter a particular route will need to purchase slots from one of the incumbents. If slots are allocated on a continuous basis to incumbents, then this will tend to reinforce the market power of incumbent operators. To the extent that airlines have market power, under the current administrative system, these airlines may have a unilateral incentive to retain slots, even if these are not being fully utilised, to prevent entry and expansion by competitors. The argument here is not just that the incumbent may lack the incentive to use a slot efficiently, but that it might have an active interest in not giving up a slot to a competitor for strategic reasons, to maintain its market power. This means that carriers with significant slot holdings can restrict competitors' access to slots. This constrains competition between airlines and therefore the resultant benefits to consumers, businesses and the economy.
- 4.11 There is a clear direct link between slots and competition in the downstream markets. Given this, the key decision is how to allocate this critical and scarce input, and specifically how to carry out the initial allocation. The input is currently allocated by a third party under the administrative allocation system. Our view is that this allocation should happen via a market mechanisms in which airlines, the actual providers of the service, compete for slots.

The case for change

- 4.12 Our written advice to the DfT set out our view of the scope for gains if market-based mechanisms were introduced, and we do not repeat these here in detail.³⁷ Instead, we highlight the key practical considerations that the government should consider in deciding its preferred policy option.

³⁵ The airline can release a slot which it is not using, either by returning the slot back to the slot pool or selling the slot on the secondary market.

³⁶ See paragraph 4.32 onwards on steps to increase transparency of the current administrative system.

³⁷ See [CMA's advice for the Department for Transport on competition impacts of airport slot allocation](#)

- 4.13 Developing new capacity at London Heathrow will potentially lead to as many as 350 additional daily slot pairs being made available.³⁸ Allocating these slots will be complex. Any allocation mechanism needs to take into account multiple factors, including but not limited to the complementarity between slots, the timing of slots and network effects within airports and with other airports. This requires substantial quantitative analysis and modelling.
- 4.14 The current administrative system is inherently flawed as it is unable to take account of all the relevant factors required to allocate slots to the most efficient user. The guidelines and rules to which slots coordinators currently adhere reflect these weaknesses. They are a relatively crude way to increase efficiency and competition. In the following paragraphs, we explain why, from a practical perspective, the administrative model of allocation will always result in an inefficient allocation of slots, and why simply changing the rules or guidance around slot allocation will never fully address this deficiency.

The practical difficulties of administrative allocation

- 4.15 ACL, which is currently responsible for allocating slots from the slot pool, follows IATA's Worldwide Slot Guidelines (WSG). ACL only allocates a small number of slots from the pool each IATA 'season'.³⁹ Given the lack of transparency of the decision-making process, it is difficult to know what analysis is carried out, or what trade-offs are made. In addition, we are not aware of any ongoing or ex-post review of whether the allocation decisions have led to the most efficient use of slots.⁴⁰
- 4.16 On the basis that the allocation of new capacity at an expanded London Heathrow will follow an administrative allocation system, an administrator will be required to decide how to allocate the slots based on information from airlines. We understand that the administrator is required to weigh up all of the different arguments and try to make an objective decision based on a set of criteria for allocating capacity.⁴¹ The administrator will have to have to make

³⁸ The [Airports National Policy Statement](#) published in June 2018 indicated that government's preferred option of building a new runway would enable at least 260,000 additional air transport movements per annum. This approximates to nearly 350 additional daily slot pairs.

³⁹ The aviation scheduling calendar is based, not on the calendar year, but on two scheduling seasons, Summer and Winter, defined as follows: IATA Summer Season - starts on the last Sunday of March and ends on the last Saturday of October; IATA Winter Season - starts on the last Sunday of October and ends on the last Saturday of March.

⁴⁰ There is very limited publicly-available information on ACL's decision-making process about how they allocate slots from the slot pool. Please see paragraph 4.59 for more detail.

⁴¹ See WSG guidelines and Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots and Community airports. IATA (2019), 'Worldwide Slot Guidelines', effective 1 January 2019, 9th Edition.

such a decision for each additional daily slot pair that is allocated, which may be as many 350 additional slot pairs.

- 4.17 One of the key problems for the administrator is the informational asymmetry that exists between the administrator and airlines. Airlines have an incentive to maximise their slot holdings (because slots are scarce and there may be limited opportunities for them to acquire slots in future), which will lead them to provide submissions to the administrator that are optimal for winning approval, rather than truly reflecting how they intend to use the slot.
- 4.18 Once a slot is allocated and used for a specific period of time, the airline is able to change use to operate on a different route to the one that was agreed with the administrator when the slot was initially allocated. There is no mechanism to sanction an airline if a slot is not used as an airline said it would be, or other incentives for airlines to be truthful in their submissions.
- 4.19 The administrator's decisions are therefore based on erroneous assumptions about how slots will be used by airlines. This clearly limits the ability of the administrator to decide allocation on the basis of which airline would be the most efficient user of the slot.
- 4.20 Even if the administrator had perfect information from the airlines, the scale and complexity of the decision-making process is considerable. One guideline criterion is for the administrator 'to ensure that due account is taken of competitive factors in the allocation of available slots'. When allocating a slot, the administrator will have to assess on which route competition would increase the most from allowing entry. Our understanding is that ACL's current assessment of competition is to give priority to allocating slots to airlines that want to enter routes that are poorly served, ie routes with the fewest number of carriers or unserved routes.⁴² While it may be the case that increasing the number of carriers improves competition, in other cases it may be that improving the schedule of an existing competitor (such as increased frequency) is more beneficial to competition.⁴³
- 4.21 A competitive assessment is not as simple or static as described above. An administrator would have to consider many different variables to assess the

⁴² Entry on routes with fewer competing airlines is likely to lead to a more significant reduction in air fares (ie entry onto a monopoly route is likely to lead to a bigger reduction in air fares than a route where the number of airlines increases from two to three). See "Pricing by International Airline Alliances: A Retrospective Study Using Supplementary Foreign-Carrier Fare Data", Brueckner and Singer, February 2019.

⁴³ For example, the effect of entry on a 'thick route' with competing airlines may result in a less significant reduction in price than a route with a 'thin' monopoly route but the gross effect could be higher, particularly if the 'thick' route services more passengers (O&D and connecting), especially if frequency is important to passengers on the route or if a low cost carrier enters and causes incumbent operators to change their commercial strategies.

potential impact on the key parameters of competition on a particular route, including the effect on prices, scheduling and reliability, frequencies, product and service quality and network-based parameters (network coverage and Frequent Flyer Programme (FFP)). Assessing competition on the same route is challenging, requiring substantial quantitative analysis and modelling. The additional complexity of making comparisons of competition impacts between different routes is not an exercise that is conducted by national competition authorities, so the framework is less well developed. Absent a framework, we consider that it is infeasible for an administrator with no specialist competition knowledge to conduct this analysis.

Efficiency gains of a market-based approach

- 4.22 A market-based approach alleviates a lot of the inherent problems of the administrative system. A well-designed auction will compel airlines to support their investment decisions by paying an upfront fee. All of the information that an administrator would have to assess would instead be captured in a price that would truly reflect the value that an airline places on the slot. The auction extracts and uses information otherwise unavailable to an administrator. The introduction of a formal price mechanism means that airlines would face a direct cash cost of holding a slot, which will create the right incentives to use slots efficiently or exchange or sell slots to airlines that may use the slots more efficiently.
- 4.23 Potential improvements in efficiency could, among other things, result in:
- (a) increase in the use of larger aeroplanes, carrying a greater number of passengers in total;
 - (b) increase in the number of routes with a higher proportion of connecting passengers at hub airports like London Heathrow;
 - (c) increased utilisation of slots, with fewer late slot returns or leases or transfers to other airlines on a temporary basis; and
 - (d) changes in scheduling to allow leisure O&D routes with lower demand to be operated during 'off-peak' hours, thereby increasing demand for 'off-peak' slots at an expanded London Heathrow.
- 4.24 As discussed in paragraphs 4.6 to 4.11, increasing the allocative efficiency of slots will have a positive impact on competition in downstream markets. This in turn can lead to better outcomes for passengers in the long-run, through lower fares, increased connectivity and improvements in quality of service.

- 4.25 A market-based approach is not without risks.⁴⁴ We identified several of these in our written advice to the DfT, including the risk of airlines with market power bidding more aggressively than new entrants to secure slots, leading to a greater concentration of slots in the hands of incumbents. This would clearly be detrimental to competition. Other risks are that a market-based approach could reinforce barriers to entry as new entrants would have to pay a fee for slots at congested airports in the UK, although it is not obvious that these risks are any higher than under the existing arrangements where new entrants have to buy slots from an illiquid secondary market.
- 4.26 Designing a market-based approach is complex but many of these same difficulties are faced by an administrator who is also faced with the inherent shortcomings of the administrative system. To the extent there are any risks specific to a market-based approach, we understand these can be addressed in auction design. As emphasised in our engagement with DfT, we strongly encourage the government to consult and engage experts in the field of auction design. They will be uniquely-placed to design a system that will maximise the potential benefits of the market mechanism.
- 4.27 We also take this opportunity to reiterate the benefits of speaking to those involved in introducing market mechanisms in other areas, such as spectrum auctions. They will have worked through the issues in depth and have important learnings to build upon. The government will also need to carry out further work on how changes to slot allocation interact with UK and EU legal frameworks, once the UK's future relationship with the EU crystallises.
- 4.28 We think that our published advice and this in-depth response to the consultation outlines and explains in detail our views on the slot allocation system. We also understand that the government has already commissioned external advisers to assess the current inefficiencies and potential benefits of reform. In this light, although we will continue working with the government as they refine policy options – to ensure competition and consumer issues are integral to their progress – we do not see merit in carrying out an in-depth review of slot allocation.⁴⁵

⁴⁴ See paragraphs 53 to 70 of the CMA's written advice to DfT for a fuller discussion of the risks of auctioning slot rights. As set out in that advice, the government should engage with experts in the field to design appropriate mitigations against these risks.

⁴⁵ See paragraph 3.59 of the Green Paper.

The CMA's view on allocating new capacity

- 4.29 The task of allocating such a large tranche of new capacity will be challenging. As explained above, the administrative system is inherently flawed and will always result in inefficient outcomes. In our view, it is infeasible for an administrator to make an ex-ante assessment of which airlines would be the most efficient user of the new capacity. Adopting a market-based mechanism will be a significant improvement on the status quo and result in a more efficient allocation of new capacity at London Heathrow. Importantly, as outlined above, generating competition in the upstream slot market will lead to improvements in competition in downstream markets, stimulating innovation within the airline industry and resulting in the reduction of prices and improvement in quality to consumers over time.
- 4.30 We expect that there will be objections from industry stakeholders, arguing that it will be too risky or too difficult to auction new capacity. Slot allocation, whichever method is used will be complex, but this is yet more reason for why these choices are better made by the end user of slots, the airlines. No administrator, however good, will have the knowledge to decide which slots, and how many slots, should be allocated to optimise each airlines' network and business requirements. Auctioning slots provides an opportunity for airlines to have a direct input into how they shape their networks and how best to respond to the demands of their passengers over time, according to their knowledge and strategic direction. There is no clear rationale for why these important commercial decisions should be made by a third-party administrator that is not privy to knowledge about each individual airlines' commercial and business interests.
- 4.31 We encourage the government to fully engage with the process and not miss out on the opportunity to harness the gains from a market-based approach. In our view, an initial investment in auction design will result in long-term benefits to passengers and the economy, particularly if this model is used to allocate scarce capacity at congested airports in the UK, today and in the future.

Potential changes to secondary trading

- 4.32 In our advice to the DfT, we explained why secondary trading in isolation, even if improved, is unlikely to address the problems of the administrative allocation mechanism. We considered that, among other things, the strategic conduct by incumbent slot holders is likely to act as a real constraint on the

effective functioning of secondary trading.⁴⁶ Additionally, we noted that some of the characteristics of airports slots – eg the fact that there is a relatively limited number of slots traded at each airport, and that slots can be differentiated (eg between peak and off-peak) – appear to place real limits on the degree of liquidity that might be achieved.

- 4.33 Notwithstanding this analysis, below we consider whether modifications to the current, ‘grey’ secondary market could increase liquidity, for example by increasing transparency.

Issuing guidance on secondary trading to increase transparency and ensure all interested parties are aware of which slots are being made available

- 4.34 Although the formalisation of slot trading may increase slot trades, if most trades continue to take place through bilateral negotiations, there will continue to be limited transparency in the market prices of slots. This may inhibit slot sales by restricting the ability of airlines to take into account the opportunity cost of holding a slot and increase transactions costs.
- 4.35 In addition, a lack of transparency over how many slots are being bought and sold at a particular airport could lead airlines to underestimate the level of trading and encourage them to hold on to their slots for longer than they otherwise would, for fear of being unable to regain a similar slot once sold. Another aspect of this is that if the large carriers are obvious buyers, small and medium sized carriers may have less opportunity to buy slots.⁴⁷
- 4.36 This suggests that there is scope for increasing transparency to boost liquidity within the system. There may however come a point at which further increases in transparency would inhibit, rather than improve, liquidity. For example, if airlines were required to publish full details of every slot transaction, trading may be reduced because of airlines’ concerns about publication of commercially confidential information.
- 4.37 Against this background, we consider three main options for increasing liquidity in the secondary trading market:

⁴⁶ In the last 10 IATA seasons (from summer 2013 to 2019), there have been approximately 50 ‘sales’ in the secondary market. A sizeable proportion of these transactions take place between airlines that are either in alliances or joint ventures.

⁴⁷ Airlines that want to sell slots through bilateral negotiations are more likely to approach large carriers rather than small and medium sized carriers, which would in turn make it more difficult for small and medium carriers from benefitting from secondary trades.

- (a) an official notice board;
- (b) publication of average prices; and/or⁴⁸
- (c) a formal market place.

Official notice board for slot sales

- 4.38 An official notice board could take a variety of forms. Airlines could, for example, be required to advertise slots they wish to sell before they do so; or they could be required simply to post information about sales after they have taken place. Both would increase transparency about how many slots were being sold; the former may also enable a wider range of airlines to bid for particular slots. Airlines wishing to purchase or exchange slots at a particular airport could be entitled to advertise their requirements on the site.
- 4.39 Although private sector companies may choose to set up similar sites for secondary trading (particularly in the absence of a formal site), the advantage of an official notice board is that it could require airlines to post certain information as a minimum so that airlines would be aware of the volume of trading.

Publication of 'average' price information

- 4.40 Publication of average price information for slots at different airports could also improve price transparency. This could particularly benefit smaller airlines by making it easier for them to take the opportunity cost of holding onto slots into account.
- 4.41 In practice, it may be difficult for regulators to provide useful average price information. Slots are not homogenous; their price will vary by, for example, time of day. Slot transactions may also entail part exchanges or part payment in kind. Attempts to provide more useful (ie reasonably accurate) price information would be difficult and may end up relying on a small number of slot trades. As well as giving a false level of comfort, this would also raise the risk of revealing commercially confidential information.
- 4.42 Publication of average price information could also reduce airlines' willingness to sell because it would essentially require them to deposit a copy of all slot transactions with the relevant regulatory authority, thus revealing more

⁴⁸ Each could be implemented in isolation or in conjunction with other approaches.

information to both the regulator and actual and potential competitors than they may otherwise wish to do.

Formal market place

4.43 A formal market place could take a number of different forms and has the potential to improve transparency.

4.44 At the far end of the spectrum, airlines could be required to trade through an official market place and to trade anonymously (so that the seller has to sell blindly to the highest bidder):

- (a) Requirement that all trades and swaps take place through the exchange: this would create a comprehensive market place and including straightforward swaps may help kick-start the exchange and boost liquidity. Such an exchange could make it easier for airlines to find willing traders (including for swaps), and thereby increase liquidity. The exchange could result in a significant increase in transparency about prices and trading volumes with knock-on benefits on liquidity. However, such an exchange would prevent airlines engaging in multi-dimensional trading and this may reduce trading.⁴⁹ It may preclude the developments of other intermediaries.
- (b) Anonymous bidding: this would prevent airlines from discriminating against particular airlines (by, for example, refusing to sell to them; only offering them slots at unattractive times; or offering them worse terms and conditions than they would offer to other airlines). However, anonymous bidding would also prevent airlines from being able to put together special packages for particular airlines that better meet their demands and increase efficiency. Also, at present much slot trading takes place within alliances. Airlines may prefer to hold on to their slots rather than let them move outside the alliance. If it is important for airlines to know who they are selling to, they may choose to lease slots rather than sell them. In which case we would expect to see higher levels of leasing. Leasing does not address the concerns around airlines' strategic conduct and, given there is no sale involved, it will not increase the liquidity of the secondary market. In practice, it may also be difficult for airlines to keep their identity secret. Carriers may know or be able to guess each other's identity and may in fact take steps to identify themselves to one another.

⁴⁹ It may be more difficult for airlines to sell a 'package of slots' via a formal exchange than under bilateral negotiations where airlines could make available a portfolio of slots for potential buyers.

4.45 A formal market place could improve the liquidity of slot trading because of the increased transparency of slot availability. However, the impact on liquidity will still depend on the willingness of airlines to trade. A lack of willing sellers is still likely to be the main problem. This problem will always exist under an administrative model of allocation as airlines are less likely to respond to the opportunity cost of holding a slot than they would if they faced a direct cash cost.

Potential changes to the administrative system

4.46 In this subsection we set out our views on potential changes to the existing administrative system. In doing so we recognise that there is scope to improve competition within the existing framework but in the long-term, as outlined in the case for change above, we do not believe that the gains will be anywhere near as pronounced as if a market-based system were to be introduced.

Changing the existing ‘new entrant’ rule to allow new entrants or smaller incumbents to build presence at constrained airports

4.47 At present, 50% of the slots in the pool at initial slot allocation must be allocated to new entrants, unless requests by new entrants are for less than 50%. The new entrant rule states that an airline only qualifies as a new entrant if it holds fewer than five slots at that airport on that day.⁵⁰ Airlines would however not qualify as a new entrant if they have more than 4% of the slots at an ‘airport system’ level (ie the airports serving a given city), even if they do not hold any slot holdings at the airport at which they are requesting slots.

4.48 Most of the major airlines that currently operate in the UK would not satisfy the new entrant criteria, including airlines with only limited slot holdings. Low cost carriers like EasyJet or Ryanair that have no slots at London Heathrow, would not qualify as a ‘new entrant’ if they requested slots at London Heathrow because their slot holdings at the airport system level would be more than 4% of total slot holdings.

4.49 Table 1 below shows the distribution of slots used or operated by airlines at London Heathrow.⁵¹ It shows that 55% of the total slots used at London

⁵⁰ See WSG guidelines.

⁵¹ The CAA airport statistics relate to the number of slots used by an airline. This is good proxy for slot holdings, although often airlines ‘use’ fewer slots than they hold as some airlines lease slots to other airlines.

Heathrow were operated by IAG airlines.⁵² The airline with the next highest slot usage is Virgin with 3%; there are 10 other airlines that individually used at least 1% of the slots, and that in aggregate hold 23% of the slots. Then there is a long tail of a further 72 airlines which collectively used 22% of the slots, each using less than 1% of the slots at London Heathrow in 2018.⁵³

Table 1: Airlines' share of total slot usage at London Heathrow

| Airline | 2014 | 2015 | 2016 | 2017 | 2018 |
|-------------------|------|------|------|------|------|
| British Airways | 51% | 51% | 52% | 51% | 51% |
| Aer Lingus | 3% | 3% | 3% | 3% | 3% |
| Virgin Atlantic | 5% | 4% | 3% | 3% | 3% |
| Lufthansa | 4% | 3% | 3% | 3% | 3% |
| American Airlines | 2% | 2% | 3% | 3% | 3% |
| United Airlines | 2% | 2% | 2% | 3% | 2% |
| Eurowings | 0% | 0% | 1% | 1% | 2% |
| Swiss Airlines | 2% | 2% | 2% | 2% | 2% |
| SAS | 3% | 3% | 3% | 3% | 2% |
| KLM | 1% | 1% | 1% | 2% | 2% |

Source: CMA analysis of CAA airport statistics

- 4.50 Airlines that have used as much as 3% of total slots at London Heathrow would be treated as 'incumbents' under the current rule.⁵⁴ This means that they are allocated slots on the same basis as other airline groups that have over 50% of total slot holdings. The new entrant rule has reduced the ability of incumbent carriers with modest slot holdings to build up a portfolio of slots at London Heathrow. This in turn has limited the ability of those airlines to connect passengers across their networks as efficiently as IAG.
- 4.51 The current rule has also led to a large number of fringe operators with very small slot holdings at London Heathrow. This may have resulted in an inefficient allocation if those slots were used on routes that could have been better served by 'incumbent airlines' as defined. For example, competition on the route could have been improved if it would have benefited from more connecting traffic or from a higher number of frequencies which would likely only be achievable by those airlines with a more substantial portfolio of slots.

⁵² IAG share of 55% is the sum of the slots used by British Airways (51%), Aer-Lingus (3%) (number 1 and 2 from the table) and IAG's other airlines, Iberia and Vueling, which account for around 1% of London Heathrow's total slot usage.

⁵³ CAA data.

⁵⁴ As mentioned in footnote 51, we have used slot usage as a good proxy for slot holdings. 3% usage of the slots at London Heathrow equates to about 40 slots daily slots, which is significantly more than the number of slots an airline would be allowed to hold at an airport to qualify as a 'new entrant' (ie an airline would have to hold five slots or fewer to qualify as a new entrant).

- 4.52 Nonetheless, we can also see some benefit of having some form of new entrant rule. It allows 'new' airlines to enter congested airports like London Heathrow and London Gatwick and potentially introduce new routes and expand connectivity that existing airlines may not do. For example, a new entrant may be able to offer services to an unserved market that existing airlines would not be able to serve because they do not have the necessary infrastructure or network to make that route commercially viable. As mentioned in paragraph 4.48, some low-cost carriers like EasyJet would not qualify as a new entrant. Entry by low cost carriers could significantly increase competition on short haul routes and offer a partner for airlines looking for feeder traffic, other than IAG.
- 4.53 Relaxing the criteria to allow those airlines with more incumbent slot holdings to qualify as new entrants may help address some of these issues. Consolidation of slot holdings to fewer airlines could allow incumbent airlines to build up their slot holdings more quickly than they are able to under the current administrative allocation system. This may result in more competition between airlines.

Allocating a proportion of slots without 'grandfather' rights (or limiting the grandfather period)

- 4.54 As explained in our advice to DfT, grandfather rights limit the ability of airlines to obtain slots because existing slot holders rarely release slots for use by other airlines, and there is no mechanism to require airlines to release slots, however inefficiently those slots are being used.⁵⁵ Introducing time limits on an airline's right to use slots should in principle result in more slots being released and made available from the slot pool for airlines.
- 4.55 There are benefits for airlines to have security of tenure at capacity-constrained airports; it allows for planning in terms of scheduling and fleets, without which airlines may be less incentivised to invest on particular routes or fleet, reducing innovation and choice for passengers overall. However, we see no rationale for perpetual rights. We understand that airlines may need up to 18 months to manage scheduling and network requirements. There may be other longer-term investment decisions contingent on slot security, such as buying aircraft, ie an airline may invest in a new fleet on the condition that it has access to slots at London Heathrow for a period of time.

⁵⁵ Other than if the airline has not used 80% of the slot. This rule does not incentivise efficient use of the slots. In fact, the presence of this rule could incentivise airlines to operate flights that they would not have otherwise done so to ensure they satisfy the minimum criteria to retain access to the slot for the following IATA season.

- 4.56 Determining the right length of the ‘grandfathered’ period brings its own challenges and the government should be mindful of the impacts:
- (a) A longer duration will result in fewer slots being released into the pool, which could maintain the current barriers to entry and expansion and therefore limit the positive effect on competition in downstream O&D routes.
 - (b) A shorter duration may reduce airlines’ incentives to invest, which could reduce innovation and have an impact on the quality of service and choice for passengers.
- 4.57 In determining the length of the grandfathered period, a balance needs to be found between protecting airlines’ commercial and operational imperatives while ensuring that enough slots are made available for airlines wanting to enter or expand services. The government should consult widely to determine the appropriate duration.

Transparency of decision-making in the administrative system

- 4.58 We welcome the government’s proposals to enhance the transparency of the slot allocation system, provide airlines with increased clarity and certainty, and to ensure a process which is as legally-robust as possible.
- 4.59 There is very limited publicly-available information on ACL’s decision-making process for how they allocate slots from the slot pool; for example, which and how many airlines requested slots from the slot pool; which slots they requested; and why slots are ultimately allocated to any given airline. It is similarly unclear how ACL monitor or question airlines where the slots are not used for what they were allocated for.
- 4.60 The allocation of slots involves the transfer of valuable inputs for use by private enterprises. It is arguably a matter of public interest that sufficient information is disclosed about which airlines have benefited from these transfers and the reasoning behind the administrator’s decisions. Ideally, this should be done in all cases, both for the allocation of new capacity and existing capacity from the slot pool. The requirement for additional reporting and the benefits of increased transparency should be cognisant of the additional burden this will place on the administrator.
- 4.61 We strongly encourage the government to seek further information and clarification from ACL about decision-making and reasoning for how slots are allocated from the slots pool. We think it would be useful for the government to see and analyse this data, as well as data on how slots were allocated and whether they were ultimately used for what they were allocated for.

5. Surface access

5.1 In the Green Paper the government talks about the role of airports as potential regional transport hubs. In this section we set out our views on surface access (getting to and from the airport) and aviation and the need to consider aviation alongside other transport policy issues.

Aviation as one aspect of transport policy

5.2 In developing the UK's transport infrastructure, as well as the benefits of improving connectivity between airports and local and national transport networks, the government should be mindful of any potential competitive advantage that an airport might receive as a result.⁵⁶

5.3 Research by the CAA from 2011 found that the location and ease of surface access of an airport is the single most important factor for UK passengers when choosing a UK departure airport. This was true for all of the seven airports considered by the CAA.⁵⁷

5.4 Therefore, for many passengers, improving connectivity of an airport, will make it more attractive (and, as a corollary, strengthen its bargaining power with airlines).

5.5 Improving the connectivity of airports may lead to changes in passenger journeys – for example they may switch from their car to take the bus or train to the airport, or long-distance trains to a hub airport may provide a better alternative to a domestic connecting flight.

5.6 Improved connectivity could therefore be used as a driver for competition between airports. For example, the proposals for stations on High Speed 2 at Old Oak Common (for interchange with the Great Western mainline and the Elizabeth Line to London Heathrow) and new interchange stations at both Birmingham and Manchester airports could offer potential opportunities for increasing competition between these airports.⁵⁸

⁵⁶ For example, upgrading or constructing a railway line to an airport is likely to make that airport relatively attractive.

⁵⁷ Civil Aviation Authority – Airport Market Power Assessment Passengers' airport preferences Results from the CAA Passenger Survey Working paper, November 2011
<https://webarchive.nationalarchives.gov.uk/+/http://www.caa.co.uk/docs/5/Passenger%20survey%20results%20-%20FINAL.pdf>

⁵⁸ For example journey time between the proposed 'Birmingham Interchange' station and Heathrow **could be less than an hour**. More generally, a reduction in surface access journey times could increase passengers' propensity to use a more distant airport (such as halving journey times between Leeds and Birmingham airport).

5.7 To maximise the competition, consumer and environmental benefits of improved public transport links to airports, adequate consideration of the interaction of rail and air ticketing is important. For example, uncertainty over the impact of delays on the rail network with pre-booked tickets, may discourage air passengers from travelling by rail. One approach might be to allow airlines and train operating companies to offer and sell combined rail and air fares, subject to an appropriate assessment of compliance with competition law. In selling such joint/combined rail and air tickets, an appropriate framework needs to be in place to ensure disruptions on one leg don't have an adverse effect on a passenger's ability to complete their journey without incurring additional costs.⁵⁹

Surface access

5.8 Airports have a significant environmental impact and getting to and surface access can have a particular impact on local communities, through increased traffic volumes and congestion for example. Airports have adopted a range of approaches to address the social and environmental impacts of passengers arriving and departing. Airports have variously invested in their own connectivity to the national public transport network⁶⁰ or introduced charging schemes to either discourage travelling by car or to move traffic away from the airport terminal to better manage congestion.⁶¹

5.9 We note the proposed introduction of an 'Ultra-Low Emissions Zone' ('ULEZ') and subsequent 'Vehicle Access Charge' at London Heathrow.⁶² Where vehicle charges are introduced, government or the CAA should take action to ensure airport operators reinvest these charges appropriately. As noted by the CAA, there is a significant risk that passengers will not be aware of such charges and are unable to avoid them through better planning.⁶³

⁵⁹ For example the [Air France/KLM 'AIR&RAIL'](#) ticket includes guarantees of a seat on the next flight/train in the event of delays.

⁶⁰ Such as at Luton Airport's 'Direct Air Rail Transit'.

⁶¹ For example, encouraging passengers to be dropped off at short-term car parks rather than immediately at the departures hall.

⁶² <http://mediacentre.heathrow.com/pressrelease/details/81/Corporate-operational-24/11116>

⁶³ <http://publicapps.caa.co.uk/docs/33/Advisory%20letter%20DEC16.pdf>

- 5.10 In the case of charges levied on vehicles which do not adhere to a particular age or specification, care is needed that passengers on low incomes are not penalised for infrequent visits.⁶⁴
- 5.11 There is however greater scope for commercial vehicles including taxis, private hire vehicles (PHVs)⁶⁵ and buses to be required to comply with an enhanced standard, with a sufficient transition period. These should however be set to be competitively neutral between competing modes of transport, unless there is an overriding policy objective to approach this otherwise.⁶⁶
- 5.12 The CMA has previously engaged with local and central government on how separate and different regulatory requirements for taxis and PHVs can distort competition.⁶⁷ The scope for distorting competition from having divergent regulatory frameworks has increased as innovation in ride hailing and sharing services has reduced the distinction for passengers between taxis and PHVs.
- 5.13 As a result, setting emissions or other standards will be better delivered through DfT-determined minimum national standards rather than piecemeal approaches set by individual airports or local authorities.^{68,69}

Access by taxis and PHVs

- 5.14 As part of our ongoing monitoring and intelligence gathering on different markets we are conscious of the ongoing public discourse in relation to the use and regulation of taxis and PHVs. The CMA is in favour of promoting competition between taxis and PHVs through pragmatic and proportionate regulation. Some of these issues are of relevance to airports and the perception that competition is not always working well for passengers.
- 5.15 For example, some airports have appointed a partner PHV firm to provide onward road transport. These partners typically benefit from a kiosk in the

⁶⁴ Whereas the London ULEZ is sufficiently large that many vehicles are likely to make frequent trips and will have sufficient incentive to upgrade, a significant proportion of the visitors to any given airport are unlikely to visit several times a year.

⁶⁵ To note, a taxi is a vehicle which may ply for trade and be 'hailed' on the street, whereas a PHV must be pre-booked.

⁶⁶ The Heathrow ULEZ for example proposes to exempt taxis but not PHVs.

⁶⁷ The CMA has also published an open letter to local authorities on licensing of taxis and PHVs <https://www.gov.uk/government/publications/private-hire-and-hackney-carriage-licensing-open-letter-to-local-authorities/regulation-of-taxis-and-private-hire-vehicles-understanding-the-impact-on-competition>

⁶⁸ The CMA is aware of several licensing authorities which have introduced minimum emission standards for taxi and PHVs

⁶⁹ Given that many passengers will travel between two different licensing authorities to reach an airport, inconsistent standards for taxis, PHVs and public service vehicles are likely to give rise to a greater risk of confusion and inconsistency.

terminal giving the firm greater prominence for making bookings. These partners may also have exclusive use of a rank, or preferential access to the airport forecourt.

- 5.16 Airports may legitimately wish to encourage the use of public transport to reduce congestion and improve air quality around the airport, and use fees and charges as a tool to achieve this. However, if a partner firm's vehicles are exempt from any charge to access pick-up and drop-down areas it could distort competition between the partner firm and other providers and have negative impacts on passengers and particularly those with additional mobility needs.
- 5.17 The appointment of a single partner firm can be a way of managing congestion from vehicles wishing to ply for trade (either taxis or app-bookable PHVs) and for introducing a formal competition to drive better outcomes, such as minimum standards in the type of experience passengers have in leaving or arriving at an airport. However, it is not clear what criteria airports use to choose partner firms and how any benefits from competition to be such a partner, ie competition 'for the road', are passed on to passengers.
- 5.18 In understanding this issue, we have identified one airport whose partner (with exclusive access to the forecourt) charges in excess of £20 for a half-mile journey (and £25 for a pre-booked two-mile journey). This is significantly more expensive than a London taxi journey over a similar distance.⁷⁰ The potentially distortive effects of appointing a partner firm can be demonstrated by the fact that the same journeys with the same firm are some £13 cheaper in the reverse direction.
- 5.19 Many passengers with additional mobility needs may not be confident or able to use public transport from door-to-door. These passengers may therefore rely on taxis and PHVs or private transport to get to and from an airport. Their additional mobility needs may therefore attract a disability penalty for being able to access the forecourt.
- 5.20 With the advent of web and app-based booking platforms, the model of PHV service has changed significantly, blurring consumer expectations of the difference between PHVs and taxis. Whereas allocation of bookings to a given driver (and demand management across a local area) might previously have been managed by an operator through a booking office, digital platforms

⁷⁰ <https://tfl.gov.uk/modes/taxis-and-minicabs/taxi-fares>

may instead use different signals such as price to manage the supply of vehicles to manage airport bookings.⁷¹

- 5.21 We understand that airports and platforms operate both designated waiting areas and virtual queuing systems, whereby PHVs waiting in a specific location are placed in a queue for a fare.⁷² To promote competition, consumer choice and manage congestion, airports could be encouraged to provide facilities for drivers on site (such as at one of their long or medium-term car parks) which are either free or charged according to a transparent and open scheme, not advantaging or disadvantaging without clear and reasoned cause.
- 5.22 We discuss other partnership arrangements which may reduce or exclude competition from airports and lead to worse outcomes for airport users below in section 6.

Airport transport forums (ATFs)

- 5.23 The CMA welcomes the proposal to formalise the position of ATFs. In doing so ATFs should be better placed to work with airports and local authorities in developing surface access strategies and monitoring the performance of airports. ATFs, subject to appropriate guidance, could also be given a role to promote choice for passengers.
- 5.24 In designing the standard composition of ATFs, the government may wish to consider how to reduce the risk of unintentional breaches of competition law, present and exacerbated when bringing actual and potential competitors together.⁷³
- 5.25 To ensure that the needs of airports, transport providers and passengers are represented, we recommend that passenger groups are invited to participate in ATFs and that incumbent providers are not placed at a strategic advantage through participation in the forum, if prospective providers are not able to participate.

⁷¹ That is that a supply of vehicles is managed through incentivising drivers rather than direct despatch.

⁷² At Heathrow, an Authorised Vehicle Area for vehicles to wait in has been provided on a trial basis in response to concerns over the number of PHVs waiting in local residential areas (<https://www.heathrow.com/transport-and-directions/taxis-and-minicabs/authorised-vehicle-area>). The location of virtual queues appears in some instances to be negotiated with landowners other than the airport. For example we are aware of such systems operating in supermarket and retail park car parks, such as Uber at Luton Airport which uses both the Long term car park and the Luton Retail Park (<https://www.uber.com/en-GB/drive/london/airports/luton/>).

⁷³ We have previously published an [open letter on bus service partnerships](#) about how to reduce this risk.

6. Enhancing the passenger experience

- 6.1 The government believes that all passengers should have the confidence to fly and is committed to making flying a more positive experience for everyone.
- 6.2 In this section we set out the CMA's work on vulnerable consumers, some of the difficulties some consumers experience when travelling by air and the need to ensure that terms and conditions are fair. We go on to set out our views on the proposed passenger charter and on the findings of the independent Airline Insolvency Review.⁷⁴
- 6.3 Recently the CAA reported that overall passenger satisfaction with air travel has been slowly declining.
- 6.4 Passengers with disabilities are also less likely to be satisfied than those without. The CAA also found that 49% of passengers experienced a travel issue when flying and that there are aspects of the 'customer journey' where satisfaction is lower, notably in the handling of complaints where only 64% of passengers were satisfied.⁷⁵ There appears to be grounds to address some of these issues.

Vulnerable consumers

- 6.5 The CMA recently concluded some work on consumer vulnerability.⁷⁶ As part of our work we identified two broad categories of consumer vulnerability:
- (a) '**market-specific vulnerability**', which derives from the specific context of particular markets, and can affect a broad range of consumers within those markets; and
 - (b) '**vulnerability associated with personal characteristics**' such as physical disability, poor mental health or low incomes, which may result in individuals with those characteristics facing particularly severe, persistent problems across markets.
- 6.6 In considering the passenger experience and the 'customer journey', the government should consider both categories of consumer vulnerability. The latter category is partly addressed for customers with mobility issues within the proposed 'Passenger Charter', however there remain many market-specific issues which may lead to poor outcomes for passengers. In the case

⁷⁴ <https://www.gov.uk/government/publications/airline-insolvency-review-final-report>

⁷⁵ See Civil Aviation Authority: UK Aviation Consumer Survey, Key Findings, Autumn 2018, slide 9

⁷⁶ <https://www.gov.uk/government/publications/consumer-vulnerability-challenges-and-potential-solutions>

of airports this might be the nature of the passenger experience, where there is significant uncertainty over how long a passenger may need to be in an airport or the lack of alternative facilities in the immediate vicinity of the airport.

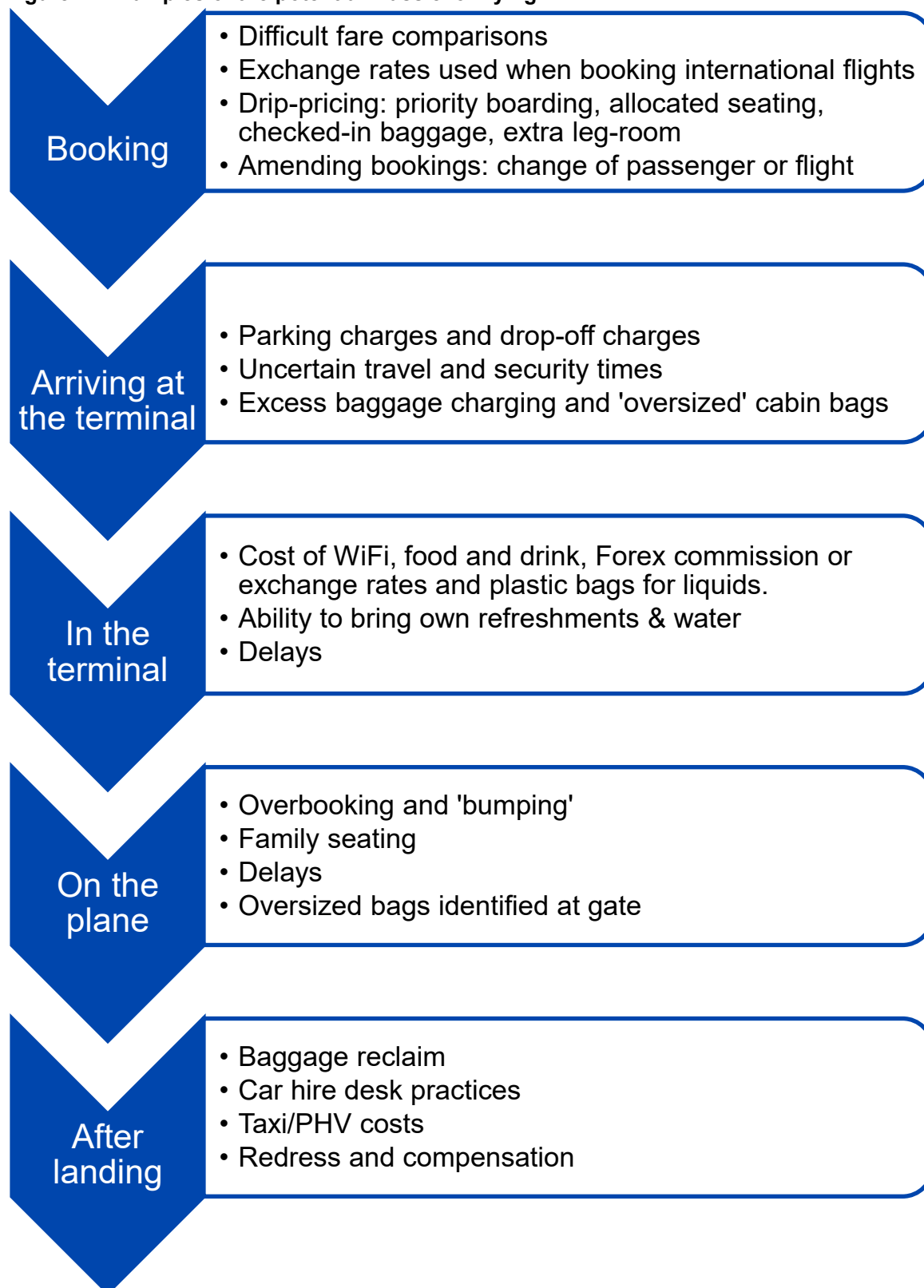
- 6.7 We note that some airports and airlines have taken steps to help passengers who may be vulnerable or would otherwise be uncomfortable or unable to travel by air.⁷⁷ Some aspects of passenger assistance schemes are mandated by regulation, while others have been introduced voluntarily by airport operators. The government should consider the extent to which such schemes could be extended further for the benefit of both passengers as customers and airports and airlines as suppliers.
- 6.8 We strongly support improving access for those with disabilities and support the government's proposals included in the Passenger Charter, which we discuss below in paragraphs 6.20 to 6.42.

The passenger experience from booking to landing

- 6.9 For some passengers, and particularly for those who fly infrequently, air travel can be a complicated and stressful experience. This may be experienced from the initial booking process, through to travelling to the airport, going through the terminal (including airport security), boarding an aircraft, disembarking and leaving a destination airport and finally, but importantly, seeking redress if things go wrong.

⁷⁷ Examples include schemes to help airport staff identify passengers who may suffer from anxiety, dementia or autism/autism spectrum disorder.

Figure 1 Examples of the potential 'hassle' of flying



Source: CMA

6.10 The proposed Passenger Charter goes some way to address several of these issues and we discuss this further below. However, it is clear from reporting in the general media and press as well as campaigns from consumer groups,

that there is a perception that passengers are ‘ripped-off’ from first arriving at the airport.⁷⁸ In many cases these ‘rip-offs’ can be avoided but this often requires time, research and general awareness (which may impact infrequent flyers disproportionately).

- 6.11 As outlined above on surface access, some airports enter into partnership arrangements with companies which appear to grant a monopoly for the provision of certain services in the airport. Examples of this include transport (PHVs and car parking), foreign exchange⁷⁹ and food concessions.⁸⁰ Without detailed investigation, we cannot say whether prices charged in any given airport in any given case are excessive, or whether such prices are driven by the practice of appointing a single supplier, are reflective of the cost of operating an airport, or simply arise through the nature of airports as captive markets or the frequency that contracts are tendered.⁸¹ Prices for similar goods and services may also appear to bunch, which may arise as a result of a single firm operating multiple concessions under different brands, or simply as a result of weak price competition.
- 6.12 While there may be legitimate reasons for the structure and award of contracts to operate multiple concessions in airports⁸², they may not lead to good outcomes for passengers. We understand for example that rent payments for some retail leases may be based on taking a proportion of projected revenue, which may encourage airports to award leases to those businesses which generate the most revenue through being able to raise prices without necessarily improving service or quality.
- 6.13 Passengers can mitigate some of the impacts of these perceived ‘rip offs’ by research in advance or if they are regular users of airports and so get the opportunity to learn through repeat journeys. For example, parking can be pre-booked, those with mobility issues might be able to be dropped-off free of

⁷⁸ There are frequent references to ‘airport rip-offs’ in consumer press and media reporting. Some examples:
<https://transferwise.com/gb/blog/five-ways-youre-ripped-off-at-the-airport/>;
<https://www.telegraph.co.uk/travel/lists/14-ways-youre-being-ripped-off-at-the-airport/>;
<https://www.which.co.uk/news/2017/04/ten-airport-rip-offs-and-how-to-avoid-them/>;
<https://www.moneysavingexpert.com/news/2018/07/how-to-get-around-airport-kiss-and-fly-charges--and-drop-off-loved-ones-for-free/>

⁷⁹ We have not conducted exhaustive research, but most of the airports we have reviewed have only one operator, with exceptions where an alternative provider is present on the railway concourse.

⁸⁰ In the case of food concessions, a single operator may operate a large number of concessions or restaurants as a franchisee, or under licence, giving the appearance of direct competition.

⁸¹ As noted above, air passengers typically have little or no choice of supplier once in an airport allowing any supplier to charge higher prices than in other circumstances.

⁸² For example, managing logistics such as staffing or access to storage and kitchen facilities in a secure environment.

charge and foreign currency can be bought in advance or collected on arrival from an ATM or bureau de change. But this requires knowledge, which can be gained through experience and research and time. In this sense, those who fly less frequently may be more likely to experience difficulties, exacerbated by the uncertainty or unfamiliarity of air travel. In some cases, simple pragmatic steps could be taken by the airports to mitigate these impacts, such as the universal provision of facilities for water bottles to be emptied at security (rather than being confiscated/placed in a waste bin) and water fountains in obvious and convenient locations for a bottle to be refilled.

- 6.14 We have not conducted detailed analysis of the value chain or where monopoly rents might or might not arise. We also recognise that higher rental yields in the airport terminal (supported by higher prices in retail units) may allow airports to offer lower landing fees when competing for airline business which in turn may lead to lower fares.⁸³ The reduction in landing fees may also make some routes more financially viable which could lead to more airlines flying from a given airport. This may, in turn, bring benefits to passengers, such as a wider range of routes or choice between different airlines operating on the same routes.
- 6.15 We note that we have previously taken enforcement action in the case of car parking charges at London Heathrow as a result of a restrictive clause in a lease issued by the airport to a hotel,⁸⁴ and the CAA's supporting open letter on airport contracts.⁸⁵

Booking information and terms and conditions

- 6.16 Passengers should not be subject to unfair terms and conditions when booking flights.
- 6.17 The CMA has conducted a range of relevant work on online platforms including online travel agents (OTAs) and metasearch providers. As noted above, in our work on Digital Comparison Tools, we found that platforms did

⁸³ In the UK, only London Heathrow airport is subject to price regulation by the CAA. The CAA regulates the aeronautical charges (ie charges to airlines for use of airport infrastructure) at Heathrow using a 'Single Till' regulatory approach. Under the Single Till approach, non-aeronautical revenues (ie revenues from activities such as retail, car parking and commercial property) is used to reduce the level of aeronautical charges to airlines. An alternative approach is the 'Dual Till' approach which imposes regulatory controls over revenue generated from aeronautical services and non-aeronautical services separately and generally leads to higher allowed levels of aeronautical charges. The 'Single Till' approach is the most common approach used by aviation regulators in Europe.

⁸⁴ <https://www.gov.uk/government/news/heathrow-and-arora-admit-to-anti-competitive-car-park-agreement>

⁸⁵ <http://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=8668>

not have consistent access to information from airlines. This lack of information can restrict innovation in the services that booking and comparison platforms can offer, which in turn may impede passengers' ability to make an informed comparison. There may be scope for government to work internationally to co-ordinate a standard set of data which airlines could provide.⁸⁶

- 6.18 Terms and conditions for air travel should be clear, easily understood and compliant with consumer law. Where there are significant restrictions on how you use a ticket for example, airlines should make this clear, and there is scope for alignment across the sector. Relevant terms and conditions that passengers need to understand include 'no-show' and coupon-sequence clauses⁸⁷, and any restrictions on amendments to bookings.
- 6.19 Various practices have been identified in the media which might not be anticipated by passengers when making travel plans, such as the overbooking of flights. Even when compensation is offered upfront or subsequently, the passenger experience may be significantly impacted (such as through forced shortening of a trip).

The proposed Passenger Charter ('the Charter')

- 6.20 **We support the development of the Charter but believe some of its provisions may need to be mandatory to be fully effective.** While many airlines may be willing to adopt and adhere to the Charter on a voluntary basis, some might not. There is therefore a significant risk that passengers will continue to have bad experiences in air travel. While there may be levers available to encourage compliance, the ability of government or the CAA to influence individual airlines and airports is unlikely to be consistent.
- 6.21 Government should work with airlines and passenger groups to ensure that the Charter is able to improve the passenger experience while avoiding undue burdens on business which may either be passed on to passengers or result in non-compliance.
- 6.22 **The government and CAA should consider publishing key metrics of satisfaction with airlines and airports, including on complaint resolution.**

⁸⁶ We recognise that not all airlines will wish to sell tickets through third-party platforms, though this should not necessarily preclude inclusion of all flights and details on booking platforms. However, a standard data taxonomy would ensure that where flights are listed, they are done so on a comparable basis. See further, Before the journey at paragraph 6.25 below.

⁸⁷ For more on these clauses. see <https://www.iata.org/policy/Documents/coupon-use-paper.pdf> and https://www.beuc.eu/publications/beuc-x-2018-115_no-show_clause_questions_and_answers.pdf

A performance framework may encourage compliance. The use of KPIs and reporting of relative performance may be one way of encouraging adoption by airlines and airports. Although this might not be information that passengers directly engage with when booking travel arrangements (passenger choice being largely driven by convenience of access), it may still incentivise airlines to improve performance, driving competition. Any metrics will be most effective if set out in an accessible format and made available and promoted through the media. The CMA has experience of using metrics to encourage improvements in service; in our retail banking market investigation we required banks to publish service metrics in branch, which importantly has been complemented by ongoing, periodic media attention when metrics are updated.⁸⁸

- 6.23 **Passengers either need to be aware of the Charter’s provisions or its provisions should be automatic.** To the extent possible, protections should be automatic and not require significant passenger intervention. We understand that the Charter would be developed over a period of time and would not be a single overarching framework of passenger protection. It is important that passengers are made aware of their rights but the gradual emergence of a new set of protections may make promoting consumer understanding more difficult than a single ‘big-bang’ reform. To the extent possible, we recommend that the Charter be promoted alongside ‘simple heuristics’ or rules of thumb so passengers can help ensure that they themselves are adequately protected.
- 6.24 **A Charter that isn’t universally adopted may lead to worse consumer outcomes.** If not all airlines or airports adopt the Charter, or they adhere to its rules inconsistently, there is a risk that consumers may incorrectly assume that it applies universally. This may lead them to take an inappropriate level of comfort that in the extreme could lead to them forgoing other consumer protections, such as travel insurance. It is important to remember that passengers have different levels of understanding and awareness – some of which are a function of how frequently they fly and should not be disadvantaged because of this.

Before the journey

- 6.25 Passengers should be able to book flights with confidence and find the best flight for their needs. Regardless of how a flight is booked, passengers should

⁸⁸ For example <https://www.moneysavingexpert.com/news/2019/02/metro-bank-tops-latest-official-bank-service-league-table/>

be able to anticipate the total cost of a flight, what service they will receive for the price they pay, with any significant restrictions presented clearly upfront.

- 6.26 Passengers are now able to book flights through several channels, be it in a bricks and mortar travel agency, direct on an airline's website or phonenumber or via a third-party online aggregator. In our market study on Digital Comparison Tools (DCTs) we noted the role of OTAs and metasearch (MSE) websites and apps in helping passengers identify flights that meet their needs and to some extent compare their relative price and convenience.
- 6.27 The growth of 'budget' airlines over the last 25 years has coincided with an increasing tendency for some airlines to unbundle aspects of a flight which have previously all been included in the headline price. Examples of this might be allocated seating, checked-in luggage allowances and refreshments. As a result, comparison of flights is more difficult. DCTs such as OTAs and MSEs can help passengers find flights but in many cases may not be able to provide like-for-like comparisons without detailed further comparison.
- 6.28 **In our DCTs work we identified the 'CARE' principles that DCTs and other online platforms should adhere to – they should be Clear, Accurate, Responsible and Easy to use.** These principles are founded in general consumer and data protection law regardless of sector. We have recommended that all of the UK's concurrent regulators embed these principles in their approach to comparison tools. In establishing the Charter we recommend that the government works with the CAA to ensure that comparison works well.
- 6.29 **The route to easy and comprehensive comparison is complicated as DCTs and other third-party aggregators may lack access to sufficient, relevant and accurate data.** On the periphery, this might relate to amenity data, such as baggage allowances, but in more extreme cases can also include a lack of access to price data. The barriers to aggregators having access to this data vary by airline and by the type of information:
- Airlines that charge an additional fee when a ticket is purchased via an aggregator;
 - Airlines that provide information but don't permit 'facilitated booking'⁸⁹ by the aggregator; and

⁸⁹ That is that the airline allows the aggregator access to the data, but a user is required to book directly with an airline as integration with the airline's booking system is not enabled.

- Airlines that simply refuse to provide timetable or price information in a machine-readable format.⁹⁰

6.30 We support the signposting of pre-notification requirements for special assistance services and recommend that the government works with relevant stakeholders to embed this information into the purchase ‘journey’.

6.31 We recommend that the government and the CAA work with airlines and aggregators to identify common complaints and how to ensure that information is presented appropriately to increase the likelihood that passengers will engage with important information and avoid unpleasant surprises.

During the journey

6.32 We support the Charter’s provisions in relation to the passenger experience during the journey and specifically:

- The provision of timely information on disruption and cancellation;
- The provision of a quality special assistance service; and
- Improved standards for baggage handling, with particular reference to wheelchairs and other specialist mobility equipment.

6.33 We see merit in government proposals for minimum service levels for clearing border control. If it is possible to reduce the time it takes for passengers to clear security and border control, the overall passenger experience should be improved by reducing the amount of time passengers need to spend in an airport.⁹¹

6.34 At both airport security and at border control, passengers are captive and may feel it is either not possible or too risky to challenge poor service. Where service is contracted out, it may also be unclear who a passenger should complain to (ie the airport, contractor or airline). As airlines and consumer groups note that airport security may cause passengers anxiety (particularly the vulnerable), we recommend that the Charter sets out clear standards and options for complaints.

⁹⁰ We understand that many of these tensions arise from both the commercial model adopted by the airlines and their willingness to pay commission to the aggregators as well as ownership of the customer relationship.

⁹¹ As the length of time that a passenger needs to leave in case of delays is uncertain, passengers who clear security relatively quickly may then find themselves ‘airside’ in the terminal for a longer period of time.

After the journey

6.35 Resolving problems should be simple and quick and we support much of the proposed Charter including:

- setting standards for timely notification to passengers of flight delays or cancellation;
- setting standards for quality responses to complaints;
- simplifying the compensation process and speeding up the payment of claims, including in relation to damage to wheelchairs;
- improving standards for timely and consistent notification to passengers of their eligibility for compensation;
- developing a performance framework including KPIs to monitor performance of the standards; and
- expanding the range of enforcement powers available to the CAA by providing for fines for breaches of Regulation [EC] 261/2004 (compensation and other enforcement measures).

6.36 **Limits to payments for damage caused to wheelchairs during flight should be removed.** It is not clear why airlines or others are able to limit their liability for failing to safely and securely stow mobility aids. The impact on an individual of being unable to use their wheelchair for any period of time can be huge. Passengers whose wheelchairs are damaged on an outbound leg are likely to have even further impaired mobility, even if a temporary replacement is offered.

6.37 **Consider mandating alternative dispute resolution (ADR).** Although we have not reviewed how ADR is working in the aviation sector, experience from our analysis in other sectors supports mandating the use of ADR.⁹² Failure to mandate ADR will mean that those that choose not to adopt or adhere to ADR will likely have lower costs and will be at a competitive advantage. This in turn is likely to disincentivise other airlines which might adopt ADR from doing so. To ensure fair, consistent and equitable treatment we recommend that the government and CAA work with ADR providers to encapsulate a minimum set of standards. This is particularly important as we do not expect that airlines

⁹² Alternative dispute resolution for consumers: CMA's response to BIS consultation (<https://www.gov.uk/government/publications/alternative-dispute-resolution-for-consumers-cmas-response-to-bis-consultation>)

would actively compete on the basis of the quality of aftercare and redress, and consumers would not base their choices of airline on this.

Developing a proportionate and effective redress scheme

- 6.38 Subject to the nature of the UK's withdrawal from the EU, the UK will need to decide what its framework for customer protection in aviation will look like.
- 6.39 At present the Flight Compensation Regulation 261/2004 offers fixed amounts of compensation to passengers regardless of the price paid by the passenger.⁹³ This can lead to situations where the compensation paid is greater than the cost of the ticket, but can also lead to compensation that is less than the fare.⁹⁴ This differs to the case in rail where compensation for delays is based on a defined proportion of the value of a ticket.
- 6.40 Any statutory framework which provides redress to passengers in the event of delays needs careful design. It needs to consider what it is that a passenger is being compensated for. Is it to compensate passengers for having not received the service they had anticipated, or is it compensating for the inconvenience and any potential associated costs? Furthermore, how should the framework be designed to incentivise airlines to minimise delays without having a disproportionate impact on their operation?
- 6.41 Setting statutory minimum levels of compensation needs careful consideration as it may lead to unintended consequences – for example a provider may choose to cancel one service totally to avoid causing delays and triggering compensation for multiple subsequent services.⁹⁵ In setting a 'generous' level of compensation airlines may also be incentivised to make obtaining statutory compensation more difficult.⁹⁶ As is evident from the CAA's recent enforcement action, it is clear that without sufficient guidance airlines may interpret any scheme in different ways.⁹⁷

⁹³ The amount of compensation depends on the distance of a flight with three categories of flight leading to payments of between €250 and €600.

⁹⁴ The use of variable pricing as part of yield management means that while all passengers will receive the same amount of compensation, the value as a proportion of the ticket price will vary.

⁹⁵ For example, where an aircraft is scheduled to fly a series of separate journeys on the same day, one journey might be cancelled to either speed up preparation for the next flight or to allow the plane to fly to a different destination.

⁹⁶ For example, a passenger that complains might be offered a lesser amount of compensation unless explicitly complaining under Regulation (EC) No 261/2004.

⁹⁷ In its recent enforcement action the CAA considered that compensation arising from delays due to industrial action should be paid. <https://www.caa.co.uk/News/UK-Civil-Aviation-Authority-begins-enforcement-action-against-Ryanair/>

6.42 Given its importance, the scope for mixed adoption, diverging views and understanding on the matter and levels of compensation, we think there are strong grounds for ADR to be made mandatory for airline services and delivered against a minimum set of standards. What the ADR looks like in aviation will need further consultation, but we are confident it will drive consumer confidence.

Airline failure and repatriation of passengers

6.43 We have contributed to the independent Airline Insolvency Review and fed in to officials developing its findings.⁹⁸ The recommendations of the Review appear to provide greater certainty and clarity, albeit for a small additional cost, to passengers who need to be repatriated in the event of airline failure.

6.44 The CMA supports the introduction of a universal baseline of protection for passengers in need of repatriation through the 'Flight Protection Scheme'. As the Review found, there are a range of protections available to passengers depending on whether a flight is booked as part of a holiday, how it is paid for and whether a passenger holds travel insurance. We think it is important that consumers are not left at a disadvantage because of confusion over, for example, the nature of cover provided by travel insurance⁹⁹ or protections under the Consumer Credit Act 1974.¹⁰⁰

6.45 Although the review estimates that 80% of passengers currently have some form of protection either through ATOL, insurance or purchase via credit card, the nature of those protections will vary significantly, and consumers may make choices which inadvertently exclude them from protection.¹⁰¹ In the case of travel insurance, passengers may hold multiple policies bundled with other financial products. Our past experience at looking at insurance products and online comparison suggests there are challenges in encouraging consumers to understand or engage with the detail on the quality of cover.¹⁰² Depending on the nature of protections held, some passengers may struggle

⁹⁸ <https://www.gov.uk/government/publications/airline-insolvency-review-final-report>

⁹⁹ We note that the review found that half of policies include relevant cover and it is not clear whether inclusion would be a key driver in policy selection by travellers.

¹⁰⁰ Specifically, protections afforded to purchases of between £100 and £30,000 under [s.75 of the Consumer Credit Act 1974](#). We note that the FCA's review of the Consumer Credit Act identified a number of issues in relation to s.75 which it considered needed further assessment by HM Treasury; FCA, [Review of retained provisions of the Consumer Credit Act: Final report](#), paragraphs 5.34-5.35

¹⁰¹ For example, those who do not wish to have a credit card or who have experienced debt problems and are therefore unable to obtain protection under s.75. We are also unaware of any Sharia compliant credit cards or travel insurance which may mean that there is an equalities impact of not providing a minimum baseline.

¹⁰² In the case of travel insurance, airline failure is unlikely to be front of mind compared to eg lost luggage, cancellation by the passenger or medical costs.

accessing sufficient funds to pay for their own repatriation, even if the cost is subsequently recouped.

- 6.46 We support the use of a toolkit to allow the CAA or other appropriate body to determine the best approach to repatriation in a given circumstance, to ensure that the scheme provides both practical and cost-effective protection for passengers. However, a focus on cost effectiveness needs to consider the differing needs of all passengers affected. We offer a note of caution over the proposed certification over the financial fitness of an airline, given the uncertainty about assessing going concerns on an ongoing basis. We would instead suggest that the CAA has sufficient powers to monitor the financial health of an airline – such as through mandatory notification if certain financial targets are not met – and through additional data gathering powers as set out in the Review’s final report.¹⁰³
- 6.47 In setting liquidity or financial health requirements, competition impacts should be considered. There is a risk that airlines overseen by the CAA¹⁰⁴ will be subject to increased operational risk either through lock-up of working capital or a general restriction in the airlines’ operational flexibility which other non-UK airlines are not subject to.
- 6.48 We agree that the ‘buyer beware’ approach is unlikely to be a sufficient nudge or prompt to engage travellers to obtain appropriate protection, particularly against a risk which may not be apparent to many travellers. Where universal protection is introduced, travel insurance providers may start to withdraw overlapping cover, reducing premiums¹⁰⁵ which may offset the cost of enhanced minimum protections charged through the scheme.¹⁰⁶ We recognise the benefit of improving consumer awareness and uptake of other sources of protection, but from our experience of consumer-facing remedies, we think this may have limited impact unless supported through appropriate framing and testing.¹⁰⁷

¹⁰³ There is a risk that if directors will not be incentivised to notify the CAA of potential financial distress if it will lead to a licence being rescinded which will effectively force the airline to cease trading.

¹⁰⁴ Which, for example, might lead to ringfencing certain monies or requiring that an airline achieves certain financial targets.

¹⁰⁵ However, lack of consumer awareness of the protection and engagement may mean that prices do not decrease.

¹⁰⁶ Care however is needed to ensure that the scope of the protection does not lead to over confidence (for example in the case of British travellers booking separate trips with multiple legs which do not start or finish in the UK).

¹⁰⁷ See for example CMA&FCA, UKCN consumer remedies project: lessons learned report <https://www.gov.uk/government/publications/ukcn-consumer-remedies-project-lessons-learned-report>

- 6.49 Additional different protections may be confusing – in introducing any new scheme there is a risk that passengers may conflate the protections it gives with those under other schemes. We recommend that standard wording is developed and tested for use and incorporation into the purchase ‘journey’, to better inform passengers of both the protection and limitations of the eventual scheme (such as the right or eligibility to seek and receive a refund for future flights that are cancelled).¹⁰⁸
- 6.50 We urge caution in limiting protection to only return flights – travellers who actively shop around may find that purchasing each leg of a return journey via different airlines is cheaper or more convenient. The increased use of OTAs and MSEs to find cheap flights may increase the risk that passengers do not purchase a qualifying flight. However, should passengers be alerted to the risk of booking separate legs, competition between airlines may be affected.
- 6.51 Vulnerable passengers may need additional support. In reaching a decision on how passengers should be repatriated we recommend the government considers the range in ability and awareness of passengers of the need to make arrangements to repatriate themselves. For example, should self-repatriation be chosen, there will be a first-mover advantage for those who become aware first and are able to book flights from existing capacity, whereas others may only find out about any collapse on arrival at an airport and potentially need to arrange both accommodation and flights. This may lead to disproportionate impact on both those less confident in searching for and booking flights.
- 6.52 The final proposed scheme should be subject to a competition impact assessment. We welcome the fact that the Review has commissioned a competition impact assessment and included this within its findings. We encourage the government to consider competition as part of any impact assessment.¹⁰⁹ As elsewhere, we note the potential impact of the nature of the UK’s withdrawal from the EU may affect the range of options open to the government.¹¹⁰ We do not have any observations on the basis of the structure of the financing of the scheme and all of our comments are subject to the completion of an impact assessment.

¹⁰⁸ We note the Review’s conclusion to limit protections to repatriation rather than for future flights.

¹⁰⁹ The CMA has published guidance to policy makers on conducting competition impact assessments <https://www.gov.uk/government/publications/competition-impact-assessment-guidelines-for-policymakers>

¹¹⁰ For example, the exemption for airlines from ATOL included in the Package Travel Directive

Appendix A: Previous CMA work in the aviation sector

1. The CMA and its predecessors have conducted work in various areas related to the aviation sector including the following cases of note:
 - a. BAA Airports Market Investigation (CC, 2009)¹¹¹
 - b. Airline payment card surcharges super-complaint and consumer enforcement (OFT, 2011-12)¹¹²
 - c. Ryanair / Aer Lingus merger (CC/CMA, 2012-15)¹¹³
 - d. Digital Comparison Tools market study (CMA, 2016-17)¹¹⁴
 - e. Advice on airport slots (CMA, 2018)¹¹⁵
 - f. Heathrow car park price fixing (CMA, 2018)¹¹⁶
 - g. Investigation of Atlantic Joint Business Agreement (CMA, 2018 ongoing)¹¹⁷
 - h. Airport services merger (Menzies/Airline Services) (CMA, 2018/19)¹¹⁸
 - i. Car hire (online and 'at desk') (CMA, various)
 - j. Hotel online booking consumer enforcement (CMA, 2018)

¹¹¹ <https://www.gov.uk/cma-cases/baa-airports-market-investigation-cc>

¹¹² <https://www.gov.uk/cma-cases/airlines-payment-card-surcharges-investigation>

¹¹³ <https://www.gov.uk/cma-cases/ryanair-aer-lingus-merger-inquiry>

¹¹⁴ <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study>

¹¹⁵ <https://www.gov.uk/government/publications/aviation-2050-the-future-of-uk-aviation-consultation-competitive-markets-reports>

¹¹⁶ <https://www.gov.uk/government/news/heathrow-and-arora-admit-to-anti-competitive-car-park-agreement>

¹¹⁷ <https://www.gov.uk/cma-cases/investigation-of-the-atlantic-joint-business-agreement>

¹¹⁸ <https://www.gov.uk/cma-cases/menzies-aviation-uk-limited-airline-services-limited-merger-inquiry>