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Memorandum of Understanding between the Competition and Markets Authority and the Civil Aviation Authority on the use of concurrent powers under consumer protection legislation.

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Introduction

This Memorandum of Understanding (“MoU”) sets out working arrangements between the Competition and Markets Authority (“CMA”) and the Civil Aviation Authority (CAA) in relation to their concurrent powers under specific consumer protection legislation as regards the sector or sectors for which the CAA is responsible.

The purpose of this document is to record our agreement to co-ordinate enforcement action and to co-operate in all ways permitted by law to ensure the effective and consistent delivery of consumer protection in relation to matters where we have joint responsibilities. It sets out the role of each organisation and explains how we intend to work together.

This MoU and the practices which it provides for will be reviewed from time to time by the CMA and the CAA as the need arises or at the request of the CMA, CAA or members of the UK Consumer Concurrence Group. This MoU may be revised solely by agreement between the CMA and the CAA.

We believe that this MoU offers a valuable basis for co-operation in the interests of the CMA, CAA and consumers.

This MoU is not legally binding.

CMA

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Purpose of this MoU

1. This Memorandum of Understanding (“MoU”) sets out working arrangements between the CMA and CAA in relation to their concurrent powers to enforce (in the aviation sector):
 - (a) certain consumer laws under Part 8 of the Enterprise Act 2002 (EA02), and
 - (b) Regulation (EC) No 2006/2004 on consumer protection cooperation

Role of the CMA

2. The CMA is a non-ministerial department, established under the Enterprise and Regulatory Reform Act 2013 whose aim is to promote competition, both within and outside the United Kingdom, for the benefit of consumers, to make markets work well for consumers, businesses and the economy.
3. In exercising its statutory responsibilities, the CMA will co-operate with sectoral regulators and encourage sectoral regulators to use their powers, including their powers to apply relevant consumer legislation, in the interests of competition for the benefit of consumers.
4. The CMA will use its full range of consumer powers to address systemic failures in a market, where changing the behaviour of one business would set a precedent or have other market-wide implications, where there is an opportunity to set an important legal precedent or where there is a strong need for deterrence or to secure compensation for consumers.

Role of the CAA

5. The CAA is a public corporation, established by Parliament in 1972 as an independent specialist aviation regulator. Its activities include economic regulation, airspace policy, safety regulation and consumer protection. Its strategic objectives include a requirement to:

“...improve choice and value for aviation consumers now and in the future by promoting competitive markets, contributing to consumers’ ability to make informed decisions and protecting them where appropriate.”¹
6. The CAA is responsible for a number of aviation activities that impact, directly or indirectly on consumers such as safety, airspace and the environment and in addition to its responsibility for enforcing aviation specific consumer protection legislation such as Regulation (EC) No 261/2004 of the European Parliament and

¹ CAA Strategic Plan 2011 – 2016 http://www.caa.co.uk/docs/33/CAP1092_Strategic_Plan_November2014.pdf

of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (DBRs),² Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (PRM),³ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 establishing common rules for the operation of air services in the Community (ASR)⁴, the CAA may also enforce more general consumer protection legislation, including the Consumer Protection from Unfair Trading Regulations 2008, as a designated enforcer under the EA02.

General co-operation

7. The CMA and the CAA will work together with the aim of ensuring that a consistent and co-ordinated approach is generally taken in relation to issues covered by concurrent enforcement powers and to discuss which body is best placed to lead in each case.
8. The CMA and the CAA are committed to the following general principles and practices for co-operation between themselves in respect of the sectors for which the CAA has responsibility.
9. Officials of the CMA and the CAA will meet and communicate regularly, at appropriate levels of seniority, to discuss matters of mutual interest, both through the Consumer Concurrence Group and bilaterally.
10. The CMA and the CAA will always consult each other before exercising their powers on a case where it appears that they have concurrent powers, even if the CMA and the CAA do not go on to exercise their concurrent powers.
11. Where either the CMA or the CAA exercises their concurrent powers, the CMA and the CAA will, to the extent permitted by law, engage with each other in open dialogue and by sharing relevant information as appropriate.
12. The CMA and the CAA will consult each other at an early stage on any issues that might have significant implications for the other.
13. The CMA and the CAA agree that in deciding upon any enforcement action in respect of a potential breach of consumer protection legislation, causing potential consumer harm, they will have regard to the principles that regulatory

² See <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004R0261&from=EN>

³ See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1107&from=EN>

⁴ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:293:0003:0020:en:PDF>

activities should be carried out in a way which is proportionate, consistent, transparent, accountable and targeted. The CMA will enforce consumer protection legislation with regard to published statements of enforcement and prioritisation principles.⁵ The CAA will take action having regard to its Regulatory Enforcement Policy and Consumer Enforcement Guidelines.⁶ The aim of these arrangements is to avoid, as far as is reasonably practicable, duplication of enforcement or other action.

Notifications

14. The CAA will comply with its legislative obligations under s.214 EA02 to notify the CMA of its intention to take certain enforcement action, and of the outcome of the action under s.215 EA02 by entering the required information on the Trading Standards Sanctions Database.
15. Where the CMA has an obligation to publish the information it will do so by publishing it on www.gov.uk/cma

Liaison between CMA and the CAA

16. Where CMA identifies a consumer law issue relating to matters falling within the CAA's remit which it considers merits regulatory attention the CMA will, prior to taking any action, contact the CAA.⁷ It will do so in the first instance to discuss whether the matters raise issues which the CAA agrees is appropriate for it to consider under its consumer law and/or sectoral regulatory powers, having regard to matters such as its sectoral expertise and its administrative prioritisation framework.
17. Where the CAA identifies potential breaches of consumer protection legislation which may lead to enforcement action, and opens an enquiry, or investigation in accordance with its Regulatory Enforcement Policy and Consumer Enforcement Guidelines, it will contact the CMA as well as providing notification by placing details of the investigation on the Trading Standards Sanctions Database.⁸

⁵ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299784/CMA16.pdf

⁶ <http://www.caa.co.uk/default.aspx?catid=2516&pagetype=90>

⁷ Head of Consumer Enforcement, CAA House, 45-59 Kingsway, WC2B 6TE

⁸ www.nafn.gov.uk

Sharing information – legal aspects

18. CMA and the CAA will, in accordance with Part 9 EA02 (governing the disclosure of specified information⁹) promptly share such information as is permitted and necessary to enable efficient and effective handling of consumer law issues. Where appropriate, this includes sharing complaint data, together with relevant correspondence regarding those complaints.
19. Under Part 9, information that comes to the CMA in connection with the exercise of its functions (as defined) and in appropriate cases information that comes to the CAA is “specified information” (see section 238(1) of the EA02). Where specified information relates to the affairs of an individual or any business of an undertaking (see section 237(1) of the EA02) the CMA and CAA can only disclose it, during the lifetime of the individual or while the undertaking continues in existence, under permitted gateways (see section 237 (2) of the EA02). Disclosure outside those gateways is a criminal offence.
20. Unless the “specified information” is already properly and lawfully in the public domain (see section 237(3) of the EA02), or a power or duty to disclose it exists outside Part 9 of the EA02 (see section 237(6) of the EA02), the CMA and CAA, as the case may be, may only disclose it where one of the following gateways exists:
 - (a) where the CMA or CAA obtains consent from both those providing the information and those to whom it relates (section 239 of the EA02);
 - (b) disclosure is required to meet an obligation under EC law (section 240 of the EA02);
 - (c) disclosure facilitates the exercise of the CMA’s or CAA’s statutory functions;
 - (d) disclosure facilitates the exercise of any function another body has under certain specified statutes (section 241 of the EA02);
 - (e) disclosure is for the purposes of, or in connection with, prescribed civil proceedings or prospective proceedings in the UK or elsewhere, or for the purposes of taking legal advice in relation to them, or for the purposes of establishing, enforcing or defending legal rights that are or may be the subject of such proceedings;
 - (f) the disclosure is for certain purposes connected with criminal investigations and proceedings in the UK (section 242 of the EA02); or
 - (g) the disclosure is to facilitate the performance of an overseas public authority’s functions, in certain circumstances (section 243 of the EA02).

⁹ See s. 238(1) of the EA02 for definition of specified information

21. Even where a gateway exists, the CMA or CAA, as the case may be, is also required to consider excluding from disclosure (so far as practicable):
- (a) information whose disclosure the CMA or CAA, as the case may be, thinks is against the public interest (see section 244(2) of the EA02);
 - (b) information relating to the private affairs of an individual, or any commercial information relating to a business, whose disclosure might, in the CMA's opinion or, as the case may be, CAA's opinion, significantly harm the individual's interests or the legitimate business interests of the undertaking to which it relates (see section 244(3) of the EA02); and
 - (c) The CMA or CAA, as the case may be, must also consider the extent to which any disclosure under (b) above is necessary to fulfil the purpose for which it is made (see section 244(4) of the EA02).

Transfer of personal data

22. In receiving any "personal data" through the gateways set out above or otherwise the CMA and the CAA will comply at all times with the Data Protection Act 1998.

Process for sharing information

23. The CMA and the CAA have designated a Relationship Manager to act as a primary point of contact, as well as arranging for regular meetings at Chief Executive Officer level to discuss areas of mutual strategic interest.
24. Communication between the organisations may happen at different levels to facilitate the efficient flow of information and intelligence between them.