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Dear Pedro,

R.e: Draft guidance on the application of the Market Power Test under the Civil Aviation Act 2012 Consultation

VAA welcomes this opportunity to respond to the consultation on the draft guidance on the application of the Market Power Test.

Process

We welcome a clear distinction between stages when you will be gathering information and when you will be consulting on your assessment. This will be helpful in determining how we should resource our response to particular stages of the assessment process.

VAA recognises that the guidance under Test A goes into less detail in order to be able to consider all types of evidence submitted to the CAA by stakeholders. However, we would want to ensure that the quality of the evidence submitted to the CAA remains robust, and that it is helpful to have some grounds on what evidence or information the CAA would find most useful at this stage. VAA has a plethora of evidence we are able to marshal on slot access, substitutability and feeder traffic to name a few key areas that we would be happy to share where relevant.

It is important to note for Test B that Competition Law and in particular the remedies sometimes offered under Competition Law can be subject to manipulation. VAA has had recent experience on the subjective nature of remedies under this law, and therefore it is worth bearing this in mind in the assessment process in relation to this test.

Under Test C, where comparisons are being made in the assessment process, we would question the form and definition of the counterfactual the use of a "generic licence". There is some indication of what this may include, however, greater detail on what a generic licence would look like at the particular airport in question would be appreciated at the time of the assessment.

In determining when to launch the process for MPDs, we would welcome some greater clarity on how a material change of circumstances is defined.

Timetable

Whilst we welcome the CAA's ambition to complete future MPDs within 18 months, there is a need to ensure that the process remains robust, and that flexibility is allowed if a longer period is deemed necessary.

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Please do get in touch if you would like to discuss any of the above in greater detail.

Kind regards,
David Joseph
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