

DECISION ON THE REVIEW OF THE CAA'S STATEMENT OF POLICIES IN RESPECT OF ALLOCATION OF SCARCE CAPACITY RIGHTS

This document is likely to be of most interest to airlines operating scheduled routes between the UK and points outside the European Common Aviation Area, or representatives of those airlines.

Background

1. Where more than one airline wishes to operate services on a route where capacity is restricted by the terms of a bilateral agreement between the UK and another country, the CAA has the task of deciding how to allocate rights between the competing airlines. During consultations on the last Statement of Policies on Route and Air Transport Licensing, it was suggested by some respondents that the CAA should produce its own competition guidelines for use in such scarce capacity cases, rather than rely on the OFT's general competition guidelines. At the end of the consultation, the CAA committed to give careful consideration to this proposal.

2. Having considered this further, the CAA reached the conclusion that it should adopt the OFT's general guidelines rather than publish any aviation-specific guidelines of its own. However, given the recent changes to UK competition law which came into force in June 2003, the CAA proposed to amend its Statement of Policies on Route and Air Transport Licensing in order to ensure consistency with the Enterprise Act. The rationale for adopting the OFT guidelines, and the reasons behind the proposed change of wording in the Statement of Policies are set out in detail [here](#).

3. The proposed change to the Statement of Policies was subject to formal consultation under Section 69(3) of the Civil Aviation Act 1982 and on 18 August 2003 the CAA published its [proposal for consultation](#). It invited responses by 30 September 2003.

Responses to the Consultation

4. Responses were received from bmi, British Airways, Lane and Partners, States of Guernsey Transport Board, The Office of the Deputy Governor of Gibraltar and Virgin Atlantic. Those responses that are not confidential are published on the CAA website [here](#). There were no objections to the proposal, and indeed some positive support was received.

Decision

5. With effect from 29 December 2003 the CAA has reworded the sentences that refer to dominance in paragraph 5 of the current Statement of Policies on Route and Air Transport Licensing as proposed in its consultation of 18 August 2003. The revised Statement of Policies may be viewed [here](#).

Proposed changes to DfT procedures

6. The Department for Transport has recently consulted on changes to existing procedures for the allocation of scarce bilateral capacity following the European Court of Justice ruling of November 2002 in the so-called "Open Skies" cases. The consultation paper considered the implications of the ECJ ruling for the procedures and proposed a number of changes, notably amending the Civil Aviation Act and the CAA Regulations 1991 to allow all eligible Community carriers equal opportunity to compete for frequencies. The consultation period closed at the end of November and the Department is currently considering responses. The CAA's Statement of Policies would of course change in due course to reflect any amendments.