Dear Dan

Thank you for your email. The Council responded to the CAA consulation on the allocation of scarce bilateral capacity rights on 8 November and in that response said "in respect of the third bullet point on page 2 of your letter the Council has some concerns about the proposal that the CAA should be free to consider commercially confidential information from an airline that is not made available to the other parties at a hearing, albeit whilst placing less weight on such restricted information".

The Council's concerns relate to the ordinary requirements of fairness in the context of an adversarial hearing where in principle each party has a right to know and comment upon all the evidence adduced. There could be a particular unfairness in non-disclosure where one party seeks to rely on important confidential information in order to preserve an existing advantage over other parties.

These comments relate to the disclosure of evidence generally and the Council considers that in the context of scarce bilateral capacity hearings the question of non-disclosure may require special expertise. You are probably already aware that the Competition Commission, and the Competition Appeal Tribunal, have experience dealing with commercially sensitive information.

Sorry we cannot be more help.

Best regards

Simon Catherall Legal Assistant Council on Tribunals 81 Chancery Lane London 020 7855 5210

18 November 2005

Simon

Thank you for your response to the consultation. Could you expand on the first bullet point in your response on the consideration of commercially confidential data - we note your concerns, but it seems difficult to see another way around the problem of confidential information, other than to consider it privately, albeit whilst putting less weight on this part of the evidence. Do you have any suggestions in terms of best practice in this regard, or could you point us to circumstances where it is done differently?

Grateful for your thoughts.

Dan

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