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18 September 2018

Open letter to airport operators and their relevant business partners following CMA's airport car parking investigation.

CMA's airport car parking investigation

1. The Competition and Markets Authority (CMA) has recently announced its decision to issue a Statement of Objections in a competition case relating to car parking at airports.¹ The CMA provisionally found that the parties in this case (Heathrow airport² and Arora Group³) infringed competition law⁴ by participating in a signed, written agreement under which Arora agreed to a tenant's covenant which precluded it from charging customers, that were not guests at the hotel but wished to use the T5 Sofitel hotel car park, rates lower than those charged at Heathrow airport's car parks.
2. Heathrow airport agreed to settle the case – i.e. it accepted that it had infringed competition law and to pay a £1.6m penalty. The CMA did not propose to impose a financial penalty on the Arora Group. This is because the Arora Group first came forward with relevant information that led to the opening of this investigation and, as such, has been granted immunity from

¹ This announcement is available at <https://www.gov.uk/cma-cases/conduct-in-the-transport-sector-facilities-at-airports>. The case page is available at <https://www.gov.uk/cma-cases/conduct-in-the-transport-sector-facilities-at-airports>.

² Heathrow Airport Limited ('HAL') and its parent Heathrow Airport Holdings Limited

³ Heathrow T5 Hotel Limited ('HTHL'), and its parent Arora Holdings Limited ('AHL') (a holding company within the Arora group)

⁴ More specifically, the prohibition in section 2 of the Competition Act 1998 (the Chapter I prohibition).

penalties, in so far as it continues to fulfil the conditions of its leniency agreement with the CMA and the conditions set out in the CMA's leniency policy.⁵

3. The CMA has sent warning letters to other airports and hotel operators warning against similar anti-competitive agreements.
4. This investigation is another reminder to the airport sector and their counterparties of the need to comply with competition law. It highlights that it is not acceptable for agreements (including land agreements and leasing arrangements) to contain anti-competitive pricing restrictions or other anti-competitive restrictions.
5. Even though airport operators may need to oversee and manage certain activities by third-parties at airports for safety, security and other important operational reasons, this decision highlights that airport operators must be careful not to impose restrictions that might undermine competition without any objective justification. Minimum pricing restrictions, specifically, are very unlikely to be a justifiable means that airport operators can resort to, as part of ensuring that airport operations are run efficiently.
6. Following the CMA's announcement, the CAA has written this open letter to draw industry's attention to the implications of this case.

CAA's concurrent competition functions

7. The CAA is a concurrent competition authority in relation to Airport Operation and Air Traffic Services. This means that both the CAA and the CMA can investigate suspected anticompetitive behaviour in these sectors. In this instance, the CAA and the CMA agreed that the CMA would be best placed to lead on the investigation with the CAA's assistance.⁶ The CAA assisted the CMA with the investigation, including by seconding a staff member to the CMA and advising CMA's case team at key stages of the process. This outcome is a good example of competition authorities working together to

⁵ To continue to benefit from leniency, Arora is expected to continue to cooperate with the conditions of its leniency agreement with the CMA and the CMA leniency policy.

⁶ Together with the other sector regulators and the CMA, we are a member of the UK Competition Network (UKCN). The UKCN works to ensure consistency of application of competition law in the regulated sectors to support and enable competition.

crack down on anti-competitive agreements that risk disadvantaging consumers.

8. This case follows a previous competition investigation⁷ undertaken by the CAA and the CAA's sector review⁸ relating to airport surface access services. At the conclusion of these, in December 2016, the CAA issued an advisory letter⁹ to airport operators and wider industry participants reminding them of their obligations under competition and consumer law. The messages in that letter remain relevant and this recent development is a good opportunity for industry to reflect on them and to take necessary steps to ensure that their commercial arrangements and practices are compliant.
9. We are committed to continuing to play our part, in close collaboration with the CMA and other sectoral regulators, to enforce competition law for the benefit of consumers.

Reporting competition concerns

10. Anyone can report anti-competitive concerns in the airport and air traffic sectors to us and/or the CMA. There is a range of guidance on the CAA's competition powers' page¹⁰ and the CMA's website¹¹ to help businesses.
11. A business which has participated in a cartel may receive total or partial immunity from fines if it comes forward with information about the cartel, provided that certain conditions for leniency are met. It may also secure limited liability in any subsequent competition damages litigation claims. All businesses wishing to apply for, or enquire about, leniency should first approach the CMA by calling their leniency number to secure their place in the leniency queue. The CMA's leniency number is 020 3738 6833.¹²

⁷ Available at <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/East-Midlands-airport-car-parking-competition-case/>.

⁸ Available at <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Review-of-market-conditions-for-surface-access-to-airports/>.

⁹ Available at <https://www.caa.co.uk/cap1473b>.

¹⁰ Available at <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Competition-policy/Competition-powers/>.

¹¹ Available at <https://www.gov.uk/government/organisations/competition-and-markets-authority>.

¹² More information on the arrangements for the handling of leniency applications in the regulated sectors is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656905/information-note-on-arrangements-for-handling-of-leniency-applications.pdf.

Concluding remarks

12. Most businesses and trade associations want to comply with the law. Not only because it is the right thing to do, but also because it is in their commercial interests to do so and in the best interests of their customers.
13. We encourage you to ensure that you have an effective compliance programme in place to ensure you are actively complying with competition law.
14. We will also be available to meet relevant stakeholders to help them improve their competition compliance activities, and to better explain our competition functions and the importance of competition law compliance to their businesses.

Paul Smith

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