

# CIVIL AVIATION ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 1 – Airports

#### Chapter 2 – Competition

#### **Section 62: Functions under Competition Act 1998 and Section 63: Competition Act 1998: supplementary**

176. These sections provide for most of the functions of the OFT under Part 1 of the Competition Act 1998 (competition) to be held concurrently by the CAA, so far as they relate to the provision of airport operation services and to the things listed in *subsection (3)* of section 62. These things are restrictive agreements, concerted practices or decisions of associations of undertakings and abuse of a dominant position as prohibited by the Competition Act 1998 and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union of 30 March 2010 (the “TFEU”). This means that the CAA is able to exercise almost all of the functions of the OFT under Part 1 of the Competition Act 1998 in so far as they relate to the provision of airport operation services.
177. The functions under Part 1 of the Competition Act 1998 which the CAA is not able to exercise are functions under:
- section 31D, which requires the OFT to prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments from such person (or persons) concerned as it considers appropriate when the OFT has begun an investigation;
  - section 38, which requires the OFT to prepare and publish guidance as to the appropriate amount of any penalty under Part 1 of that Act;
  - section 51, which allows the OFT to make rules (currently in the form of the Competition Act 1998 ([Office of Fair Trading's Rules](#)) [Order 2004 \(SI 2004/2751\)](#)) setting out the procedures to be followed by the OFT, the sectoral regulators and third parties under Part 1 of that Act.
178. The Competition Act 1998 contains statutory prohibitions on anti-competitive behaviour applicable in the UK which are modelled on Articles 101 and 102 of the TFEU. It contains two prohibitions: first, it prohibits agreements which prevent, restrict or distort competition and which may affect trade within the United Kingdom (‘the Chapter I prohibition’); secondly, it prohibits conduct which amounts to an abuse of a dominant position in a market which may affect trade within the United Kingdom (‘the Chapter II prohibition’). The Competition Act 1998 confers on the OFT powers to investigate and enforce against infringements of both the Chapter I and Chapter II prohibitions and the prohibitions set out in Articles 101 and 102 TFEU.

*These notes refer to the Civil Aviation Act 2012 (c.19)  
which received Royal Assent on 19 December 2012*

179. Examples of the functions in respect of which section 62 gives the CAA concurrent jurisdiction include:
- to investigate possible infringements of the Chapter I or II of the Competition Act 1998 or Article 101 or 102 prohibitions of the TFEU, either on their own initiative or in response to complaints;
  - to impose financial penalties and/or to give directions to bring an infringement of any of the prohibitions to an end; and
  - to issue general advice and information on how the Competition Act 1998 applies to the airport operation services sector.
180. Further provision for the co-ordination of the performance by the OFT and sectoral regulators of concurrent functions under the Competition Act 1998 is contained in the Competition Act 1998 ([Concurrency](#)) [Regulations 2004 \(SI 2004/1077\)](#).
181. The OFT and each regulator are also represented on the Concurrency Working Party which was formed in 1997 to ensure full co-ordination between regulators and the OFT and to ensure consistency of approach to casework.
182. The CAA and the OFT would be expected to consult each other before a decision is made as to who will deal with a case in respect of which there is concurrent jurisdiction. In general, anti-competitive agreements or abusive conduct that relate to airport operation services will be dealt with by the CAA (unless the OFT is better placed to do so).
183. *Subsection (1)* of section 63 makes clear that no action taken by the CAA under Part 1 of the Competition Act 1998 is open to challenge on the grounds that such action should have been taken by the OFT.
184. *Subsection (2)* of section 63 enables the CAA, when carrying out relevant functions under the Competition Act 1998, to have regard to matters mentioned in subsections (1) to (3) of section 1 (the CAA's general duty when exercising functions under Chapter 1 of Part 1). *Subsection (3)* disapplies the CAA's general objectives in section 4 of the CAA 1982 when carrying out relevant functions under the Competition Act 1998.