

Executive summary:

- The approach to Test A should be based on a more comprehensive framework of guidance.
- Benchmarking of airport performance based on price and quality of service as well as operational and financial performance can serve as an input in identifying whether a MPD is required and in identifying whether SMP is being abused. However benchmarking must be robust and should not use other monopolistic airports as an ideal standard.
- The guidance should clearly specify which factors the MPT will take into account and how the CAA intends to assess these factors (what methods are intend to be used?).
- The lack of transparency in service levels provided and prices charged may mean that competition law does not in fact provide sufficient protection against airport abuse in cases of vertical exclusion and discriminatory treatment.
- The CAA should evaluate the merits of specific set of license conditions, not just non-regulation v regulation, either as part of Test C or alternatively as a standalone consultation.
- The assessment of benefits of economic regulations need to be undertaken from the perspective of the consumer.

Question 1: Do you have any comments on our proposed approach in the draft guidance to apply Tests A, B and C of the Market Power Test?

Test A – Market power determination

- The overall intent of the market definition and market power test as articulated in the draft guidance is a good one. However, the guidance does not provide sufficient detail on how market power will be assessed and should be based on a more comprehensive framework for assessing market power.¹
- Technical concerns and considerations:
 - The guidance should clearly specify which factors the MPT will take into account and how the CAA intends to assess these factors (what methods are intend to be used?). The guidance should elaborate how such factors may be assessed. To the extent possible, a robust quantitative approach should be used. This should also help provide greater clarity on how the CAA intends to combine/weight the different factors under consideration. This should not serve to constrain the CAA in carrying out the assessment but rather provide greater clarity on the approach. Furthermore, the CAA should keep its guidance under periodic review to enhance approach and cater it to changing circumstances over time.

¹ For more information see Profitability and the Air Transport Value Chain (p. 35):
<https://www.iata.org/whatwedo/Documents/economics/profitability-and-the-air-transport-value%20chain.pdf>

- IATA is in the process of developing an approach to rapid market power assessments based on quantitative measures and we welcome the possibility to engage on substantive details on this with the CAA.
- One of the factors that raises particular concern is that the CAA does not provide any substantive information on how it intends to assess the 'countervailing power by airlines.' In general, what we observe is that airlines serve the underlying travel demand in the market. If one airline pulls out another one will fill that demand. However, travel demand can still be stimulated through lower airport charges.
- The hypothetical monopolist test or 'SNIPP test' provides an appealing theoretical framework but as pointed out in the guidance document has several drawbacks and in reality will unlikely be possible to carry out. Therefore, we would urge the CAA to develop other quantitative methods for assessing market power.
- Benchmarking of airport performance based on price and quality of service as well as operational and financial performance can serve as an input to assessing whether a MPD may be required as well as whether significant market power is being abused. Though note that benchmarking should not be undertaken against other monopolistic airports, even if they are more efficient than UK airports, the standard of other monopolistic airports is not the standard we want the CAA to be aiming for. Therefore, great care needs to be given in identifying best in class airport to ensure it sets the appropriate benchmark. Several performance areas can be considered for undertaking such an assessment, including:
 - Profitability – Sustained return on invested capital above the cost of capital may be as a result of abuse of market power
 - Cost efficiency - price of service proposition at certain level of quality can reveal imbedded inefficiencies.

- Operational performance – other operational efficiency metrics can reveal level of performance.
- In its discussion of temporal markets the CAA draft guidance does not take into account the different time period when airlines decide to serve a market and passengers decisions on travel. This characteristic is another feature of the market dynamics that increases switching costs to airlines but also has impact on passenger preferences for airport choice.
- Any approach to setting of charges that deviates from single till (for example through the use of hybrid or dual till) points to the existence of market power. There are weak competitive pressures on airports placing them in a position of economic strength and endowing them with market power. Airports can use their market power to generate excess profits. Airport non-aeronautical services are exactly the same solution to covering fixed costs, as competitive markets have developed in industries such as restaurants, cinemas, sports venues, hotels and more. If there were strong competitive pressures on airports they would be disciplined by market forces to reduce their charges and improve their services in order to survive in the business. Airports would automatically utilize, what is called in the airport charges jargon, a “single till” mechanism. It is only in the presence of market power would an airport be in a position to deviate from a single till.

Box 1: IATA experience at some non-designated airports (EDI, MAN, GLA)

Despite repeated requests none of these airports would confirm that they work under a single till approach

Transparency and justification of proposals:

- the methodology to set airport charges had never been explained although it is a clear requirement from the UK regulation. We do not consider this to be in line with UK or EU regulations (Airport Charges Directive).
- Airports have not disclosed their figures in the required transparency despite repeated requests. Users are simple not able to find any justification of the proposals.

The common dismissal of users’ requests at consultations provide a strong hint of the market power at these airports. In addition, the current regulatory regimes does not help in leveling the negotiating power between airports and airlines, since the appeal process envisaged by the CAA for non-designated airports does not cover the possibility for the CAA to amend the level of charges.

Test B – Effectiveness of competition law

- The guidance document states that competition law has been successfully applied in consideration of vertical exclusion cases and discriminatory abuses. We do not agree that the mere existence of having such cases adjudicated on in competition law should lead one to conclude that competition law is sufficient to protect against the risk of airport abuse of its dominant position. The lack of transparency in service levels provided and prices charged may mean that competition law cannot provide sufficient protection against airport abuse in cases of vertical exclusion and discriminatory treatment. Willingness to pursuing legal remedies available through competition law may be muted due to associated costs (legal fees and potential

retaliatory measures). Furthermore, the lack of transparency may result in an airline not being aware that the airport is abusing its market power.

- We welcome part of the CAA statement that reiterates that Test B will be undertaken in the context “to further the interests of passengers and cargo owners.” We would like to remind the CAA that given the competitive forces facing airlines, we remain convinced that airlines as a collective group share a commonality of interests with the end users. Collectively airlines are best placed to represent current and future interests of end users and the CAA needs to take account of the views of airlines in promoting the consumer interest.

Test C – benefits of regulatory intervention

- The test currently does not require that specific license conditions are assessed. In addition to assessing whether economic regulation is beneficial, the CAA should evaluate and consult on the merits of specific set of license conditions either as part of Test C or alternatively as a standalone consultation.
- The assessment of benefits of economic regulation needs to be undertaken entirely from the perspective of the consumer interest. Consideration of impact on other stakeholders is only relevant to the extent it has a bearing on consumer interest. The CAA has not provided sufficient detail to explain how the various impact areas identified in the guidance are envisioned to be aggregated and considered from the perspective of consumer benefit. Furthermore, the criteria should explicitly consider the impact of economic regulation in avoiding distortions in the (downstream) airline market.
- Ex-ante vs. ex-post: The reference to ex-post measures is centered on remedies that are available through competition law. The guidance should make clear what other ex-post remedies, if any, will be considered by the CAA. Test B would have already considered the extent to which competition law is sufficient to protect against the risk of abuse of dominant position. Therefore, there is no need to repeat the comparison with competition law measures under Test C if Test B had found competition law to be insufficient. However, if there are other ex-post remedies that are expected to be considered the CAA should elaborate in the guidance what specifically will be considered and how.

Question 2: Do you have any comments on our proposed approach in the draft guidance to decide when to launch the process for undertaking MPDs?

Initiating an MPD

- IATA believes measures are required to increase transparency on price and quality of service. This is in order to make it easier to detect when an airport may be in position of market power such that a MPD is required or when an abuse of market power is taking place, as well as improving performance results.
- The CAA’s reliance on third parties directly impacted by an MPD to request initiation of an MPT can lead to a low number of requests. An airline that is under the market power of an airport may not be aware that the airport is abusing its market power or may hesitate to initiate a request for an MPT if it is concerned about retaliatory action by the airport. This can potentially be a bigger concern in circumstances where an airport is choosing to adversely leverage its market power over a subset of airlines. Greater transparency will assist here.

- We appreciate the difficulties associated with describing pre factum what events constitute a material change in circumstances. Nevertheless, it would be beneficial to provide greater clarity on what may constitute a material change in circumstances. In this context we see it appropriate for the CAA to describe what market outcomes would be observable when an MCC has occurred. We do not envision it as appropriate to try to prophesize on what event would trigger the change but rather the CAA should describe what outcomes would be observable following an MCC.
- It is not clear how the prioritization criteria will be applied in deciding whether to undertake an MPD.

Timetable and stages

- The timetables suggest that each MPD will require comparable resources. We see there to be scope for simplified MPD that could expedite the MPD process through leveraging quantitative data through airport benchmarking while not compromising on the robustness of the consultation process. Benchmarking can also be used to identify when MPAs may be needed.

Question 3: Have you any comments on our proposed process for undertaking MPDs in the draft guidance?

The below comments repeat some of the points made above but as they have implications for the process they have also been highlighted below:

- **Initiation of MPD:** In addition to responding to requests for undertaking MPD, the CAA should monitor the service quality and price levels at large airports and be prepared to initiate MPDs based on benchmarking data obtained through the price monitoring process.
- **Assessment of specific license conditions:** The CAA should evaluate the merits of specific set of license conditions either as part of Test C or alternatively as a standalone consultation.