Consumers and Markets Group

CAP 3230: CAA's response to "Refining our competition regime" – a consultation from the Department for Business & Trade

25 March 2026

Summary

The Civil Aviation Authority ("CAA") is the UK's independent specialist aviation regulator, with a mission to protect those impacted by aviation and enable aerospace.

As a concurrent competition regulator, this response focuses on the questions most relevant to our duties and functions. In particular, we set out below our views on the questions in Chapter 2 (Markets Work and Market Remedies) and on the question relating to stronger investigative powers for algorithms contained in the Department for Business and Trade ("DBT")'s consultation "Refining our competition regime".

In summary:

- We are responding specifically on the reforms relevant to the CAA as a concurrent competition regulator and broadly support the proposed reforms in these areas. While their practical implementation will be important, we fully expect that suitable legislative arrangements, guidance and memoranda of understanding ("MOUs") will enable the UK concurrent competition regime to continue to be effective.
- We also consider that the CAA's concurrent competition jurisdiction is unnecessarily narrow and that this represents an anomaly compared to the jurisdictions of peer regulators. Addressing this would complement and enhance the proposed reforms as well as the wider regime.

Introduction

The CAA's vision is to ensure safe, secure and sustainable aviation and aerospace working for consumers and the public.

We work so that:

- the aviation industry meets the highest safety standards;
- consumers have choice, are protected and treated fairly when they fly;
- working together with the whole industry, the environmental performance across the aviation and aerospace system is improved; and
- the aviation industry manages security risks effectively.

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We economically regulate airports and air traffic control as necessary under the relevant legislation.

As with other UK sectoral regulators, we have concurrent competition functions alongside the Competition and Markets Authority ("CMA"), meaning we can enforce competition law and have several market functions in areas specifically related to **airport operation** services and **air traffic** services. Through concurrent powers and functions under the Competition Act 1998 and Enterprise Act 2002, our powers cover tackling anti-competitive agreements, investigating abuses of market dominance, carrying out market studies, and making market investigation references.

We coordinate our work closely with the CMA through the UK Competition Network and a formal MOU. These allow cases to be allocated to the regulator best placed to act, sharing expertise, and using our industry relationships to identify and prevent issues early.

Although **the scope of our concurrent powers is currently relatively narrow – and both the CAA and the CMA consider that our competition remit should be expanded** – this joint system strengthens oversight and enhances consumer protection in the aviation sector. We consider that expanding the remit of the CAA's concurrent powers would be complementary to the reforms proposed in the consultation and help the overall strength and consistency of the UK's competition regime.

Chapter 2. Markets Work and Market Remedies

i. Enhancing the CMA's markets work

Q4. Do you agree the existing market study and market investigation model should be replaced with a new single-phase market review tool? [Yes / No / Not sure] Please explain why.

We do not object to the proposals put forward and agree that a new single-phase market review tool can introduce greater flexibility and speed in the CMA's markets work. This is on the assumption that this will not remove the existing role and powers of (concurrent) sectoral regulators in this regime. We are responding separately on the proposal to move to a consultative approach for Market Investigation References below. The interaction between market studies conducted by concurrent regulators and the new regime will be important and particularly to the relevant updated MOUs between the CMA and concurrent regulators.

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Q5. Do you agree the statutory time-limit for market reviews should be 24 months, with a possibility to extend by a maximum of 6 months? [Yes / No / Not sure] Please explain why.

We consider that the proposed timelines for a "single-phase market review" look reasonable.

Q6. Do you agree there should be a single legal test for single-phase market reviews? [Yes / No / Not sure] Please explain why.

In our view, a single legal test would make the regime clear, predictable, and consistent, benefiting both the CMA and stakeholders. It would help ensure that decisions remain focused, transparent, and grounded in a well-understood legal standard.

Q7. If so, should this be the adverse effect on consumers test? [Yes / No / Not sure] Please explain why.

We consider the proposed legal test would ensure that the market review framework remains focused on the ultimate purpose of competition policy: protecting consumers and ensuring efficient, competitive markets. The adverse effect on consumers test would, in our view, preserve both the consumer and competition lenses central to the statutory regime, without materially departing from the current framework. This is on the basis of our understanding that the test would involve balancing both dynamic and static effects on consumer welfare.

ii. CMA Market Remedies

Q8. Do you agree the CMA should consider sunset clauses when designing remedies? [Yes / No / Not sure] Please explain why.

We agree that sunset clauses can play a valuable role in ensuring that remedies are targeted, proportionate, time-limited, and responsive to market developments, while reducing the risk of over-regulation or unintended harm. It prevents outdated remedies from remaining indefinitely (beyond the time when they are effective) and promotes better regulatory outcomes for businesses and consumers. As such, it makes sense for the inclusion of sunset clauses to be a standard consideration when designing remedies.

Q9. Do you agree the CMA should review market remedies at least once every 10 years? [Yes / No / Not sure] Please explain why.

We agree that, in most circumstances, reviewing market remedies at least every 10 years helps ensure that interventions remain current, proportionate, effective, and take account of evolving markets' context, such as commercial and technological changes. Like with the use of sunset clauses (see Q8), this would also prevent outdated remedies from remaining indefinitely and promote better regulatory outcomes.

Q10. Should the CMA be able to delay reviews beyond 10 years in exceptional circumstances, providing it publishes its reasons for doing so? [Yes / No / Not sure] Please explain why.

We agree with the proposal to allow the CMA to delay reviews in exceptional circumstances provided that it publishes its reasons for doing so. This ensures that remedy reviews remain robust, transparent, and evidence-based, while preserving flexibility where defined deadlines would be counterproductive.

iii. Concurrency

Q11. Should sector regulators be able to oversee market remedies imposed or accepted by the CMA? [Yes / No / Not sure] Please explain why.

We support sectoral regulators taking on responsibility for monitoring, updating and revoking market remedies in their sectors. We agree sectoral regulators should have the option to agree to take on such a responsibility on a case-by-case basis, as this would allow proper consideration of who is best placed including issues of resourcing and prioritisation. We believe this will create a more flexible and effective approach, for example enabling remedies to be implemented using well known existing regulatory approaches in sectors where this is relevant, rather than creating new or overlapping systems. This approach could therefore also contribute to reducing regulatory complexity and administrative costs of compliance on industry.

We consider the proposals should also ensure that sectoral regulators have a specified role/standing in remedy design for regulated sectors. This would ensure regulators can contribute their expertise to remedy design (including through engagement with relevant parties), as well as on implementation matters which would mean relevant prioritisation and resourcing could be considered in good time and would ensure an efficient process of moving from a CMA investigation and imposition of remedies to a regulator taking responsibility for the monitoring, updating and revocation of such remedies.

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Furthermore, we consider that the expansion of the CAA's concurrent competition jurisdiction should be considered alongside these proposals (see Q13 below). Although the CAA should not be prevented from taking on responsibility for monitoring or enforcing a remedy solely because it does not have concurrent competition jurisdiction, we consider that expanding out its jurisdiction would appropriately facilitate widening the range of markets in relation to which responsibility for remedies could be overseen effectively by the CAA. It would also have the potential to further release pressures on the CMA's resources, both by facilitating the transfer of oversight of a greater number of future remedies, but also – perhaps more importantly – by allowing the CAA to leverage its regulatory expertise on a wider range of potential markets and antitrust issues. It would also promote regulatory consistency and regulatory co-ordination between the different parts of the closely inter-related aviation industry supply chain.

Q12. Do you support the proposed consultative approach, where the CMA must consider undertaking a single-phase review following a request from sector regulators? [Yes / No / Not sure] Please explain why.

We consider that there are advantages and disadvantages to the proposed consultative approach.

We value sectoral regulators' ability to ensure the CMA launches a market investigation afforded by the ability to make Market Investigation References ("MIRs"), including following a market study under the Enterprise Act 2002. However, we also acknowledge that the CMA would benefit from having additional flexibility over how it responds to MIRs, including on the timeline by which it is required to investigate the issues raised and *how* (rather than whether) it prioritises its work following an MIR.

It is possible that the proposal would reduce the leverage sectoral regulators currently have to obtain undertakings from industry in lieu of an MIR, potentially leading to more issues needing to be addressed as part of a more resource intensive market investigation, rather than through undertakings and/or other mechanisms.

We consider that if the CMA were of the view that certain aspects of an MIR were not a matter of high priority, it should be empowered to deal with those issues in a more proportionate manner, while, at the same time, still providing regulators' MIRs with a considered and substantive response to the issues referred.

If the consultative approach proposed is taken forward, our view is that the CMA should at least be required to consider the sectoral regulators' recommendation and respond to it within a set time frame, including with details of any actions it intends to take (for example, within 90 days from the date of any reasoned recommendation by sectoral regulators that is supported by relevant evidence and information) or reasons for not taking action.

We note that the CMA and sectoral regulators are planning to update competition MOUs, including on issues of improved coordination in relation to market issues and the making of MIRs. Such actions may well be sufficient to address any concerns about this aspect of the regime.

Q13. We welcome any other views or evidence on improving the concurrency framework.

Noting DBT's commitment in the March Regulation Action Plan and modern Industrial Strategy to consider legislative proposals to refine the UK's competition regime, we would like to use this opportunity to highlight an important area where targeted reform would materially improve the effectiveness and coherence of the regime: **expanding the CAA's concurrent competition jurisdiction.**

The CAA's concurrent competition powers are currently limited to air traffic services and airport operation services. These powers do not extend to issues relating to airlines or to the wider aviation and aerospace sectors, despite the CAA's other statutory functions and regulatory expertise covering these areas. This position is anomalous when compared to the remit of other sectoral regulators, whose concurrent competition jurisdiction is aligned with their other regulatory responsibilities (or in some cases broader than those).

This runs counter to the core rationale for concurrency: that regulators with specialist sectoral knowledge are often best placed to identify, analyse, and address competition problems within their industries. The CMA has itself recognised this discrepancy. In its 10 year review of the competition concurrency arrangements, the CMA recommended that the CAA's competition powers be expanded to align with the scope of its other functions (see paragraphs 58–61).

Aligning the CAA's competition remit with its wider regulatory functions would improve the coherence of the concurrency framework, reduce CAA's jurisdictional gaps, and support a more efficient allocation of casework across the system. This would enhance the wider concurrency regime to the benefit of aviation consumers

and may reduce regulatory burdens to businesses in the aviation and aerospace sector.

Aligning the CAA's regulatory and competition jurisdictions would better reflect the commercial reality of the UK aviation sector, in which firms operate integrated business models that cut across traditional regulatory boundaries. It would also ensure the CAA has appropriate regulatory tools to address emerging innovative parts of the industry, ensuring they are effectively competitive. This will promote the interests of consumers as well assist in ensuring these new markets realise their potential for contributing to UK growth.

In our view, this proposal represents a relatively straightforward legislative amendment, fully aligned with the Government's wider objectives for competition policy and regulatory effectiveness. We have been engaging with the Department for Transport (DfT) and DBT on this matter and are available to assist further in setting out in more detail the case for widening the CAA's concurrent competition jurisdiction. We believe that such a measure should therefore be included in legislation as soon as feasible.

For these reasons, we encourage DBT to consider this targeted but important improvement as part of its work to enhance the UK's concurrency arrangements.

Chapter 4. Further cross-cutting changes

i. Stronger investigative powers for algorithms

Q23. Should the CMA be granted enhanced powers to investigate algorithms in its competition and consumer protection functions? [Yes / No / Not sure] Please explain your reasoning.

We fully support CMA's response to this consultation question. Existing investigatory powers were developed before algorithms played their current role and the proposed new powers are necessary to ensure competition and consumer law can continue providing the protections they are intended to deliver. Furthermore, we consider that sectoral regulators should have the same powers as those eventually granted to the CMA. This would maintain consistency of tools and approaches between the CMA and sectoral regulators when dealing with cases that might benefit from similar investigatory strategies. As with existing arrangements, concurrency MOUs could allow for suitable sharing of expertise between regulators in this regard.

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