



Civil Aviation Act 2012

2012 CHAPTER 19

PART 1

AIRPORTS

CHAPTER 1

REGULATION OF OPERATORS OF DOMINANT AIRPORTS

Dominant airports

5 Dominant areas and dominant airports

- (1) For the purposes of this Part, an airport area is dominant if the CAA has—
 - (a) made a determination that the market power test is met in relation to the area (see section 6), and
 - (b) published a notice of the determination.
- (2) For the purposes of this Part, an airport is dominant if all or part of its core area is a dominant area or part of a dominant area.
- (3) In this Part—

“airport area” means an area that consists of or forms part of an airport;

“area” includes an area of land, a building or other structure and a part of a building or other structure.
- (4) In this Part “core area”, in relation to an airport, means—
 - (a) the land, buildings and other structures used for the purposes of the landing, taking off, manoeuvring, parking and servicing of aircraft at the airport,
 - (b) the passenger terminals, and
 - (c) the cargo processing areas,(subject to regulations under section 66).

Changes to legislation: There are currently no known outstanding effects for the Civil Aviation Act 2012, Cross Heading: Dominant airports. (See end of Document for details)

- (5) In subsection (1) the reference to a determination does not include a determination that has ceased to have effect (see section 7(9) and (10)).

Commencement Information
 II S. 5 in force at 6.4.2013 by S.I. 2013/589, art. 2(1)-(3)

6 Market power test

- (1) The market power test is met in relation to an airport area if tests A to C are met by or in relation to the relevant operator.
- (2) For the purposes of tests A to C “the relevant operator” means the person who is the operator of the airport area at the time the test is applied.
- (3) Test A is that the relevant operator has, or is likely to acquire, substantial market power in a market, either alone or taken with such other persons as the CAA considers appropriate (but see subsections (6) and (7)).
- (4) Test B is that competition law does not provide sufficient protection against the risk that the relevant operator may engage in conduct that amounts to an abuse of that substantial market power.
- (5) Test C is that, for users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects.
- (6) Test A is met only if—
 - (a) the market is a market for one or more of the types of airport operation service provided in the airport area (or for services that include one or more of those types of service), and
 - (b) geographically the market consists of or includes all or part of the airport area.
- (7) In relation to an airport area that includes all or part of the core area of an airport (as well as all or part of the rest of the airport), subsection (6) has effect as if the references to the airport area were references to the core area or, as appropriate, the part of the core area.
- (8) For the purposes of test B conduct may, in particular, amount to an abuse of substantial market power if it is conduct described in section 18(2)(a) to (d) of the Competition Act 1998.
- (9) In test B “competition law” means—
 - ^{F1}(a)
 - (b) Part 1 of the Competition Act 1998, and
 - (c) Part 4 of the Enterprise Act 2002 (market investigations).
- (10) In applying tests A to C, the CAA must have regard to—
 - ^{F2}(a)
 - (b) relevant advice and information published under section 52 of the Competition Act 1998 (advice and information about the application and enforcement of the prohibitions in Part 1 of that Act ^{F3} ...);
 - (c) relevant advice and information published under section 171 of the Enterprise Act 2002 (advice and information about the operation of Part 4 of that Act).

Changes to legislation: There are currently no known outstanding effects for the Civil Aviation Act 2012, Cross Heading: Dominant airports. (See end of Document for details)

F⁴(11)

Textual Amendments

- F1** S. 6(9)(a) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), reg. 1(1), **Sch. 1 para. 14(2)(a)** (with Sch. 4 paras. 7, 13) (as amended by S.I. 2020/1343, regs. 35-59); 2020 c. 1, Sch. 5 para. 1(1)
- F2** S. 6(10)(a) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), reg. 1(1), **Sch. 1 para. 14(2)(b)** (with Sch. 4 paras. 7, 13) (as amended by S.I. 2020/1343, regs. 35-59); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in s. 6(10)(b) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), reg. 1(1), **Sch. 1 para. 14(2)(c)** (with Sch. 4 paras. 7, 13) (as amended by S.I. 2020/1343, regs. 35-59); 2020 c. 1, Sch. 5 para. 1(1)
- F4** S. 6(11) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), reg. 1(1), **Sch. 1 para. 14(2)(d)** (with Sch. 4 paras. 7, 13) (as amended by S.I. 2020/1343, regs. 35-59); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I2** S. 6 in force at 6.4.2013 by [S.I. 2013/589](#), **art. 2(1)-(3)**

7 Market power determinations

- (1) The CAA may make a determination that the market power test is or is not met in relation to an airport area (a “market power determination”) whenever it considers it appropriate to do so.
- (2) The CAA must make a market power determination in respect of an airport area if—
 - (a) it is asked to do so by a person listed in subsection (3),
 - (b) the area is located at an airport that is a large airport at the time the request is made, and
 - (c) the area consists of or includes all or part of the core area of the airport.
- (3) Those persons are—
 - (a) the operator of the airport area, and
 - (b) any other person whose interests are likely to be materially affected by the determination.
- (4) For the purposes of subsection (2)(b), an airport is a large airport during a calendar year if, in the previous calendar year, the number of passenger movements at the airport exceeded 5 million.
- (5) Subsection (2) does not apply if—
 - (a) the CAA has previously made a market power determination in respect of the airport area (or an area that includes all of the airport area), and
 - (b) it considers that there has not been a material change of circumstances since that determination.
- (6) The CAA may treat a request under subsection (2) in respect of an airport area (“area A”) as if it were—
 - (a) a number of requests in respect of a number of airport areas that consist of or include different parts of area A, or

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- (b) a request in respect of an area that includes all of area A.
- (7) When choosing an airport area that is to be the subject of a market power determination, the CAA must have regard to the market or markets that are relevant for the purposes of test A (see section 6(3)).
- (8) The CAA may, in particular—
 - (a) make separate market power determinations in respect of different areas which are located at the same airport and have the same relevant operator (within the meaning of section 6(2));
 - (b) make a market power determination in respect of an airport area that consists of two or more areas that are not adjacent if the areas are located at the same airport.
- (9) A market power determination in respect of an airport area ceases to have effect if the CAA publishes a notice of a further market power determination in respect of the airport area or in respect of an area that includes all of the airport area.
- (10) Where the CAA—
 - (a) publishes a notice of a market power determination in respect of an airport area (“determination A”), and
 - (b) subsequently publishes a notice of a market power determination in respect of part of the airport area or in respect of an area that includes part of the airport area,
 determination A ceases to have effect in relation to that part (but continues to have effect in relation to the rest of the airport area).
- (11) In this section “passenger movements” has the same meaning as in Directive [2009/12/EC](#) of the European Parliament and of the Council of 11 March 2009 on airport charges.

Commencement Information

I3 S. 7 in force at 6.4.2013 by [S.I. 2013/589](#), [art. 2\(1\)-\(3\)](#)

8 Publication of market power determinations

- (1) As soon as practicable after making a market power determination the CAA must—
 - (a) publish a notice of the determination, and
 - (b) send a copy of the notice to each person listed in subsection (2).
- (2) Those persons are—
 - (a) the operator of the airport area that is the subject of the determination,
 - (b) if the CAA was required by section 7(2) to make the determination, any other person who requested the determination, and
 - (c) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (3) If the notice does not include the CAA's reasons for the determination, the CAA must as soon as practicable after publishing the notice—
 - (a) publish its reasons, and
 - (b) send a copy of them to each person listed in subsection (2).

Changes to legislation: There are currently no known outstanding effects for the Civil Aviation Act 2012, Cross Heading: Dominant airports. (See end of Document for details)

Commencement Information

I4 S. 8 in force at 6.4.2013 by S.I. 2013/589, art. 2(1)-(3)

9 Operators of areas

- (1) For the purposes of this Part, a person is the operator of an airport area if the person has overall responsibility for the management of all of the area.
- (2) The Secretary of State may by regulations make provision about when a person is or is not to be treated for the purposes of this Part as having overall responsibility for the management of an airport area.
- (3) The regulations may, in particular, make provision for determining which person has overall responsibility for the management of an airport area where more than one person controls or may control the matters listed in subsection (4) to some extent.
- (4) Those matters are—
 - (a) the types of services that are or may be provided in the area,
 - (b) the prices that are or may be charged for services provided in the area,
 - (c) the quality of services provided in the area,
 - (d) access to the area, and
 - (e) the development of the area.
- (5) The regulations have effect subject to operator determinations by the CAA under section 10.

Commencement Information

I5 S. 9 in force at 6.4.2013 by S.I. 2013/589, art. 2(1)-(3)

10 Operator determinations

- (1) The CAA may determine whether, in a particular case, a person has overall responsibility for the management of an airport area.
- (2) A determination under subsection (1) is an “operator determination” for the purposes of this Part if the CAA states in the determination that it is made for the purposes of this section.
- (3) If the CAA publishes a notice of an operator determination in respect of a person, the person is to be treated for the purposes of this Part as having or not having overall responsibility for the management of the airport area in accordance with the determination until the CAA publishes a notice withdrawing it.
- (4) When making an operator determination in respect of a person, the CAA must have regard, in particular, to—
 - (a) regulations under section 9, and
 - (b) the extent to which the person controls or may control the matters listed in section 9(4).

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- (5) The CAA must make an operator determination in respect of a person and an area that consists of or forms part of a dominant airport if it is asked to do so by the person.
- (6) Subsection (5) does not apply if—
 - (a) the CAA has previously made an operator determination to the effect that the person requesting the determination does or does not have overall responsibility for the management of the airport area,
 - (b) it has not published a notice withdrawing that determination, and
 - (c) it considers that there has not been a material change of circumstances since that determination.
- (7) Subsection (5) does not apply if the CAA considers that it is possible to ascertain whether the person has overall responsibility for the management of the area from—
 - (a) information that is in the public domain, and
 - (b) information that is in the person's custody or under the person's control.
- (8) The CAA may treat a request under subsection (5) in respect of an airport area (“area A”) as if it were—
 - (a) a number of requests in respect of a number of airport areas that consist of or include different parts of area A, or
 - (b) a request in respect of an area that includes all of area A.

Commencement Information

I6 S. 10 in force at 6.4.2013 by S.I. 2013/589, art. 2(1)-(3)

11 Publication of operator determinations

- (1) As soon as practicable after making an operator determination the CAA must—
 - (a) publish a notice of the determination, and
 - (b) send a copy of the notice to each person listed in subsection (2).
- (2) Those persons are—
 - (a) the person in respect of whom the determination was made, and
 - (b) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.
- (3) The notice of the determination must include the statement under section 10(2).
- (4) As soon as practicable after withdrawing an operator determination the CAA must—
 - (a) publish a notice of the withdrawal, and
 - (b) send a copy of the notice to each person listed in subsection (2).
- (5) If a notice under subsection (1) or (4) does not include the CAA's reasons for the determination or withdrawal, the CAA must as soon as practicable after publishing the notice—
 - (a) publish its reasons, and
 - (b) send a copy of them to each person listed in subsection (2).

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Commencement Information

I7 S. 11 in force at 6.4.2013 by S.I. 2013/589, art. 2(1)-(3)

12 Advance determinations

- (1) The CAA may make a market power determination or an operator determination based entirely or partly on circumstances that have not arisen at the time the determination is made.
- (2) The CAA must specify the circumstances in the determination.
- (3) The CAA may make a determination in reliance on subsection (1) only if it considers that the specified circumstances are likely to arise.
- (4) Sections 8 and 11 do not require the CAA to publish or send a copy of a notice of a determination made in reliance on subsection (1), or reasons for such a determination, at a time when—
 - (a) the circumstances specified in the determination have not arisen, and
 - (b) it considers that doing so would involve disclosing commercially sensitive information.
- (5) If a notice of a market power determination made in reliance on subsection (1) is published before the circumstances specified in the determination arise—
 - (a) an airport area or airport is not dominant by virtue of the determination until those circumstances arise, and
 - (b) a previous market power determination which would otherwise cease to have effect by virtue of section 7(9) or (10) continues to have effect until those circumstances arise.
- (6) If a notice of an operator determination made in reliance on subsection (1) is published before the circumstances specified in the determination arise, a person is not to be treated as having or not having overall responsibility for the management of an airport area by virtue of the determination until those circumstances arise.

Commencement Information

I8 S. 12 in force at 6.4.2013 by S.I. 2013/589, art. 2(1)-(3)

13 Appeals against determinations

Schedule 1 (appeals against determinations) has effect.

Commencement Information

I9 S. 13 in force at 6.4.2013 by S.I. 2013/589, art. 2(1)-(3)

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