

Consultation on issues affecting passengers' access to UK airports: a review of surface access

CAP 1364



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Executive summary

Background to the review

1. Surface access¹ to UK airports can account for a sizeable proportion of the cost of any air journey and forms a significant part of the aviation value chain. The CAA is reviewing this element of airport operations in order to better understand how effectively it is operating and serving the interests of consumers.
2. We are conducting this review under Section 64 of the Civil Aviation Act 2012, which requires the CAA to monitor services provided at airports. One of the reasons for carrying out this review is a commitment we gave in response to a submission to the Q6 review of Heathrow and Gatwick² from the Independent Airport Parking Association (IAPA).³
3. In addition, the CAA has had concurrent competition powers over airport operation services since 2013. We are therefore taking the opportunity in this review to draw attention to the existence of several previous private action competition cases.⁴ In a number of these, airport operators were found to have abused their dominant position⁵ in an upstream facilities market by adversely affecting competition in downstream markets. Some were found to have, for example, protected their own road access⁶

¹ The journeys passengers make in order to get to and from the airports to their ultimate point of origin or destination on the ground.

² The last periodic price control review of the airports finalised in 2014.

³ A non-confidential version of IAPA's submission is available at <http://webarchive.nationalarchives.gov.uk/+/https://www.caa.co.uk/docs/78/IAPAApr13.pdf/>

⁴ The cases are summarised in a separate discussion paper issued with this document: "A discussion of national and European Competition Case Law relevant to the Aviation Sector", available at www.caa.co.uk/cap1370.

⁵ A dominant position is a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.

⁶ Road access includes all products and services provided to passengers to get to and from the airports by road such as parking, drop-off, taxis, buses, etc, but not by rail modes.

products from competition or by extracting higher commissions from third party operators that have access to facilities at the airport.

4. We have also noted passenger interest in the 'hidden costs' of using airports and we received some complaints that they are not aware of various costs of accessing airports (drop-off fees, car parking cost, etc). We have also examined how parking products are distributed on-line.
5. The CAA Consumer Panel⁷ has strongly encouraged our work in this area and have supported our aim of ensuring consumers have access to the widest possible range of surface access options. However, the Panel felt that our understanding of consumer needs and behaviour is not as well developed at this stage as our understanding of upstream market conditions. In the absence of consumer research that could have informed the CAA's engagement with the industry, the Panel have advised us to use this consultation to gather information that allows us to come to a more balanced view of the market as a whole. We are therefore keen to receive input from consumer groups, particularly those representing more vulnerable or disadvantaged consumers, who may have specific surface access requirements.
6. The Panel also advised us that infrequent flyers, inbound (foreign) passengers and less engaged consumers, including those without easy access to the internet, could be unduly disadvantaged by a lack of information. The Panel also suggested the CAA should examine the scope for some common principles to be developed while also taking into account the specific situation at individual airports, particularly those serving more isolated regions. They noted that in developing principles, the CAA should seek to learn from the success (or otherwise) of similar self-regulatory approaches in other sectors.

⁷ The panel has internal independence from the CAA and acts as a 'critical friend', scrutinising and challenging all of the CAA's work. The main aim of the panel is to be a champion for the interests of consumers. Further information on the Panel's views on this issue can be found in the minutes from the Panel's meetings, which are published on the CAA's website at www.caa.co.uk/consumerpanel.

Scope of the review

7. Surface access covers a range of modes: private car, train, cycle, private hire vehicles and taxis. This review is concentrated primarily on road and forecourt access. We have focused it around two main topics.
 - The first is to understand the market structure for surface access, in particular how competitive conditions for road and forecourt access at individual UK airports affect outcomes to consumers. This includes interactions between airport operators and surface transport providers such as independent car parking operators, taxi/minicab operators, bus operators and car hire operators.
 - Our second area of interest is transparency in terms of the extent to which consumers are well informed about the options they have to access UK airports and the charges they face. This includes how surface access products are distributed.
8. To date, the review has been based on discussions with some key stakeholders in this sector: airport operators, consumer organisations and representatives of independent surface access operators. In this document, we present our initial conclusions. We are now keen to receive views and further information from all stakeholders and from anyone with an interest in this sector.

Initial views

9. Our initial views, based on these early discussions are that, in general, the sector appears to be a dynamic one, with a variety of parties active in providing surface access services of different types to consumers. These different modes, to a varying extent, compete with each other. However, the range of product choices available to consumers varies by airport. Passengers at larger airports generally have more options whereas at smaller airports with poorer transport links the choice is more limited.
10. It also appears that a key driver of passenger choice is the time it takes to get to airports and the cost and so consumers are actively engaged in this aspect of the market. According to a previous survey commissioned by the

CAA passengers, particularly those who reside in the UK or fly frequently, state that they are broadly aware of the options they have to access UK airports. However, there is some evidence that passengers are not always able to find the best service at the best cost that suits their needs. Also, some categories of passengers may not be in a position to make fully informed decisions.

11. We also found that airport operators and surface access operators engage meaningfully in commercial negotiations with each other. However, as is often the case in the commercial world, there are areas of tension and disputes.
12. Furthermore, the industry seems to be aware that it needs to comply with competition law in view of the private action cases in recent years where airport operators were found to have breached competition law. Stakeholders have told us that those decisions, in some circumstances, have had a positive deterrent effect on how airport operators treat independent surface access operators.
13. That said, we have identified some aspects of this sector that may still have the potential to give rise to risks to consumers in terms of choice and value for money.
 - Airport operators tend to control a large proportion of the required facilities needed to run surface access operations, both at the forecourt and in surrounding areas (such as land suitable for car parks, surface transport interchanges, etc.). Airport operators also provide many surface access products directly to consumers, often in competition with independent operators that require access to the airport's facilities. Airport operators are therefore active in both the provision of facilities (upstream) and in the service itself (downstream).
 - Surface access is one of the few areas where airport operators have a direct commercial relationship with consumers. For most other aspects there is an intermediary in the form of the airline, or, for example, a retail outlet between the airport and the consumer. This may serve to strengthen the position of the airport since airlines and retailers are more likely to have bargaining power than individual passengers who do not engage in commercial negotiations with airport operators.

- Surface access revenues, as for other commercial revenues generated by airport operators, are an important part of airport operators' overall revenues. These may help keeping airport charges (paid by airlines) low, potentially boosting the connectivity at the airport and, depending on the extent to which reductions in airport charges are passed on to passengers, lower passenger air fares. Depending on the strength of this mechanism, it may be that passengers may or may not be indifferent on whether they pay for airport services through their airfare or through the price of their surface access products.
- In terms of transparency to consumers, even though passengers state that they are broadly aware of the options they have, there are some instances where the difference in costs or service quality may not be totally clear to passengers. Some stakeholders considered that the way premium services are marketed and distributed at airports means that passengers often purchase more expensive services without being aware that there are cheaper alternatives for similar services. This could be particularly true in the case of those passengers that use the airport infrequently, such as inbound (foreign) passengers. However, we are unsure about the *level* of awareness that passengers have. There may still be scope for substantial consumer detriment if passengers not being fully aware of their options (the "unknown unknowns") or from "behavioural" (rather than rational) decisions made by passengers. This is an area where we welcome evidence from stakeholders and views on whether it merits further research.
- Finally, our review has highlighted the prominent role played by online intermediaries for surface access services. As well as airport operators and independent operators selling their own services directly to consumers online, there are also more dedicated online distributors which operate on a commission basis. Products are also listed on airlines' websites. Online sales channels have, in general, been the subject of several recent investigations by the CMA and other European competition authorities⁸ and operators should ensure that the nature of these arrangements do not risk infringing competition law.

14. A more detailed account of our initial findings is given in Chapter 3 (below).

⁸ See for example, online booking sector investigation (<https://www.gov.uk/cma-cases/hotel-online-booking-sector-investigation>) and private motor insurance investigation (<https://www.gov.uk/cma-cases/private-motor-insurance-market-investigation>).

Next steps

15. The CAA is already conducting one investigation into a possible infringement of competition law relating to surface access.⁹ We would highlight the need for all providers and distributors of surface access products, including airport operators, to ensure their contracts and behaviours do not infringe competition law. In particular airports should give special consideration to contract clauses providing for, for example, exclusivity, Most Favoured Nation and Retail Price Maintenance (Price Parity) clauses.¹⁰ They should also consider carefully any arrangements for the sharing of, for example, price and inventory information as such exchanges can be anti-competitive practice in certain circumstances.
16. In addition, we consider that airport operators, given their upstream position as a provider of surface access facilities, need to better demonstrate that they have considered their legal responsibilities under competition and consumer law. We are therefore requesting airport operators, *as part of their submission to this consultation*, to develop and communicate good practice principles for access to their surface access facilities which reflect previous jurisprudence in the sector. These principles may not be the same at all airports since each has a different set of conditions in which it operates. However, we expect airport operators to deal with the following questions.
- a) Which surface access facilities from the airport's portfolio of assets are made available and their attitude to the development of facilities outside the airport perimeter.
 - b) How they make available facilities that can be used by surface access operators and an explanation of any restrictions to the range

⁹ See case opening notice, available at <http://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Notice-of-investigation-under-the-Competition-Act-1998/>

¹⁰ Most Favoured Nation clauses are those provisions in which a seller agrees to give the buyer the best terms it makes available to any other buyer; Retail Price Maintenance clauses are those in which the provider of a product and its distributors (that earn a commission for doing so) agree that the distributors will sell the provider's product at certain prices.

of operators or the type of services that can be operated at the airport.

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

17. We would also welcome general comments from all stakeholders on the review so far. Respondents are welcome to give their views on any aspect, but the particular questions on which we would welcome views are as follows.

- h) Have we identified the key issues on market structure within the scope of this review?
- i) Have you any views and/or evidence on the market position of airport operators in the provision of airport services used to access the airport?

- j) Have you any evidence or views on how well informed consumers are of their airport surface access options and on what is important to passengers in accessing an airport? Is this an area that merits further research?
 - k) Have we identified the key issues related to the distribution of airport car parking? Do you have any views on what, if anything, would improve outcomes to consumers?
 - l) Have you any views and/or evidence on how the information set that passengers have, when choosing between airport surface access products, could be improved for consumers?
 - m) Have you any views on our proposed way forward and, in particular, the development of good practice principles by airport operators?
18. Once we have seen airport operators' and other stakeholders' responses to this consultation based on the above questions we will be able to assess whether we need to take any further action, either independently or in coordination with the Competition and Markets Authority. We could, for example, make use of our formal evidence gathering powers in the context of a Market Study under the Enterprise Act 2002.
19. This consultation runs until 22 April 2016 during which time we would welcome submissions from all industry participants. These may be either in written form or we are happy to host meetings to discuss issues in detail with industry or consumer representative bodies. Please provide any written submissions to economicregulation@caa.co.uk by 22 April 2016.
20. If you would like to discuss any aspect of the review please can you contact Pedro Lino Pinto at pedro.pinto@caa.co.uk.

Chapter 1

Introduction

Background

- 1.1 The CAA is both the economic regulator and a designated competition authority with respect to airport operation services in the UK. Improving choice, value and fair treatment for consumers is one of the CAA's core strategic objectives.
- 1.2 Surface access to airports is a key part of the consumer experience of air travel, so any issues passengers face in these areas when using UK airports are of considerable importance. Over the past months we have been conducting a review of this sector to understand more about the passenger experience of travelling to and from UK airports. We are now reporting, and consulting on some of our initial findings.
- 1.3 This sector review has a number of objectives:
- to understand the sector: what is working well and not so well from a consumer perspective;
 - to communicate how we view current competitive conditions in this sector and how we expect this sector to evolve; and
 - to encourage the development of principles for good practice which, in our view, could make this sector work better for the interests of consumers.

Scope of the review / terms of reference

- 1.4 The review is particularly focussed on the competitive conditions for road access to UK airports. This includes interactions between airport operators and road access providers (e.g. independent car parking operators, taxi/minicab operators, bus operators etc.).
- 1.5 The review also assesses availability of information to guide consumers on how to get to and from the airport, and the options available.
- 1.6 Conversely, we do not focus on:

- aeronautical services (airport operation services (AOS) provided to airlines or groundhandling agents operating on behalf of airlines, for which passengers are not charged directly but are typically included in the ticket price);
- retail services provided at the airport (shops, bureaux de change, restaurants and cafeteria, etc.), including the provision of airport facilities to those that provide such retail services, as these, although important, are not an integral part of the passenger journey; and
- rail services operating to and from UK airports because, while they may be relevant in providing competitive constraints to access by road, the wider government and regulatory intervention in that sector somewhat determines the potential for competition to develop and the airport operators' behaviour. However, we cover areas to do with the provision of information about rail services to consumers.

The importance of surface access

1.7 Airport surface access is an important part of the passenger journey and passengers can spend fairly large amounts getting to/from the airport. Figure 1 provides some examples of parking costs, taxi and rail journeys.

Figure 1: Examples of costs incurred by passengers in accessing airports

	1h / 2h short stay	4 / 7 days long-stay	Mini-cab to City Centre	Rail to City Centre (return)
Heathrow	£6 / £10	£56 / £90	£30	£20
Gatwick	£6 / £10	£51 / £75	£45	£17
Manchester	£5.2 / £8.8	£35 / £46	£24	£4
Stansted	£6 / £11	£36 / £36	£56	£33
Birmingham	£4 / £8	£32 / £46	£20	£5

Source: CAA research (minicab.com, train operating companies, airport operator websites)

1.8 These amounts are not insignificant when compared to other elements of the passenger journey. For example:

- the average Ryanair one-way fare was around £35 excluding ancillary revenues, such as food on board and other options, and over £46 if we include ancillary revenues¹¹;
- the average easyJet one-way revenue per passenger was £70 (including ancillary revenues)¹²;
- Gatwick's aeronautical revenue¹³ was around £9 per passenger in the year to March 2015.¹⁴

1.9 Typically, passengers have a number of options to get to the airport both within modes (e.g. what taxi firm to use) and between modes (e.g. taking the car or going by train). However, car journeys are the predominant way to access UK airports accounting for about two thirds of journeys, with a broadly even split between drop-off, car parking at the airport and taxi. Public transport is mainly used for access to/from city centres but this is not considered convenient for some passengers (e.g. those travelling with large amounts of luggage). Public transport accounts for a larger share at London airports (that tend to have better public transport links) than at regional airports where it plays a less significant role. (see Figure 2)

1.10 Different passengers have different needs and preferences and not all modes will be perfect substitutes. Therefore, a situation where there is more than one competing provider of each mode, or at least, the possibility of new entry would provide more choice to passengers compared to a situation where passengers have to rely solely on competition between modes.

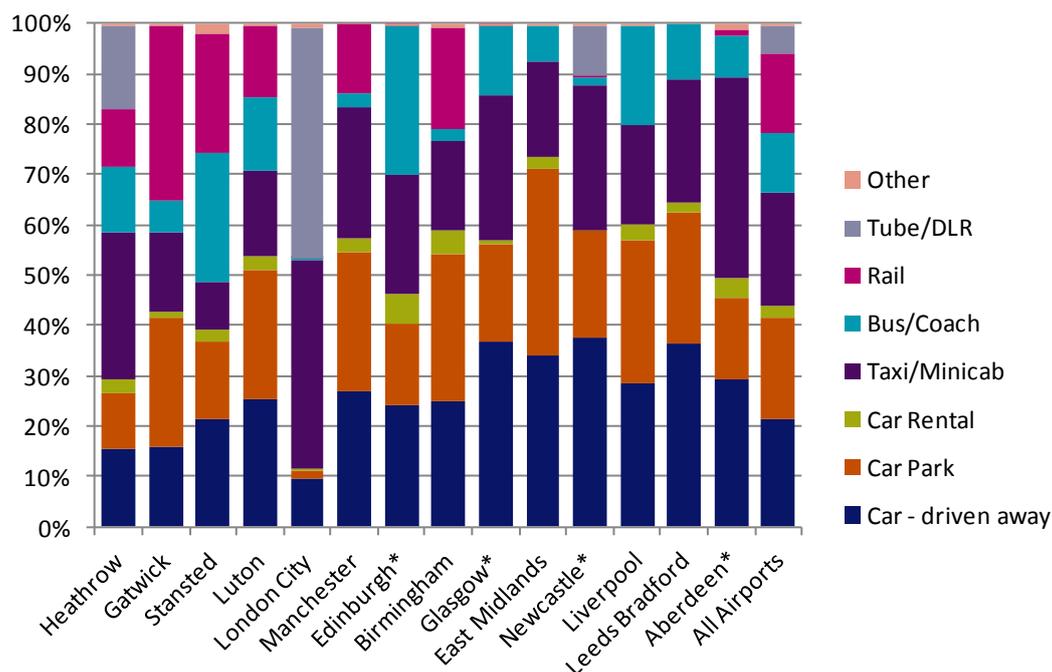
¹¹ Source: Ryanair financial accounts (year to 31 Mar 2015), available at http://investor.ryanair.com/wp-content/uploads/2015/05/FY-2015-AnnualInterm_Results-Results.pdf, when an exchange rate of 1£=€1.35 for the year is used.

¹² Source: easyJet financial accounts (year 30 September 2014)

¹³ The amount an airport charges to an airline for using the airport.

¹⁴ Source: Gatwick's financial statements, year to 31 March 2015, available at https://www.gatwickairport.com/globalassets/documents/business_and_community/investor_relations/year_end_2015/gatwick-airport-limited-financial-statements-31-march-2015.pdf

Figure 2: Surface access modal shares at large UK airports



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

Note: the chart is representative of journeys by passengers to the airport – not necessarily from the airport.

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- Chapter 2 – Policy and legal framework
- Chapter 3 – Initial findings from industry engagement
- Chapter 4 – Analysis of key issues
- Chapter 5 – Possible ways forward
- Chapter 6 – How to respond and next steps

Chapter 2

Policy and legal framework

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

Our statutory duties and strategic objectives

- 2.2 We have a statutory duty to promote competition, where appropriate. We believe that competition¹⁵ between airport operators and between different surface access operators is the best way to keep prices at competitive levels and quality of service high. We expect all service providers should face strong incentives to offer services at a price and quality to attract consumers to use their services.
- 2.3 Likewise, we expect that consumers will take reasonable steps to make themselves aware of the costs of travelling when they are planning their journeys. We do not see our role to be systematically involved in such decisions. That said, passengers can spend fairly large amounts of money getting to/from the airport. In some cases, these can be greater than the charges paid by airlines to use the airport. We therefore want to ensure that companies are aware of their obligations to comply with competition and consumer law.

Regulatory considerations

Licensed airport operators

- 2.4 At the licensed airport operators, Heathrow and Gatwick, revenues from commercial activities are regulated indirectly through the operation of the "single-till". Under this arrangement, a projection of those revenues, including charges from surface access, is used to reduce aeronautical charges paid by airlines.

¹⁵ Competition could be both inter-modal (e.g. between different modes of transport) and intra-modal (e.g. between different providers of the same service).

- 2.5 The single-till approach means that these airport operators have an incentive to over-achieve commercial revenues (i.e. beat the projected revenues) within the regulatory period. However, under the current regulatory approach we may take any over-achievement into account when setting charges for subsequent regulatory periods. This means that any over-achievement is likely to result in future reductions in regulated charges paid by airlines, and therefore lower fares for passengers.
- 2.6 In addition, there is an expectation, stemming from the licence conditions for Heathrow Airport Limited, that charges for using "specified facilities" (some of which are used by surface access operators) should be set in relation to costs and that charges, costs and revenues of such facilities should be transparent to users.¹⁶
- 2.7 During the last Q6 review (on the economic regulation of Heathrow and Gatwick), we made a commitment to investigate road and forecourt access at licensed airport operators.¹⁷ This sector review fulfils that commitment.
- 2.8 When dealing with any particular issue at licensed airports, we are required to consider in individual cases whether using competition law, to deal with particular issues, would be more appropriate than using our economic licence enforcement powers.¹⁸
- 2.9 That said, we could consider amending economic licences during the course of their periodic reviews by taking into account the evidence available to us at that time. Alternatively, if we find sufficient evidence for more immediate action, we can decide to modify conditions of an airport's economic operating licences during the course of the existing regulatory period through the available licence modifications mechanisms.
- 2.10 We are aware that, internationally, the approach to monitoring the provision of car parking at airports and modes of surface access to airports varies. For example, the Australian Competition and Consumer Commission will continue to monitor the performance of the four largest airport operators in this area until at least 2020. Its most recent report¹⁹

¹⁶ See charges for other services section of Heathrow's licence (from page 90), available at www.caa.co.uk/cap1151

¹⁷ Economic regulation at Heathrow from April 2014: Final Proposals, CAP 1103, October 2013, available at www.caa.co.uk/cap1103

Economic regulation at Gatwick from April 2014 : Final Proposals, CAP 1102, October 2013, available at www.caa.co.uk/cap1102

Paragraph 2.42 to 2.45 of the Economic regulation at Heathrow from April 2014: notice of the proposed licence, CAP1138, www.caa.co.uk/cap1138

¹⁸ By virtue of the Enterprise and Regulatory Reform Act 2013

¹⁹ The ACCC's 'Airport monitoring report 2012-13' is available from:

provides information on prices charged for services provided to airlines (aeronautical charges such as aircraft landing and parking charges), to consumers (car parking charges), and indicators of quality of aeronautical services.

Unlicensed airport operators

- 2.11 Other UK airport operators are not subject to economic regulation and have more commercial freedom to set charges to their users. They have flexibility to adjust commercial operations to best meet their commercial objectives, including the needs of their consumers.
- 2.12 Although these airport operators are subject to a lesser degree of regulatory oversight, they are still subject to competition and consumer law, as well as some aviation specific requirements, as explained in the following sections. In particular, because of the nature of the service provided, there may be elements of their services where airport operators may be considered to be dominant and therefore have a special responsibility under UK and EU competition law not to allow their conduct to impair competition.²⁰

Competition law considerations

- 2.13 The CAA has both sectoral and competition law powers in relation to AOS.²¹ We exercise our competition law powers concurrently with the Competition and Markets Authority (CMA). This means that, like the CMA, we can apply and enforce the UK²² and EU²³ competition law prohibitions, which prohibit anti-competitive agreements and abuses of a dominant position.
- 2.14 We also have powers under the Enterprise Act 2002 (EA02) to undertake market studies and to make market investigation references to the CMA for a more detailed investigation.
- 2.15 AOS are generally those services (other than air traffic services, air transport services or services provided in shops or other retail businesses) provided at an airport which broadly relate to the landing, taking off and manoeuvring of aircraft and the processing of passengers and cargo.

<http://www.accc.gov.au/publications/airport-monitoring-reports/airport-monitoring-report-2012-13>

²⁰ Article 102 of Treaty on the Functioning of the European Union (TFEU) and section 18 of the Competition Act 1998.

²¹ By virtue of CAA12

²² Under the Competition Act 1998

²³ Under Article 101(1) and Article 102 of TFEU

Typically, these services are provided by the airport operator. They include facilities for car parking. Therefore, some aspects of airport access and parking also fall within our competition law powers.²⁴

Consumer law considerations

2.16 In addition to the competition law powers above, we have powers to enforce a range of consumer law including European legislation and consumer protection legislation covered by Part 8 of EA02 as set out below. We consider taking enforcement action when it would be in the collective interest of consumers to do so. Remedies available to us include seeking undertakings to comply with the legislation and/or seeking an Enforcement Order from the courts. Guidance on the CAA's approach to enforcement of consumer legislation can be found on our website.²⁵

Information and transparency

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

2.18 The ASR contains provisions relating to the pricing of air tickets and seeks to improve price transparency by clarifying that the final price to be paid includes all applicable fares, charges (including airport operator charges), taxes and fees. Airlines, and all those selling air services, are required to display a final price that is inclusive of, and gives details of, all unavoidable and foreseeable charges, including airport operator charges.²⁶

²⁴ Under section 68 of CAA12, AOS mean services provided at an airport for the purposes of (a) the landing and taking off of aircraft' (b) the manoeuvring, parking or servicing of aircraft, (c) the arrival or departure of passengers and their baggage, (d) the arrival or departure of cargo, (e) the processing of passengers, baggage, or cargo between their arrival and departure, or (f) the arrival or departure of persons who work at the airport. AOS include permitting a person to access or use land that forms part of an airport or facilities at an airport for a purpose described in (a) to (f) above. In particular, AOS include the provision at an airport of (a) groundhandling services, (b) facilities for car parking, and (c) facilities for shops and other retail businesses. AOS do not include air transport services, air traffic services, or services provided in shops or as part of other retail businesses.

²⁵ See "Guidance on Consumer Enforcement", available at www.caa.co.uk/cap1018.

²⁶ Further information about the ASR can be found at www.caa.co.uk/cap1015

Trading fairly

- 2.19 The CPRs require businesses to provide material information to passengers and not to mislead either by act or omission – in taking action it is necessary to prove that had the information been available the consumer would have been likely to have made a different transactional decision.

CAA12 information duties

- 2.20 Section 83 of CAA12 places a duty on us to publish, or arrange for the publication of, information and advice, in order to help users of air transport services compare different services.
- 2.21 In order to publish information using our CAA12 powers, we must have regard to the principle that the benefits of doing so should outweigh any adverse effects.
- 2.22 We currently publish information for passengers on the charges made for some services at the airport; this includes airport development fees, plastic bags, drop-off and pick-up fees and fast track security lanes.²⁷ Our information duties, therefore, can be suited to address issues of transparency of aviation related issues for the benefit of consumers.

Wider government policy objectives

- 2.23 Finally, surface access is often an area where government policy can play its part in determining what is available. Notably, some large public transport investments (e.g. rail) may require a degree of government funding. Airport operators are also expected to contribute to projects that make their airport more attractive to consumers. However, we are aware that airport operators may see increased use of public transport as a threat to their own car parking revenues.
- 2.24 In addition, government may take steps to encourage the use of public transport more generally. We are aware that, in some instances, airport operators commit to targets to reduce car usage by passengers in return for planning permission that will be granted for airport expansion projects.²⁸

²⁷ This information is available at <http://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294976176>.

²⁸ For example, Birmingham Airport's surface access strategy, available at

Chapter 3

Initial findings from industry engagement

Introduction

- 3.1 This chapter sets out and assesses the evidence we have collected on key issues related to surface access at UK airports.
- 3.2 Before launching this consultation, we spoke with the operators of the largest UK airports and a number of key stakeholders in the Surface Access industry, as detailed in Figure 3. We appreciate the time and information stakeholders have provided to this review so far. The initial findings below largely reflect these conversations and our own research.

Figure 3: Bilateral engagement with industry

Type of stakeholder	Organisations
Airport operators	Heathrow Gatwick Manchester Airports Group Birmingham Edinburgh Glasgow Luton Bristol

https://birminghamairport.co.uk/media/1699/bhx_surface-access-strategy-2015-final-may-2015.pdf states:

"When planning permission was granted by Solihull MBC in 2009 for the runway extension, a legal agreement was attached to the permission which commits the airport to use all reasonable endeavours to achieve a Public Modal Transport Share (including those who use off-site car parks and then use a bus to access the site) for passengers/ employees of:

- 25% by 2012
- 31% by 2022 or 20.9m passengers per annum whichever occurs later
- 37% by 2030 or 27.2m passengers per annum whichever occurs later" .

Surface access industry	CPT (buses and coaches) easyBus British Parking Association Independent Airport Parking Association Purple Parking Holiday Extras
Consumer groups	Transport Focus London Travel Watch Which?
Others	Office of Rail and Road (ORR) Competition and Markets Authority (CMA) Department for Transport (DfT)

Overarching initial findings

General comments

- 3.3 Most airport operators we spoke to, particularly airport operators not subject to an economic licence from the CAA, highlighted to us that they were operating in a very competitive sector from the perspective of attracting airline routes to their airport. Their view was that non-aeronautical charges and profits (including those levied on passengers and surface access operators) were therefore a key element of their business model. They argued that this allowed them to charge for their services based on a user-pays principle, helps reduce aeronautical charges and thereby maintain a larger choice of routes.
- 3.4 Meanwhile, regulated airport operators – which are also the airport operators the CAA identified as having substantial market power – seem to see the surface access sector somewhat differently. In particular, these airport operators seem more likely to base their charges to surface access operators on the basis of cost recovery. Compared with unregulated airport operators, they may have weaker incentives to increase surface access

revenues as, over time, a single-till form of economic regulation would take those revenues into account to lower revenues airport operators are allowed to make from airlines.

- 3.5 Overall, there seems to be normal commercial engagement and negotiation between surface access operators and airport operators. However, as is often the case in the commercial world, there are areas of tension and dispute. Some representatives of surface access operators consider that airport operators do not always treat them fairly. On the other hand, airport operators told us that often they also have concerns over the standards of independent parking operators in security, safety and service quality provided to passengers.
- 3.6 Competition law is being applied in the surface access sector, as there have been a number of competition cases relating to access to facilities required to provide surface access services. Airport operators seem to be aware of such cases and that they must pro-actively make sure they comply with competition law. Stakeholders have told us that decisions in those cases, in some circumstances, have had a positive deterrent effect on how airport operators treat independent surface access operators.
- 3.7 However, in the course of our review so far, we have seen areas where risks to consumers may arise from market features that could incentivise parties to restrict competition. We found that these risks to consumers are not restricted only to the regulated airports or to large airports. In fact, at the larger airports there is often greater choice of ways to travel to and from the airport, and the size of the operation is more likely to be able to sustain a larger number of competitors offering services to passengers.

Market structure

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

- 3.10 In particular, airport operators' ownership of most of the required facilities to operate parking service and their ability to control the way in which different transport modes access the airports, provides an opportunity to charge most if not all of the passenger segments arriving or departing the airport. This means that even if the surface access sector downstream is competitive, airport operators may be able to introduce and to increase charges generally for accessing the airport.
- 3.11 Airport operators also have a number of tools at their disposal to control surface access at the airports, including legal instruments such as by-laws. They also, in some cases, appear to be pro-active in influencing planning policy, which may have the ability to restrict entry in car-parking markets. That view was put to us by representatives of independent airport parking operators and some distributors of car parking.

Transparency of surface access products from a consumer perspective

- 3.12 It is possible that some passengers, particularly those that travel more infrequently, are not fully aware of changes in services at airports and, as a result, do not fully take into account some of the costs they will face at the airport (when they purchase their flights). Some consumer bodies we spoke with considered that there could be substantial consumer detriment in some cases. We note some areas of concern below that were highlighted to us by Which? and London Travel Watch.
- 3.13 That said, we found that UK-based passengers, when asked through a survey, mostly say they are broadly aware of the options they have in getting to and from the airport. Passenger research conducted by the CAA²⁹ also suggests that around half of the passengers make their surface access decision during or before the air service booking process (i.e. when passengers buy their flight ticket).
- 3.14 Airport operators tend to provide a fair amount of surface access information on their websites and on their onward travel information areas in passenger terminals. However, that information is not always complete and, as a result of commercial arrangements made with some surface access operators, some surface access products may be better advertised to consumers than others.
- 3.15 Some stakeholders representing consumers also told us that the way some surface access premium services are marketed and distributed at airports means that passengers may end up purchasing more expensive

²⁹ See paragraphs 3.68 to 3.78 below.

services without being aware that there are cheaper alternatives for similar services.

- 3.16 Airport operators' websites in general do not refer to competing car park operators. They consider that providing information about such services could also mislead passengers about the nature of the services provided. They also told us that they have some concerns over the standards of some independent parking operators in terms of security, safety and service quality provided to passengers.
- 3.17 However, one example where the airport operator has been more active in communicating the availability of other providers is the Gatwick Approved Operators Scheme, as explained in Figure 4.

Figure 4: The Gatwick Approved Operators Scheme

This scheme is aimed at ensuring passengers understand whether they are purchasing car parking from operators that have demonstrated they meet planning and security requirements, as well as high levels of service.³⁰ The scheme also provides clarity about the car parking options available at Gatwick, regardless of whether they are run by the airport operator or by third-parties.

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

- 3.18 Another area where we have heard that consumers may not be getting sufficiently transparent information relates to the information provided by online distributors of airport parking products. We found that price comparison websites aggregating several products do not necessarily present all the options available to consumers and may present alternatives differently depending on the terms received for listing car parking products (notably, the size of the commission received).
- 3.19 We note that some of these distributors also run or have a financial interest in providers of certain car parking services serving some airports, a fact that passengers are normally unaware of when making their bookings as this is not disclosed.

³⁰ More information is available at <http://www.gatwickairport.com/parking/other-parking-options/operator-scheme/>

- 3.20 We found that the use of the airport name by independent parking operators is one area of contention between stakeholders. Airport operators sometimes consider that passengers may perceive the off-airport parking products as being on-airport. Conversely, independent operators told us that they need to tell customers that their products are for parking near a particular airport to be able to market their products effectively.

Mode by mode characterisation

Short stay, drop-off and pick-up

- 3.21 Drop-off fees have increasingly become a feature of the UK airport sector where private cars are asked to pay £1 to £3 for access to an area near the terminal for a period of around 10 minutes. In general airport operators have not tried to justify these charges on a cost-related basis. We understand that these fees are instead a revenue raising tool contributing to the overall costs of the airport. Some airport operators considered that charging private cars to drop-off is not any different to payments required from other forms of road transport to access the forecourt.
- 3.22 In some cases, it was argued that these charges could also fulfil some other needs. For example, some airport operators justified these charges as a way to manage congestion at the forecourt, particularly following some security restrictions introduced following the terrorist attack at Glasgow airport. Arguably, there could be other measures to alleviate congestion at the forecourt such as stricter enforcement of rules on the amount of time cars can spend at drop-off areas, without necessarily introducing charges to passengers.
- 3.23 Drop-off and pick-up fees may also help fulfil other sustainability objectives in the airport operators' surface access strategies to encourage passengers to use more environmentally friendly modes of accessing airports such as public transport or car-parking (which halves the number of journeys compared with drop-off/pick-up).
- 3.24 As noted earlier, some passengers may not take these charges into account when booking their travel. Others consider these charges to be an inappropriate way for airport operators to be raising revenue from passengers, at a time when they already made a choice of travelling on a particular flight and therefore don't have much choice but to pay the charge. As such, we consider that continuing to provide a free option for drop-off/pick-up in some form, even if it is not equally convenient as the paid option, to be a minimum standard for airport operators to meet.

Long stay and off-airport car parking operators

- 3.25 Independent airport car park operators provide competition to long-stay car parking at the airport, which is likely to bring benefits to consumers in terms of value and choice. However, to do so effectively they require access to the facilities at or near the airport's forecourt (sometimes the airport's short-stay car parks).
- 3.26 The extent to which there is competition from off-airport parking to on-airport parking varies considerably from airport to airport, in part as a result of historical ownership of land around the airport, geographical conditions and planning policies. For example, at Stansted, there seems to be very limited capacity used by off-airport parking operators serving the airport whereas at Edinburgh there seems to be a much wider range. Airport operators have told us, however, that, in general, they run or control over half of the long-stay parking capacity at or near their airports.
- 3.27 Generally, airport operators do not tend to make available their parking capacity to other providers. Independent operators therefore usually have to find alternative facilities outside the airport perimeter with the required planning permission. They also have to pay airport operators to access the forecourt to transfer passengers for their onward journey.
- 3.28 With respect to forecourt access, the way in which airport operators charge independent operators varies from airport to airport and, at times, from contract to contract. In some cases independent operators pay a per vehicle movement fee but in other cases they are required to pay a per passenger charge, or on the basis of the independent parking operators' turnover.
- 3.29 Although it is common practice for airport operators to charge an amount linked to the revenues of retailers (shops) with activities in the terminal, airport operators do not tend to be competing downstream with such retailers. Therefore, it may be less appropriate to be demanding sensitive financial information (such as the information required to be able to charge as a proportion of independent parking operators' turnover) from surface access operators that compete with the airport in downstream markets.
- 3.30 Independent airport parking operators expressed concerns that the airport's ability to charge competitors to access the airport puts them at a competitive disadvantage compared with the airport operator's own car parking offerings. They also considered that at some airports there was a need for competition to be introduced by, for example, requiring airport operators to sell or lease parking spaces in excess of a stipulated market share. In addition, they considered that leasing arrangements should also

not give airport operators control over car parking prices and rent should not be turnover related.

- 3.31 In addition they considered that the bundling of parking services with other unrelated airport products (such as fast-track security) by airport operators makes it more difficult to compete. They consider this to be another example of airport operators using their position to reduce competitors' ability to compete fairly.
- 3.32 Independent operators also told that entry in this sector is quite difficult near some airports as a result of the influence of airports in setting local planning policy. They noted that some local authorities are shareholders of airport operators and therefore have an interest in their financial performance.
- 3.33 Finally, we were also told about concerns over the ability of established operators to enter in exclusive revenue sharing agreements with large online distributors (consolidators) in such terms that make new entry into the airport parking sector harder or encourage concentration (exit / merger by some operators).

Buses and coaches

- 3.34 Representatives of the coach industry consider that coach travel to and from airports is a growing market and that it will have a greater role to play as airport operators try to encourage modal shift from private cars to public transport. According to them coach services compete with other access modes and, where they exist, particularly with rail services. They also considered that coaches provide passengers with a generally cheaper option to rail.
- 3.35 The way airport operators charge operators of bus and coach services varies from airport to airport. Often, there is an annual licence fee and a per movement fee. However, sometimes differentiation is made based on the size of the vehicle. One surface access operator we spoke with considered that a per-movement uniform charge levied at some airports puts them at a competitive disadvantage because they operate a differentiated business model with smaller vehicles. At some airports, the amount paid is partly or totally based on number of passengers carried. Representatives of coach operators considered that airport operators should be more transparent on how they construct their charges.
- 3.36 We note that there has been a recent focus at Heathrow and Gatwick to analyse the size and the factors affecting the cost base of the services used by bus and coach operators. This is being done to inform a consultation process with their users. At some of the other large airports,

the charges paid by bus and coach operators seem to be determined from a perspective that is more negotiated or based on surface access operators' ability and willingness to pay.

- 3.37 It was put to us by representatives of the coach industry that the fact that some airport operators charge an annual licence fee³¹, can be very onerous to operators of charter coaches in particular, because they use the airport only very infrequently. For example, a licence fee of just £100 a year to make 3 or 4 drop-offs over that period makes it unaffordable for these operators to reach an airport.
- 3.38 Meanwhile operators of scheduled services told us that some airport operators tender access rights to bays or to the airport compound – sometimes for the provision of services to particular destinations – and award those rights to the bidders that pay the highest price. According to them, this is done even at airports where the coach station has significant spare capacity.
- 3.39 We have observed one case where a large coach operator provides both coach services to and from the airport and simultaneously manages the day-to-day running of the coach station on behalf of the airport operator. However, we have no reason to believe at present that these management contracts are in any way putting other competitors in a disadvantageous situation.
- 3.40 Finally, some airport operators have told us that they support financially specific bus and coach services to areas of strategic importance of their catchment that would otherwise not be commercially viable.

Taxi and minicabs

- 3.41 Airport operators, from time to time, tender for firms to manage taxi ranks and/or to provide taxi services at the airport. Usually, airport operators tender for a single preferred minicab (pre-booked) operator to operate directly from the forecourt. These tenders specify some quality standards expected from the service providers but we understand they may then tend to be decided based on which firm can provide the best financial terms to airport operators.
- 3.42 Airport operators told us that it can be difficult to have more than one taxi firm operating from the airport forecourt, as it can lead to inefficient operations for taxi drivers (such as the multiple queuing systems) and disorderly selling of services to passengers. Airport operators also noted that other taxi/minicab firms can also operate to and from the airport by

³¹ See for example, <https://birminghamairport.co.uk/about-us/doing-business-with-us/coach-access/>

dropping-off passengers as the general public does and/or by using airports' short-stay car parks for picking up passengers. We consider that those alternatives may not always be good substitutes to a taxi rank arrangement, depending on the type of taxi/minicab service being provided.

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

Car hire

- 3.44 Car-hire firms generally have a presence in the terminal building and require some road facilities at the airport. We noted that, unlike for some other modes, there tends to be a number of brands and providers supplying car hire services at each airport, which we consider to be an important driver of benefits to consumers in terms of choice and value.
- 3.45 According to data from the CAA Passenger Survey (see Figure 1.2 above), car hire accounts for a relatively small proportion of total surface access trips made by passengers. The survey also shows that this form of transport is primarily used by inbound passengers (those that do not originate in the airport's catchment). As a result, these passengers may use the airport more infrequently and generally be less aware of local operating conditions of car-hire firms.
- 3.46 Which? told us that car-hire is an area where they regularly receive complaints from members about the car hire they rent abroad. This may or may not be an indication of how foreign travellers' experience car-hire in the UK. According to Which?, car rental companies can charge passengers for 'extras' that they may not want or need, and it's not always easy to understand what they are buying.³²
- 3.47 We consider that the extent to which car-hire services compete with car-parking at the airport is quite limited, given the nature of the services and the type of users.
- 3.48 We have seen that at many airports car hire desks of on-airport car hire operators tend to be located near to each other, which we consider makes clear to passengers what choices they have. In some cases the onward

³² More information can be found at <http://www.which.co.uk/home-and-garden/travel-and-leisure/guides/car-hire-advice/hiring-a-car-abroad/>

travel information desks give the details of car hire operators operating outside the airport's compound.

- 3.49 We understand that most car-hire is pre-booked online through a multitude of channels, including airlines, travel agents, car-hire firms' websites as well as aggregators' websites.
- 3.50 That said, we have not had the opportunity to engage as much as we would have hoped with the car hire industry. Therefore, we would welcome views from representatives of the car hire industry on how the provision of airport services to facilitate the supply of their services is working at UK airports.

Rail

- 3.51 At the largest UK airports (those with better rail links), rail is an important way that passengers use to get to and from the airport and it is important in providing a competitive constraint to other modes. That is the view we heard from representatives of the bus and coach industry, for example.
- 3.52 However, not all passengers can, or would like to, use the train and similar transport modes for their surface access journeys. That is particularly true for those with a point of origin not well served by rail, for those travelling with lots of luggage, and those with mobility difficulties that hinder their use of public transport.
- 3.53 The government plays a key role in the rail sector which is also regulated by the ORR. In terms of enforcement of competition law, the sector is also overseen by the ORR and, more generally, by the CMA. Some of the issues raised by stakeholders (e.g. investment decisions, quality of rail services, ticketing) are not the direct responsibility of airport operators or are ones where airport operators play a marginal role. We note, in particular, that train operating companies need to behave in line with the franchise conditions set by government. Some airport operators told us that they often try to influence the requirements of the franchise (such as service quality requirements).
- 3.54 Therefore, we did not include the market structure issues of the rail sub-sector within the scope of this review, as this is an area where the CAA's ability to contribute will, necessarily, be quite limited. That said, we have some responsibilities in terms of allowing airport operators, subject to economic regulation (Heathrow and Gatwick), to invest in rail infrastructure projects. This is an area, taking into account our duty to protect passengers' interest, which we normally consider during regulatory reviews, in consultation with government and other stakeholders.

- 3.55 We note, however, that new infrastructure requires large investment. Also, many rail services require government subsidy to be sustainable. It is therefore rare for airport operators decide to fund rail projects without some form of government participation.³³
- 3.56 On the other hand, new rail links or changes to how rail infrastructure is managed also affects airport operators in other ways:
- they can make the airport more attractive to consumers (expand the catchment, better service to passengers);
 - they can "cannibalise" other surface access revenues. For example, some stakeholders told us that some airport operators may not be too cooperative with new rail infrastructure investment because they fear that it will affect their car parking revenues.
- 3.57 The main issue which we have examined, which was raised by stakeholders, was around the transparency of rail options available to consumers to make their journey from or to the airport. London Travel Watch, for example, put to us that the way some premium services are marketed and distributed at airports means that passengers are often pushed to purchase more expensive services without being aware that there are cheaper alternatives for similar services. They also considered that more of the services going to and from London airports should be included in common ticketing systems, and that passengers should be able to use London's Oystercard/contactless payment system to travel on the train.³⁴

Distribution channels

- 3.58 Long-term car parking (whether or not in long-stay car parks) is now predominantly purchased online, as typically passengers can have much better rates from operators if they book in advance compared with turning up on the day without a prior booking.
- 3.59 The airport operators car parking can be distributed through the airport's own website but a large proportion of bookings are also made through third-party channels.
- 3.60 Airport operators told us that online distributors (consolidators) demand a significant proportion of revenues in order to list their parking products on

³³ See, for example, <http://www.mediacentre.gatwickairport.com/press-releases/2015/transformation-of-gatwick-rail-station-secured.aspx>

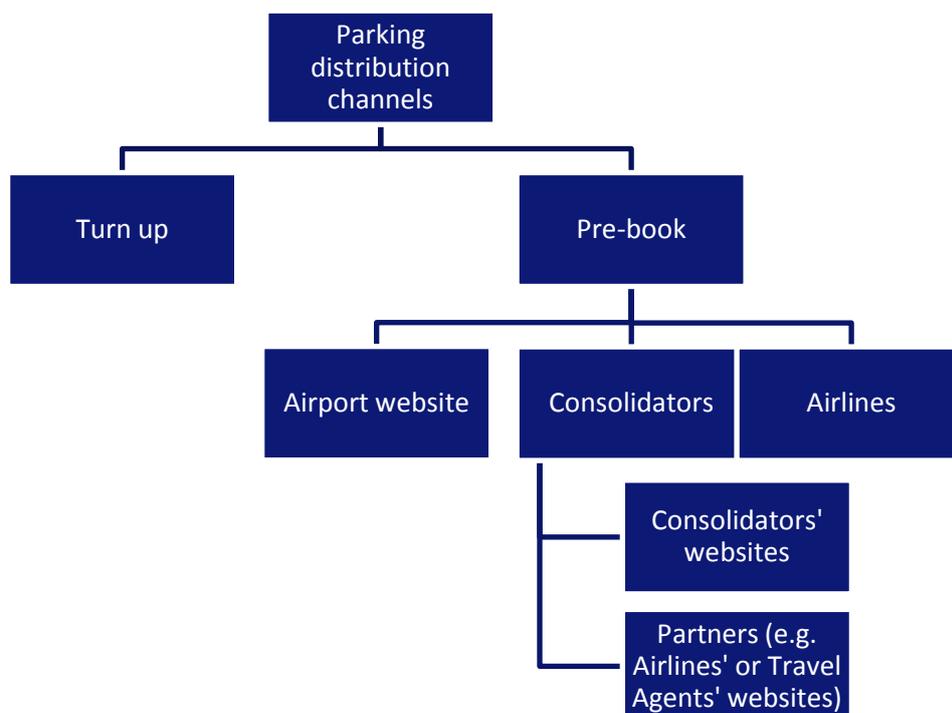
³⁴ More information on this can be found on London Travel Watch's report on airport surface access, available at http://www.londontravelwatch.org.uk/documents/get_lob?id=3894&field=file.

the distributors' or their partners' websites. This suggests that when airport operators sell car parking from their own channels they are able to generate a better profit margin from this part of their business, as they do not need to incur the significant costs of paying those intermediaries.

- 3.61 The largest distributors are seen by many airport operators as major players in the distribution of car parking and a key determinant in placing/sustaining a successful car parking product in the market. Their substantial positions are seen to be a result of extensive deals some of them have with major airlines and travel agents for car-parking cross-selling. Some consolidators may have more relevant presences at particular airports, depending on whether they have off-airport parking operations near the airport or partnership agreements with the airlines established at the airport.
- 3.62 Consolidators, however, told us that most of those revenues gained through commission are used to generate internet traffic from search engines and social media, for example, as well as to pay their partners for sales originating on airlines and travel agents' websites. They have also told us that their business is not highly profitable.
- 3.63 Some airport operators have agreements for the distribution of their airport car parking with a few airlines, even if those airlines also continue to use aggregators to sell airport car parking. We were told that the direct airport operator-airline relationship seems to be less developed than the car-park operator – aggregator – airline relationship, but that the potential for this type of relationship to develop and become more frequent exists.
- 3.64 Online distributors of car parking products told us that they are not allowed to offer discounts from rates set by airport parking providers except to members of closed groups (e.g. Groupon or previous customers of a distributor). They consider that this allows providers of car parking to manage occupancy of car parking capacity (yield-management) efficiently. They have also told us that they are aware of recent investigations by competition authorities on similar issues in other sectors.

- 3.65 Finally rail, bus and coach operators of airport surface access services tend to distribute online through the common channels that are also used by other rail, bus and coach services. Airlines and airport operators sometimes have agreements with some of these operators to distribute their products in return for a commission.

Figure 5: Illustration of distribution channels for airport parking



Passenger research on surface access information needs

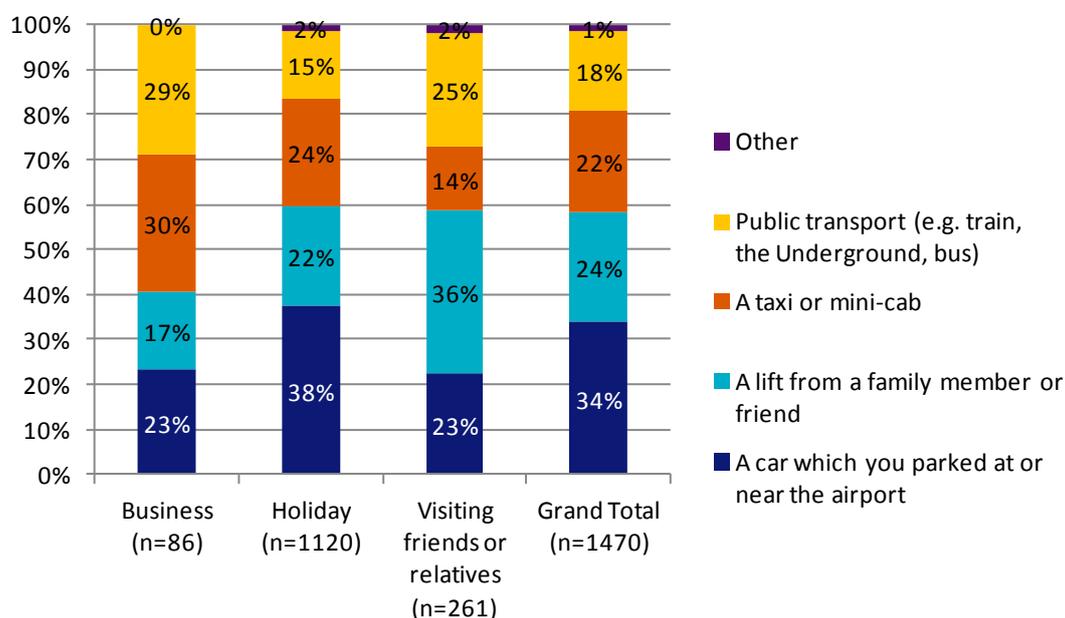
- 3.66 In June 2015, we published a consumer research report commissioned to Collaborate Research (a market research company) to assist in the development of our new strategic plan.³⁵ The research updated the evidence base on how consumers make air travel decisions, what information they use and value, and what if any gaps in provision there may be. This research contained some questions specifically about surface access to UK airports, and the results to those questions are reported below.
- 3.67 Part of this research consisted of a household survey of UK residents who had flown in the past 12 months with a sample size of 1,470 passengers.

³⁵ The report is available at <http://www.caa.co.uk/CAP1303>.

That is different from the total passenger population, which includes for example foreign residents. Respondents were asked a series of questions on their transport to the UK departure airport on their most recent flight.

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

Figure 6: Access mode by journey purpose



3.69 By airport (where there were more 50 survey responses): public transport use was higher for those departing from London airports, particularly Heathrow and Stansted. By contrast, use of private vehicles (self-driven or lifts) was higher in Bristol and Newcastle.

3.70 Demographics: those aged 16-24 are relatively more likely to have received a lift, those aged 25-44 to have used public transport, those aged 44-64 to have driven, and those aged 65+ to have taken a taxi.

When was the transport decision made?

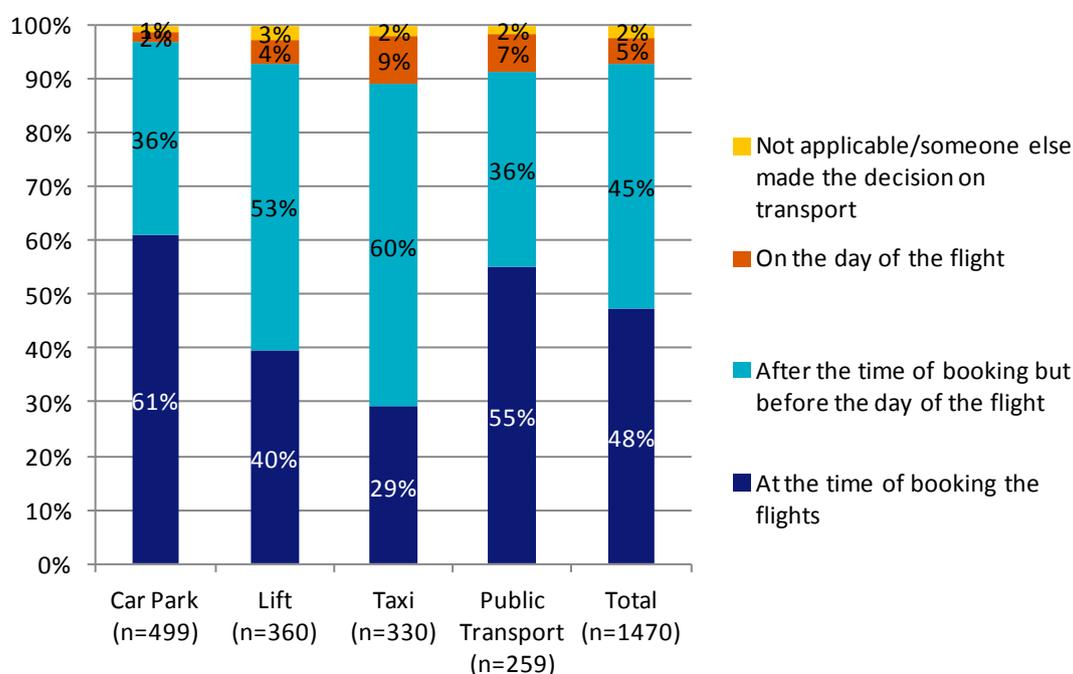
3.71 Recent flyers were also asked when they made their decision to use this particular mode of transport.

3.72 Most made the decision on transport either at the time of booking (48%), or sometime after the booking but before departure (45%). Very few waited

until the day of the flight (5%). The proportions varied by transport mode as evidenced in Figure 7.

- 3.73 Domestic flyers were more likely than average to decide on their transport at the point of booking (56%), medium to long-haul flyers to determine this sometime after this but before the day of travel (50%), and business flyers to have left this decision until the day of flight.
- 3.74 The timing of the decision to use a particular mode of transport differed depending on the mode used. People using public transport or car parks were more likely to have made their decision at the time of booking their flight compared with those using a taxi or asking friends and relatives for a lift.

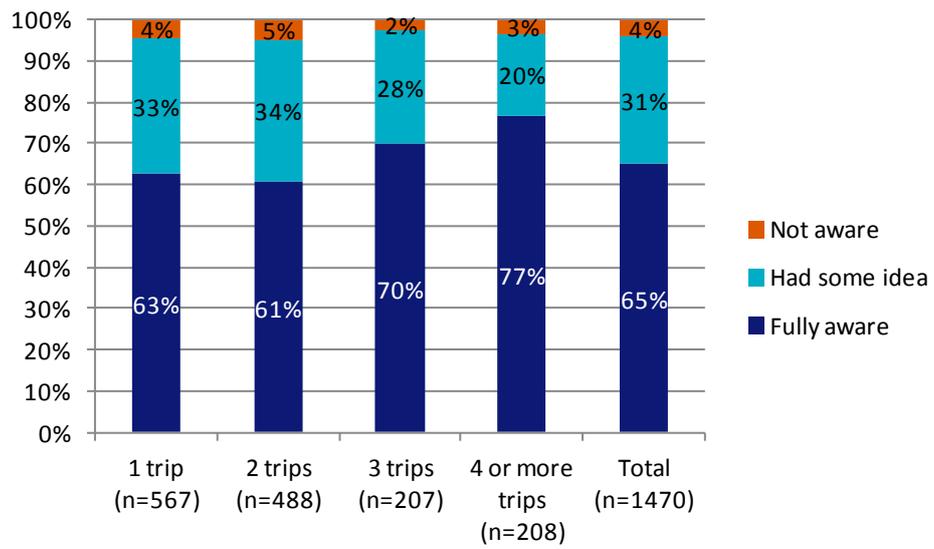
Figure 7: When was the decision made?



Source: collaborate research

Awareness of transport options at the time of booking

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

Figure 8: Awareness of transport options / costs

Source: collaborate research

Chapter 4

Key issues for consultation

4.1 In this chapter, we set out some of the key issues identified from the initial findings of this sector review. In formulating these issues we have concentrated on two main areas, as discussed previously:

- market structure / market access issues, and
- transparency / consumer information issues (including distribution).

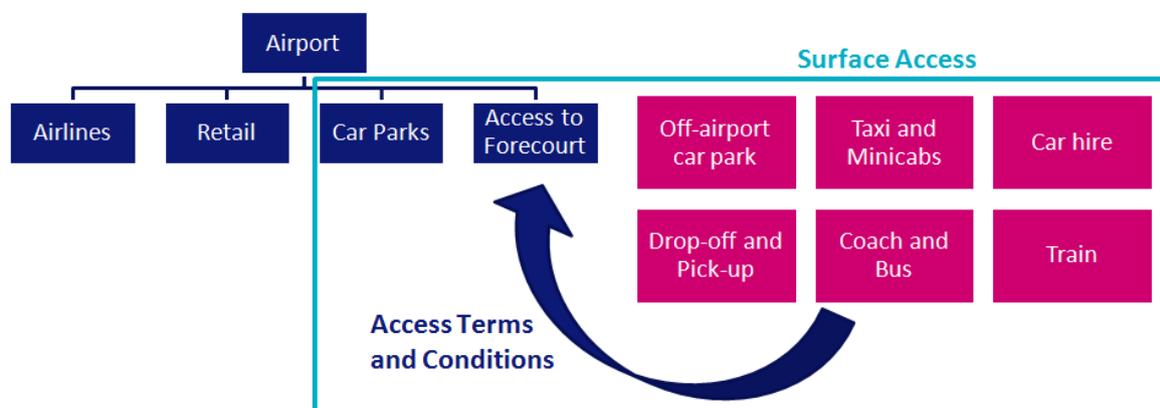
Market structure / market access

Overview

4.2 As illustrated in Figure 9, airport operators' revenues come principally from:

- airport charges levied on airlines; retail services provided to passengers or a commission levied on entities that provide those services to passengers (generally a percentage of revenues);
- car parking revenues - in general, airport operators own (short and long-term) car parks in the vicinity of the airports; and
- airport operators may also charge other users of airport infrastructure. That includes charges levied to road access operators (such as taxi, bus and train operators, as well as off-airport car-park operators) and drivers dropping-off air passengers near the terminal building.

Figure 9: Stylised model of airport operators' revenue sources and surface access options



Assessing market power

- 4.3 Airport operators want their airports to be attractive for passengers and for airlines to be willing to use their facilities. Passengers will choose between airports based on some combination of:
- the flights available at the airport (route network, timings, quality, reliability of airlines);
 - the cost and convenience of getting to the airport; and
 - other airport operator services available.³⁶
- 4.4 Meanwhile, airlines choose airports based on the potential demand for their services available at that airport (taking into account passenger choice) compared with other ways of deploying their aircraft.
- 4.5 It could be argued that passengers will choose airports predominantly based on the flights available and how far they need to travel, and generally take less notice of charges levied by airport operators on access. In this event, airport operators may be able to raise access prices to passengers and surface access operators above competitive levels. This could mean that even though an airport operator may not have a dominant position in relation to aeronautical services provided to airlines, it could be dominant in the surface access facilities element of AOS. We note that in private action cases the courts have tended towards analysis based on a market definition of a separate surface access product.
- 4.6 Under such a market definition, it follows that airport operators generally are present in both the upstream (access to the airport) and downstream (services to get to the airport) levels of the surface access sector. As such, the airport provides third parties access to facilities that are necessary for them to supply surface access services to passengers, whilst at the same time competing with those third parties in the downstream market. This may mean that airport operators have incentives to favour their own services when granting access to facilities needed by their rivals.
- 4.7 Furthermore, even without considering in detail the competitive conditions downstream, it seems clear that, under such a market definition, airport operators would be able to have substantial influence in downstream

³⁶ See for example Figure 11 of a previous consumer research report by the CAA, available at <http://webarchive.nationalarchives.gov.uk/+/http://www.caa.co.uk/docs/5/Passenger%20survey%20results%20-%20FINAL.pdf>

surface access market(s) by controlling the upstream market. One way of exerting such influence would be, for example, to tender access to facilities to one or a set of particular surface access providers, while restricting access to other operators.

- 4.8 Judgments of the courts in private action competition cases also indicate that some airport operators by their nature may be deemed to hold a dominant position upstream by virtue of controlling access to the airport's facilities. As such, an airport operator can be a dominant supplier of an input required, or very important, to successfully operate road transportation services to and from the airport. We note that those cases involved both licensed airport operators³⁷ and unlicensed ones.³⁸ However, in those cases the question of dominance was not tested. Rather, dominance was assumed for the purposes of the expedience of the trial.
- 4.9 We also note that, in the groundhandling sector where similar issues regarding the vertical structure of the market may arise, legislation at European level was required to encourage the development of competition.³⁹
- 4.10 The alternative view, put forward by some airport operators, is that airport operators face strong competitive constraints from rival airports, alternative travel options, and potentially from passengers deciding not to travel after all; and that this also constrains how they organise surface access. On this basis, they may not be able to act independently of consumers by, for example, increasing prices to non-competitive levels, or by managing surface access arrangements such that the cost of getting to the airports is increased. Likewise, it may be that, by raising extra money from passengers, airport operators may be able to extend airport charge discounts to attract airlines. If we then assume an efficient and competitive airline sector, this would result in lower fares and more connectivity being provided to passengers.
- 4.11 If this is the case, it may be that the existence and extent of dominance over surface access facilities should be included in a general assessment of market power of the airport operator.

³⁷ e.g. Purple Parking Limited and Meteor Parking Limited vs. Heathrow Airport Limited, available at <http://www.bailii.org/ew/cases/EWHC/Ch/2011/987.html>

³⁸ e.g. Arriva The Shires Ltd vs. London Luton Airport Operations Ltd <http://www.bailii.org/ew/cases/EWHC/Ch/2014/64.html>

³⁹ See, for example the Commission's groundhandling page at http://ec.europa.eu/transport/modes/air/airports/ground_handling_market_en.htm

- 4.12 We have previously noted, however, in our published guidance on our approach to our concurrent competition powers, CAP 1235 'Guidance on the Application of the CAA's Competition Powers' that:

*"Although there are some parallels between [assessing market power for the purposes of airport economic regulation] and investigating complaints under the competition prohibitions, there are also some important differences between them. For instance, when assessing market power at an airport as a whole, we will usually consider the overall bundle of AOS services and then determine the relevant market in which the airport offers those services. In comparison, when assessing complaints under the competition prohibitions, we need to start by determining a product market relevant to the complaint in question. This may be much narrower than the total range of services offered at an airport e.g. it could relate to groundhandling or forecourt access at an airport or airports."*⁴⁰

Exclusivity

- 4.13 The High Court held that the operator of Luton Airport abused its dominant market position by granting a seven-year exclusive concession to National Express to operate buses between Luton Airport and central London.⁴¹ As already noted, the issue of dominance was not tested in the courts but rather it was assumed that airport operator was dominant in the upstream market.
- 4.14 In our initial findings from this review, we found that other tendering agreements of this sort may exist at other airports for a range of airport operations. In particular, we found that some airport operators tender for contracts for the provision of services where access to some facilities (bus bays, taxi ranks, etc.) is sometimes restricted to one or a limited number of suppliers.
- 4.15 A tendering process can be a good way to select a provider of a service that needs to be provided by only one operator for whatever reason (e.g. natural monopoly, health and safety or security). That said, by granting exclusive rights to one particular firm on a long-term basis, an airport operator may be limiting competitive entry in the market, and thus potentially adversely affecting competition, by leveraging its ability to grant access to facilities at or near the airport terminal.

⁴⁰ Paragraph 2,6, CAP1235 'Guidance on the Application of the CAA's Competition Powers' is available from: <http://www.caa.co.uk/cap1235>

⁴¹ [2014] EWHC 64 (Ch) at 16, <http://www.bailii.org/ew/cases/EWHC/Ch/2014/64.html>

Discrimination

4.16 We note that the High Court found that Heathrow Airport Limited abused its dominant position in the provision of access to forecourts at its terminals by discriminating against its rival Purple Parking.⁴²

4.17 In our initial findings from this review, representatives of some surface access operators told us that airport operators still have the ability to discriminate between different independent operators or between independent operators and their own operations. While there may be objective justifications for treating different providers differently – it may be unfair to treat different operators equally – we consider that, in this sector, airport operators should be vigilant around not applying "dissimilar conditions to equivalent transactions" to surface access operators without objective justification, for example:

- charging different independent operators with similar surface access services differently;
- charging competing independent operators for access to airports' facilities in a way that cannot be related to costs and making it hard for such operators to compete on a level playing field with similar products supplied by airport operators;
- charging structures that do not take into account different usage of facilities by different operators, putting some in a disadvantageous competitive position;
- providing significantly better quality facilities to some operators over others without an objective justification; and
- bundling own or partners' surface access products with other airport services that only airport operators can provide (e.g. fast-track security).

Initial conclusions on market structure

4.18 Our initial conclusions on market structure are therefore as follows.

- Airport operators may have a dominant position in a relevant market defined as the upstream provision of surface access facilities or forecourt access, particularly where there are planning restrictions around the use of land for car parking near the airport.
- In some cases, there is evidence of airport operators arranging access to these facilities with some level of exclusivity for which they may or may not be able to objectively justify.

⁴² [2011] EWHC 987 (Ch) at 109, <http://www.bailii.org/ew/cases/EWHC/Ch/2011/987.html>

- Likewise, we see some evidence of differential treatment of surface access providers and in particular between the airport operators' own services and independent providers.
- It is not always clear how the charges for use of surface access facilities have been derived and whether they are related to costs.
- Airport operators may not always provide sufficient transparency on cost of providing access to surface access operators and consultation on the charges paid by such operators.

Consultation question: **Have we identified the key issues on market structure within the scope of this review?**

Consultation question: **Have you any views and/or evidence on the market position of airport operators in the provision of airport services used to access the airport?**

Transparency / consumer information

Overview

- 4.19 We have received a number of complaints from passengers stating that they were not aware of costs of drop-off, parking or other services. When we looked at passengers' online reviews of airports and airport operators, we found that many that were dissatisfied wrote about these topics (car parking / drop-off charges).
- 4.20 It is possible that some passengers, particularly those that travel more infrequently, are not fully aware of changes in services at airports and, as a result, do not fully take into account some of the costs they will face at the airport (when they purchase their flights).
- 4.21 In Chapter 3 we summarised the results relating to airport access from a study commissioned by us on how consumers make air travel decisions, what information they use and value, and what if any gaps in provision there may be. Overall, this research, which consisted of a household survey of UK residents who had flown in the past 12 months, found that UK-based passengers seem to be broadly aware of the options they have in getting to and from the airport. Around half of the passengers make their surface access decision during or before the air service booking process.
- 4.22 We are, however, unsure about whether there could be still some consumer detriment arising to some categories of passenger demand,

such as to those passengers that use the airport infrequently, such as inbound (foreign) passengers. We are also unsure about the *level* of awareness that passengers have of their options. There may still be scope for substantial consumer detriment to be present as a result of passengers' not being fully aware of their options (the "unknown unknowns") or from "behavioural" (rather than rational) decisions made by passengers.

Consultation question: **Have you any evidence or views on how well informed consumers are of their airport surface access options and on what is most important to passengers in accessing an airport? Is this an area that merits further research?**

Distribution channels / price comparison websites

- 4.23 Price comparison websites or specialised online distributors can be a good way to help consumers compare services and increase transparency leading to greater competition between providers of surface access services and air transport services.
- 4.24 However, they may also provide consumers with incomplete information which, in turn can lead consumers to believe erroneously that they are getting the best available price or product.
- 4.25 We note that some airlines and travel agents sell some – but not all – surface access products to passengers on their websites. Airlines and travel agents can, by doing so, earn commissions from surface access operators. Airlines may also agree to market airport operators' parking products within their overall commercial relationship with the airport operator, including the negotiation of airport operator charges.
- 4.26 The question of price comparison websites is novel and touches a number of different sectors of the economy. For example, the CMA has found that some deals between car insurance providers and price comparison websites may be anti-competitive as they result in insurance companies being unable to make their products available more cheaply elsewhere, and therefore result in consumer detriment.⁴³ The CMA also expressed some concerns about parties not declaring the incentives they have (such as whether they receive a commission) to consumers.
- 4.27 Similarly, an investigation on hotel booking recently closed by the CMA⁴⁴, as well as similar cases throughout Europe, have identified some competition issues in the way prices are set between providers of hotel

⁴³ See <https://www.gov.uk/government/news/cma-finalises-changes-for-car-insurance>

⁴⁴ See <https://www.gov.uk/cma-cases/hotel-online-booking-sector-investigation>

capacity and online distributors. Given the characteristics that these sectors have in common, we consider that the way that airport car parking is distributed can raise similar competition issues and we encourage stakeholders to review their practices in light of those cases. We note that parties in the online hotel booking investigation gave commitments to eliminate and reduce some retail price maintenance restrictions in some circumstances. In addition, the CMA has said that vertical restraints in online markets, where a business imposes pricing or certain other restrictions on another business operating at a different level of the supply chain, remain a serious concern where they result in consumers losing out. It also said that consideration would be given to taking enforcement action in any sector where it suspects a breach of competition law which gives rise to consumer harm.⁴⁵

- 4.28 Online distributors and surface access providers (including airport operators) should therefore make sure they learn the lessons of recent competition investigations in analogous sectors of the economy and review their practices, for example, relating to contractual arrangement involving most favoured nation clauses (price parity across distribution channels).
- 4.29 Finally distributors are often also providers of car parking products in competition with other providers whose services they also distribute. This means that having real time access to each others' inventories and (published) prices risks coordination rather than competition between providers.

Consultation question: **Have we identified the key issues related to the distribution of airport car parking? Do you have any views on what, if anything, would improve outcomes to consumers?**

Initial conclusions on transparency

- 4.30 Our initial conclusions on transparency and information are as follows:
- There are some areas where the airport and surface access industry should consider providing further information in a transparent and neutral way. However, in general, UK-based passengers seem to be broadly aware of the information they require about the options they have in order to access UK airports.

⁴⁵ See <https://www.gov.uk/government/news/cma-closes-hotel-online-booking-investigation>

- Charges for drop-off and pick-up by private cars at UK airports have become more common. Airport operators justify these charges with a variety of commercial and operational reasons. That said, alongside these changeable and convenient drop-off and pick-up options, airport operators tend to provide a less convenient free drop-off and pick-up alternative, often involving a short bus transfer journey. We consider that airport operators should continue to provide a free option for passengers in some form and that its availability should be clearly highlighted to consumers. We, however, welcome evidence from stakeholders on whether the free options currently provided by airport operators are of sufficient quality and/or convenience.

Consultation question: **Have you any views and/or evidence on how the information set that passengers have when choosing between airport surface access products could be improved for consumers?**

Chapter 5

Next steps and how to respond

- 5.1 The CAA is already conducting one investigation into a possible infringement of competition law relating to surface access.⁴⁶ We would highlight the need for all providers and distributors of surface access products, including airport operators, to ensure their contracts do not infringe competition law and should avoid contract clauses providing for exclusivity, Most Favoured Nation and Retail Price Maintenance (Price Parity) clauses.⁴⁷ They should also consider carefully any arrangements for the sharing of, for example, price and inventory information between providers, as information exchange can be an anti-competitive practice in certain circumstances.
- 5.2 In addition to this, we consider that airport operators, given their upstream position as providers of surface access facilities, need to demonstrate more clearly that they have considered their legal responsibilities under competition and consumer law. We are therefore requesting airport operators, *as part of their submission to this consultation*, to develop and communicate good practice principles for access to their surface access facilities which reflects previous jurisprudence in the sector. These principles may not be the same at all airports since each has a different set of conditions in which it operates. However, we expect airport operators to deal with the following questions.
- a) Which surface access facilities from the airport's portfolio of assets are made available and their attitude to the development of facilities outside the airport perimeter.
 - b) How they make available facilities that can be used by surface access operators and an explanation of any restrictions to the range of operators or the type of services that can be operated at the airport.

⁴⁶ See case opening notice, available at <http://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Notice-of-investigation-under-the-Competition-Act-1998/>

⁴⁷ Most Favoured Nation clauses are those provisions in which a seller agrees to give the buyer the best terms it makes available to any other buyer; Retail Price Maintenance clauses are those in which the provider of a product and its distributors (that earn a commission for doing so) agree that the distributors will sell the provider's product at certain prices.

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

5.3 We also welcome general comments from all stakeholders on the review so far. Respondents are welcome to give their views on any aspect, but the particular questions on which we would welcome views are as follows:

- h) Have we identified the key issues on market structure within the scope of this review?
- i) Have you any views and/or evidence on the market position of airport operators in the provision of airport services used to access the airport?
- j) Have you any evidence or views on how well informed consumers are of their airport surface access options and on what is most important to passengers in accessing an airport? Is this an area that merits further research?

- k) Have we identified the key issues related to the distribution of airport car parking? Do you have any views on what, if anything, would improve outcomes to consumers?
- l) Have you any views and/or evidence on how the information set that passengers have when choosing between airport surface access products could be improved for consumers?
- m) Have you any views on our proposed way forward and, in particular, the development of good practice principles by airport operators?

5.4 Once we have seen airport operators' and other stakeholders' responses to this consultation based on the above questions we will be able to assess whether we need to make use, for example, of our information powers or of our formal evidence gathering powers in the context of a market study under the Enterprise Act 2002.

5.5 This consultation runs until 22 April 2016 during which time we would welcome submissions from all industry participants. These may be either in written form or we are happy to host meetings to discuss issues in detail with industry or consumer representatives. Please provide any written submissions to economicregulation@caa.co.uk by 22 April 2016.

5.6 During this consultation we plan to organise a workshop to meet with stakeholders to discuss the issues identified in this document. Following the consultation, we intend to examine the submissions received alongside any information resulting from our own analysis.

5.7 We propose to publish a final report with our findings and summary of responses to this consultation as well as confirming our views about ways forward on these issues. Figure 5.1 contains an indicative timetable for the remainder of this sector review.

5.8 Depending on the responses to this consultation, this review could have a number of outcomes, including finding that no further action is necessary. Other outcomes may be industry-led or may be actioned by us. As noted in Chapter 2, if required, we have a range of tools available to us if we consider that further action is required.

5.9 If you would like to discuss any aspect of the review please can you contact Pedro Lino Pinto at pedro.pinto@caa.co.uk.

Figure 10: Indicative timetable for sector review

Event	Date
Consultation published	18 January 2016
Workshop	5 February 2016
Consultation closes	22 April 2016
Summary of responses and next steps published	August 2016

Appendix A

Glossary

Glossary	
ACCC	Australian Competition and Consumer Commission
AOS	Airport Operation Services, as defined in CAA12
ASR	Air Services Regulation
Airport bye-laws	Bye-laws are laws of local or limited application made by airport operators, in their exercise public or semi-public functions, using powers granted by Parliament.
CA98	Competition Act 1998
CAA12	Civil Aviation Act 2012
CMA	Competition and Markets Authority
CPRs	Consumer Protection from Unfair Trading Regulations 2008
DfT	Department for Transport
Dominant position	A dominant position is a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.
Drop-off or pick-up	The option of private individuals to drive passengers up to or from the airport forecourt. Also known as “kiss and fly”.
EA02	Enterprise Act 2002
ERRA13	Enterprise and Regulatory Reform Act 2013
IAPA	Independent Airport Parking Association
Independent car parking	Car parking that is operated independently from airport operators
Most Favoured Nation Clauses	Clauses in which a seller agrees to give the buyer the best terms it makes available to any other buyer
Off-airport car	Car parks that provide services to passengers that use airports but that require an additional form of transport to reach the terminal

parks	building
Online distributors or consolidators of car parking	Non-airport third-party channels to distribute car parking, usually online
ORR	Office for Rail and Road
Q6 review	The last periodic price control review of Heathrow and Gatwick finalised in 2014
Retail Price Maintenance (Price Parity) clauses	Clauses in which the provider of a product and its distributors (that earn a commission for doing so) agree that the distributors will sell the provider's product at certain prices.
Road access	Road access includes all products and services provided to passengers to get to and from the airports by road such as parking, drop-off, taxis, buses, etc, but not by rail modes.
Single-till	A regulatory framework for airport in which a projection of commercial revenues, including charges from surface access, are used to reduce the maximum level of aeronautical charges paid by airlines.
Surface access	The journeys passengers make in order to get to and from the airports to their ultimate point of origin or destination on the ground.