



Civil Aviation Authority
Prioritisation Principles
Consultation

Draft Prioritisation Principles

Introduction

The CAA's aim is for an aviation market that works well for users of UK airports and consumers purchasing air travel services in the UK. We consider that competition is the best way to deliver outcomes for consumers by driving price, service quality and choice. However, we also recognise that even in competitive markets, there will sometimes be the need for regulatory intervention to protect consumers' interests and to make markets work well for them. The aviation market is relatively complex, with significant product differentiation, considerable choice and a range of suppliers involved in delivering the service to consumers.

The Air Transport Users Council (AUC) is the UK's consumer watchdog for the aviation industry. It provides advice and assistance to consumers and records data about the complaints it receives. The CAA is able to identify consumer issues from the data provided by the AUC and can also seek information from other organisations such as Consumer Direct. Complaints can be an important indication of issues that are impacting on consumers, or may impact on them in the future. Other sources of information include other regulators, industry, trade organisations or government bodies. We can also carry out informal studies and market research to consider possible issues in the aviation market.



The CAA has a statutory function to further the reasonable interests of users of air transport services. We have also developed the following strategic consumer objective, to set out the outcomes we want to achieve:

“To improve choice and value for aviation consumers now and in the future by promoting competitive markets, contributing to consumers’ ability to make informed decisions and protecting them where appropriate”.

We have a range of tools available to help us achieve this objective, from influencing the way business behaves by providing guidance on what the law requires, working informally with industry to change their behaviour, through to taking formal enforcement action.

To ensure that the CAA makes the best use of its resources to deliver outcomes for consumers, we need to prioritise the projects we carry out and the resulting actions we take. We have developed this set of prioritisation principles to demonstrate how we will make decisions on which consumer issues we should consider. In developing the principles, we have used the previous experience of the OFT and other regulators. Our aim is to ensure that the CAA acts proportionately and focuses on the more important issues. Using our resources to deter bad behaviour and encourage businesses to compete and trade fairly will deliver consumer benefits without imposing a disproportionate burden on industry. The principles also provide

guidance on the evidence required by the CAA to consider pursuing a consumer issue.

These principles apply to how the CAA will assess consumer issues in aviation. There may be some issues where the CAA does not have formal powers and in these cases it may consider working informally with industry to resolve the issue. The CAA’s formal competition and consumer powers in the aviation sector fall in the following broad categories:

- European legislation providing rights to air passengers;
- Consumer protection legislation covered by Part 8 of the Enterprise Act;
- Competition powers in relation to airport and air transport services

There are also some areas where we have legal obligations to take action and these include:

- considering applications from airports regarding the number of ground handlers that can operate at that airport;
- hearing appeals on airport decisions on the selection of ground handlers and on conditions of access to airport installations;
- if we apply our Competition Act powers in relation to the supply of air traffic services we will also apply Articles 101 and 102 of the EC Treaty where there is an effect on trade between member states;
- investigating a potential infringement of listed legislation referred to us by another Member State under Regulation (EC) No 2006/2004 on Consumer Protection Co-operation (CPC Regulation).

How we apply the principles

The CAA will consider how to prioritise consumer issues against four key principles:

Impact | Importance | Risks | Resources

This document sets out the broad framework that we will use to assess consumer issues and the possible actions we may take. The principles are not exhaustive or specific and the examples we have provided are to illustrate the principles. It will not be necessary to meet all the requirements, and judgments will be made on a case-by-case basis. In some cases we may also consider other relevant factors and we will make it clear when this has been necessary and how it has affected the outcomes.

The principles will prompt us to assess the resources required to take on new projects and those required to finalise existing work programmes. There may also be a need to review projects at key decision points to consider whether to continue or whether resources could be used more effectively on other projects. When we publish the results of taking a case we will explain the key factors in our decision to take action and explain any additional factors that we took into account.

The CAA will annually assess the outcomes of its prioritisation decisions and consider the lessons learned. This will include considering possible changes to our internal processes, reviewing the timescales for taking cases and the available resources. We will also consider amending the principles in the light of experience.



CAA Prioritisation Principles

The CAA will use the following principles to prioritise the consumer issues that it will investigate.

Impact

Is the CAA's intervention likely to result in a direct or indirect impact on consumer welfare in the aviation market?

Is there likely to be an impact on economic efficiency?

Direct Impact

Direct improvements for consumers include better value in terms of price, service quality, the range of service available or being treated fairly. It can also contribute to promoting consumer ability to engage with all aspects of the aviation market.

When assessing the impact we will consider the harm, or potential harm to consumers or competition resulting from the identified issue. This may include practices that impact on consumer behaviour and reduce their ability to drive competition or those that exploit consumers' behavioural biases.

The aviation market is international and our interventions will not therefore be limited to those that solely benefit UK nationals but may include action which has an impact on users of UK airports and consumers of aviation services sold in the UK. The following paragraphs provide

some examples of the issues we may consider.

We will not only consider consumer-facing aspects of the market. Many aspects of air travel services that are provided to consumers are done so through important business-to-business relationships between airports, air traffic service providers and airlines. The direct impact may therefore apply firstly to businesses and in some cases it will be reasonable to assume that benefits will also be passed on to consumers. For example improvements in airport services that are provided to airlines should also have a direct positive impact on consumers.

We may also prioritise cases where there would be a benefit to disadvantaged groups of consumers. The CAA would consider whether it had a relevant statutory duty, for example, where it is responsible for enforcing legislation providing equal access to air travel for disabled people and those with reduced mobility. In cases where the CAA does not have a statutory duty it will only take action to benefit a specific group of consumers where the action supports competition and also benefits consumers as a whole. Where there are particular issues raised by aviation markets that only affect the distribution of benefits between consumers the CAA would normally pass these to Government.

In prioritising our work we will consider current and potential issues and we will not

necessarily wait for any harm to occur before taking action. When considering issues, we will ensure that due weight is placed on developing competition in specific parts of the aviation market and whether this may assist in resolving the issue to the benefit of consumers in the longer term.

Indirect Impact

When considering indirect improvements to consumer welfare we will consider the result of changes in behaviour by consumers and the aviation industry that could be prompted by the CAA's action. This includes improved consumer awareness allowing consumers to make more informed choices and the impact of this on increased competition and compliance with consumer law. It also covers the deterrent effect of CAA action that can encourage other businesses to change their behaviour.

Effect on economic efficiency

We may consider whether our intervention could be expected to improve efficiency of the various parties in the aviation market and as a result deliver consumer benefits. Actions that increase competition could lead to improved consumer choice and drive innovation. Enforcement of consumer law can also enhance competition by promoting a level playing field for businesses.

Competition has already had a significant impact in the air travel market delivering reduced costs and innovation in the way flights are sold. Increased competition amongst UK airports, suppliers of air traffic services and airlines could result in yet further benefits

Importance

Does the project assist the CAA in meeting its consumer and competition objectives?

Is the CAA best placed to act?

How serious is the infringement?

Consumer and Competition Objectives

We will publish our consumer and competition objectives and themes for the year in the CAA's annual business plan. The CAA will pay particular attention to issues that fall within these published objectives. We will also have regard to the need to show leadership and establish credibility in dealing with competition and consumer issues through building up experience in using the full range of enforcement tools available.

When considering possible actions, the CAA will also take account of its objective to use the most appropriate tools to resolve consumer issues. Where possible it will consider informal

interventions such as:

- publishing guidance for industry;
- working informally with businesses to seek changes in behaviour, for example, through compliance or other in house training programmes;
- informally studying specific aspects of the market;
- promoting competition;
- educating consumers on their rights.

Consideration of who is best placed to act

There may be options other than the CAA taking action itself. Consumers are able to take their own private actions in the courts and other organisations or self-regulatory bodies such as local Trading Standards Services or the ASA may also be able to investigate a case. Where there is a cross-border element to a case, for example where the infringement occurred in another Member State, we will consider asking an overseas enforcement body to investigate a case using the CPC Regulation.

In some cases although an issue may have an aviation focus it could also have a significant impact on other industries. Where the CAA identifies issues that could have a much wider impact than the aviation market and where action could set a precedent, we will work closely with the OFT to ensure that such cases are pursued by

the authority best placed to resolve them.

Severity

When assessing the seriousness of an infringement we will consider the current or expected levels of consumer detriment, whether the infringement is deliberate or has been repeated, if it is on-going and whether it is a widespread problem. Where the CAA, or others, have provided industry guidance or have worked with the business informally to promote compliance, we will place more weight on the continued failure of the business to comply.

Risks

How likely is a successful outcome?

The CAA will consider whether there is evidence of a consumer issue, the possible interventions available and the likelihood of achieving the desired outcome. Other risks that will be considered include the possible costs associated with taking action, the risks of achieving an unhelpful precedent as well as the possible consequences of failing to make an intervention. The CAA will not focus solely on cases where it considers a successful outcome is likely. There may be instances when the adverse impact on consumers is so great that even where the likelihood of success appears low it will be

important to take action to seek to address the problem through clarifying the law.

Resources

Are the resource requirements proportionate?

The amount of resource required is likely to differ depending on the issue and the type of intervention. When assessing resources, we will consider:

- the possible informal and formal tools that we could use to resolve the issue and the relative resource requirements for each;
 - the possibility of tackling a small issue quickly to ensure it does not become more widespread;
 - the expected time that resources will be required on the project;
 - the resources required for the project compared to the benefits of taking action;
- the possible impact of taking resources away from other projects.

Concurrent Competition and Consumer Powers

The principles set out in this document cover the CAA's general approach to considering the consumer issues that it should prioritise. Previous criteria published by the CAA setting out how it would handle complaints made under Section 41 of the Airports Act remains in place in



respect of the criteria that will apply when it has been decided to proceed with an investigation.

The CAA has concurrent powers with the OFT and other Part 8 enforcers, to enforce consumer protection legislation under Part 8 of the Enterprise Act 2002. It also has concurrent powers under the Competition Act 1998 and the Enterprise Act 2002 in respect of the supply of air traffic services. When the CAA has made a decision to pursue a case it will follow the guidance published by the OFT on the required processes. It will also consult with the OFT prior to seeking an Enforcement Order under Part 8 of the Enterprise Act.

OFT Guidance on Part 8 of the Enterprise act

http://www.of.gov.uk/shared_of/business_leaflets/enterprise_act/oft512.pdf

OFT Guidance on the Competition Act

<http://www.of.gov.uk/about-the-of/legal-powers/legal/competition-act-1998/>

Market Investigation References

The CAA has the ability to make a market investigation reference to the Competition Commission in relation to the supply of air traffic services. If the CAA decides to make a market reference it will follow the OFTs published guidance about making such references.

http://www.of.gov.uk/shared_of/business_leaf

lets/enterprise_act/oft511.pdf

Consultation Questions

We would welcome any general comments that you have on the draft principles as well as your views on the following questions:

- **Do you agree that the principles provide sufficient clarity about the framework the CAA will use to prioritise the cases it takes forward? How might clarity be improved?**
- **Do the principles set out cover the main issues the CAA should consider, or do you have any suggestions for other areas that should be included?**

Please send your responses to Barbara Perata-Smith at regulatorypolicy@caa.co.uk

