

Second Report Working Group Market Power Assessments Practices in conducting market power assessments

1. Background

1. The goal of the Aviation Strategy¹ is to strengthen the competitiveness and sustainability of the entire EU air transport value network. Tackling limits to growth in the air and on the ground, in particular by boosting the efficiency of airport services, is one of the three key priorities that the Commission has identified.
2. The Thessaloniki Forum of Airport Charges Regulators is tasked with working on and making recommendations for a better common implementation of the Directive 2009/12/EC on Airport Charges (the "ACD"). The ACD requires Member States to assign responsibility for supervising the setting of airport charges to Independent Supervisory Authorities ("ISAs").
3. The Commission has asked the Forum to 1) provide recommendations to the Commission on how market power assessments (MPAs) should best be used to ensure economic regulation of airports in the EU is appropriately targeted; and, if deemed necessary, 2) provide ISAs with recommendations on best practices in conducting MPAs. The working group will also provide advice to support the European Commission in developing its understanding of the way in which MPAs are currently being used in aviation and other sectors. It is not within the scope of the working group to investigate the market power of airports in Member States or to discuss possible regulatory measures where significant market power (SMP) is found.
4. The first report by the Forum provides recommendations on how MPAs should best be used to ensure economic regulation of airports in the EU is appropriately targeted. This second report focuses on providing ISAs with recommendations on best practices in conducting market power assessments.
5. The recommendations herein have been formulated by the MPA Working Group of the Thessaloniki Forum on Airport Charges. Members of the working group were Belgium (BE) (represented at federal level), Germany (DE) (represented at federal level and by the Land Hessen), Spain (ES), France (FR), Greece (EL) Ireland (IE), Italy (IT), Poland (PL), the United Kingdom (UK) and the Netherlands (NL). This report has been adopted by the Thessaloniki Forum on November 17th 2017.

¹ http://ec.europa.eu/transport/modes/air/aviation-strategy_en?

6. This report will be considered by the European Commission (DG MOVE) as part of its evaluation of the Airport Charges Directive.

2. Caveats

7. The recommendations do not represent the views of the European Commission and do not in any way change the requirements of the ACD.
8. This report should not be used as a limitation or constraint for Member States to apply their own methodologies when circumstances, regulation or other causes recommend it.
9. These recommendations will be kept under review and changed as and when deemed necessary by the Thessaloniki Forum.

3. Introduction to Market Power Assessments

10. This report aims to provide ISAs with recommendations and examples of practices for conducting MPAs of airports, in situations where MPAs are appropriate.² This report should be read in conjunction with the relevant EC notices and guidance on how to define a market and assess market power, on which this report is based.³
11. This report provides a framework of relevant considerations to be taken into account. However, it is not intended to be applied rigidly. Each MPA is conducted on its own facts and circumstances and it may not be appropriate to read across between specific MPAs.
12. An MPA assesses whether the relevant airport operator⁴, either alone or taken with such other entity as assessed to be appropriate, has significant market power (SMP) or dominance in a relevant market. When the MPAs are made with the intention to better target economic regulation they are primarily forward-looking exercises, whereas when they are made to establish dominance for the purposes of antitrust law enforcement the relevant period is the past. It is therefore possible to define different market definitions for regulation purposes and for the application of competition law.
13. As set out in the first report, the assessment of market power and the introduction of further economic regulation (above the requirements imposed by the ACD) do not need to be automatically linked. Once an MPA has been undertaken, if an airport operator is found to have SMP, it may be appropriate to consider whether introducing further economic regulation is a

² This was discussed in the first paper of the Working Group on Market Power Assessments of the Thessaloniki Forum, which considered if and when MPAs have a greater role to play to ensure regulation is appropriately targeted.

³ European Commission's notice on the definition of relevant market for the purposes of Community competition law, EC 97/C 372/03 (Commission Notice (97/C 372 /03)). European Commission's Guidance on its enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, EC_2009/C 45/02 (Commission Guidance (2009/C 45/02)). Further information on the EC's notices and guidance is available from ec.europa.eu/competition/index_en.html

⁴ The managing body of an airport.

proportionate response.

14. The purpose of an MPA in the airport sector is to assess the strength of competitive constraints faced by an airport operator at an airport. This is normally done over a two-stage process: Market Definition and Assessment of Market Power. These two stages contain a degree of analytical circularity and particular pieces of evidence may inform both stages.⁵ Also particular methodologies of market power assessment need to be interpreted cautiously, as they rely on the use of certain assumptions or measure partial competitive effects. It is therefore important that some expert judgement is applied in order to ensure that all sources of competitive constraints are appropriately assessed, aggregated and taken into account in the conclusions. For example, we note that the airport operator faces demand for its services from airlines, which is derived from passengers' and cargo owners' demand for airline services. The interaction of both demands and its effects on the airport operator need to be taken into account in the MPA.
15. Appendix A sets out a list on initial evidence that is likely to be required for conducting an MPA of an airport.
16. Appendix B summarises key information regarding MPAs that have been undertaken by ISAs for airports.

4. Determining the relevant market for airport services

Commission Notice (97/C 372 /03) on the definition of relevant market

17. The approach to defining the relevant market is set out in the Commission Notice (97/C 372 /03), which gives a framework for defining the relevant market.

What is market definition

18. *"Market definition is a tool to identify and define the boundaries of competition between firms."*⁶ Its main purpose is to identify in a systematic way the competitive constraints that the businesses involved face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the businesses involved that represent an alternative to customers and might be capable of constraining those businesses' behaviour and of preventing them from behaving independently of effective competitive pressure.
19. Market definition is a time-sensitive and context-specific exercise. It is based on an analysis of the structure of the market and competition prevailing at a particular point in time, therefore any assessment may change over time as market conditions evolve.

How to assess a relevant market for airport services

The Hypothetical Monopolist Test

⁵ As both market definition and assessment of market power ultimately try to assess competitive constraints, it is necessary to ensure both stages integrate the evidence base in a consistent manner.

⁶ Commission Notice (97/C 372 /03), paragraph 2.

20. The hypothetical monopolist test is a common framework that applies both to product and geographic market definition. Wherever feasible, the hypothetical monopolist test will be adopted as the generic framework for market definition. This test involves starting with the focal product or service and the smallest geographical area (normally that supplied by the airport operator in question) and assessing customers' switching reactions to a small but significant non-transitory increase in price (SSNIP) above the competitive level, generally considered as being 5 to 10 per cent. If the SSNIP is likely to be unprofitable, due to marginal customers switching away to substitute products and areas (or other suppliers entering the presumed market), the test is repeated by widening the products and geographic area to include additional substitutes until the price increase is profitable. What is then left is the narrowest set of products and geographic area over which a hypothetical monopolist could profitably sustain prices 5 to 10 per cent above competitive levels.⁷ For this, it would be appropriate to take into account all the revenue streams of the airport operator. For example, it may be that if passengers switch away in response to a SSNIP on aeronautical services, the airport operator can lose revenues and profits on related non-aeronautical services.
21. The hypothetical monopolist test is a useful generic framework for approaching market definition, rather than a prescriptive methodology. It is intended to be carried out by reference to the competitive price level. Therefore, it may be more difficult to be applied where prevailing price levels observed are not reasonably close to what is considered to be the competitive price.⁸ The test assumes that the hypothetical monopolist is not subject to economic regulation that might affect its pricing behaviour. The test also assumes that prices outside the hypothetical monopolist's control are held at the competitive level. In addition, there may be other external considerations that might affect the uniformity and/or the profitability of the price increase. If however a service or product is offered at a regulated, cost based service, such price is presumed, in the absence of indications to the contrary, to be set at what would otherwise be a competitive level and should therefore be taken as the starting point for applying the hypothetical monopolist test.⁹
22. Due to its practical limitations as well as because of data and evidential restrictions, it is therefore rarely possible (if at all) to apply the hypothetical monopolist test in a precise (quantitative) manner. However, it is appropriate to seek to gather a range of evidence on substitutability and interpret it, so far as possible and appropriate within the hypothetical monopolist test framework.
23. Also, substitution may be identified when there is evidence of price correlation between two products which is not driven by inflation or costs, or by the change of price structure of two products after an exogenous market shock (e.g. the introduction of a passenger tax introduced by the national or local government/authorities

⁷ The Commission Notice (97/C 372 /03) sets out a practical example of this test for a merger of soft-drink bottlers. An issue to examine in such a case would be to decide whether different flavours of soft drinks belong to the same market. In practice, the question to address would be whether consumers of flavour A would switch to other flavours when confronted with a permanent price increase of 5 % to 10 % for flavour A. If a sufficient number of consumers would switch to, say, flavour B, to such an extent that the price increase for flavour A would not be profitable owing to the resulting loss of sales, then the market would comprise at least flavours A and B. The process would have to be extended in addition to other available flavours until a set of products is identified for which a price rise would not induce a sufficient substitution in demand.

⁸ See Commission Notice (97/C 372 /03), paragraph 19. Also, conducting market definition analysis at prices substantially above competitive levels can lead to a market definition that is too broad and fail to identify market power when it is present. This is known as the "Cellophane Fallacy".

⁹ See paragraph 42 of the Commission guidelines on market analysis and the assessment of significant market power under the community regulatory framework for electronic communication network and services (2002/C 165/03).

Product market

24. The product market comprises all those products and/or services that are regarded as interchangeable or substitutable for the focal product (i.e. the product under investigation) by the consumer by reason of those products' characteristics, their prices and their intended use.¹⁰
25. In order to establish the focal product it is not normally necessary to start from a product-by-product inspection of all the airport operator's services. This work would increase the information needed and work required and may be of limited benefit, given the purpose of the analysis. Instead, a higher-level assessment, starting by looking at a broadly generic bundled airport infrastructure product that is sold to airlines, is likely to be more appropriate.
26. It may then also be appropriate to consider non-aeronautical products (i.e. in markets where airlines are not the airport operators' direct customers, such as car-parking or other airport retail services) to complement or further the analysis of aeronautical products. The extent to which it is appropriate to consider non-aeronautical segments will depend on the availability of evidence and concerns regarding the existence of SMP in non-aeronautical markets.
27. Alternative modes of transportation may be considered a competitive constraint if the airport charges lower prices for routes facing intermodal competition. Competition from alternative modes of transport is less likely to constrain the pricing behaviour of large international airports but may exist at regional airports serving locations equally reachable by air and other modes of transport.
28. Where an airport operator would, or would be able and likely to, discriminate or differentiate significantly between groups of customers, each of these groups may form a separate market.¹¹ For example, taking into account the evidence available in a particular case, it may be appropriate to define separate relevant product markets:
- by terminal within an airport. This could be appropriate when different types of airlines (low cost carrier v full service carrier) use different terminals because one or some of the terminals are designed to have, for example, more automated check-in kiosks, reduced baggage handling than other terminals within the same airport;
 - by type of airline service provided e.g. full service carrier v low cost carrier, and cargo vs passenger airline services;
 - by time periods; it may be relevant to differentiate across seasons or between different times of day and, in particular, between peak and off-peak periods. These time or temporal differences may be relevant where airlines and/or passengers do not regard different time slots as substitutes.
 - by different types of passengers: such as origin and destination, and transfer passengers, as well as those travelling for businesses or leisure purposes.

Geographic market

29. The relevant geographic market *"comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition*

¹⁰ See Commission Notice (97/C 372 /03), paragraph 7.

¹¹ Commission Notice (97/C 372 /03), paragraph 43.

*are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those area”.*¹²

30. It is important to recognise that, as an airport serves a number of different users, there may be different relevant geographic markets for different groups of users, if they are considered a separate product market.
31. The assessment of competitive constraints as part of the geographic market definition will include an analysis of the ability of airlines to switch away from an airport as well as the potential for passengers/owners of cargo to switch between airports, whether independently, or by following a particular airline.
32. The geographic market definition will be affected not only by the analysis of catchment areas, which indicate where passengers come from and arrive to, but also by other relevant information including airfares, routes, time of day, frequency and services of potential competitor airports, as well as by airlines’ ability to switch airports.

5. Assessment of market power for airports

Commission Guidance (2009/C 45/02)

33. Article 102 of the Treaty establishing the European Community (‘Article 102’) prohibits abuses of a dominant position. While, it is not in itself illegal for a business to be in a dominant position, the business concerned has a special responsibility not to allow its conduct to impair genuine undistorted competition on the common market. The Commission Guidance (2009/C 45/02) describes market power and how to assess if a business is dominant/has SMP in a relevant market.

What is Market Power

34. Market power is the ability, profitably, to sustain prices above the competitive level or restrict output or quality below competitive levels. Market power is a normal market feature in many markets. In this report we are dealing with a specific form of market power: significant market power. It is explained in case law as “an undertaking [a business] shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers”.¹³
35. This notion of independence is related to the degree of competitive constraint exerted on the business in question. Dominance entails that these competitive constraints are not sufficiently effective and hence that the business in question enjoys SMP over a period of time. This means that the business's decisions are largely insensitive to the actions and reactions of competitors, customers and, ultimately, consumers. It may be that effective competitive constraints are

¹² Commission Notice (97/C 372 /03), paragraph 8

¹³ Case 27/76 United Brands v Commission [1978] ECR 207. This definition has been used in other cases.

absent even if some actual or potential competition remains.¹⁴ In general, a dominant position derives from a combination of several factors which, taken separately, are not necessarily determinative.¹⁵

How to assess SMP for an airport operator

36. The assessment of market power involves an analysis of whether the competitive constraints identified in the market are strong enough to prevent market power from harming the process of competition, or alternatively whether there are barriers to these competitive constraints.¹⁶
37. Market power is, therefore, not an absolute term but a matter of degree, which varies according to the individual circumstances of the case. As part of an assessment of market power, the existence and the potential strength of the competitive constraints¹⁷ from within and from outside the relevant market needs to be identified. This will determine whether the airport operator is subject to effective competition or not.
38. Market power is more likely to exist if an airport operator has a persistently high market share over time compared to its nearest rivals.¹⁸ However, market shares are not sufficient, in isolation, to determine the intensity of competition in the relevant market. For example:
 - the difficulties in defining the market precisely might limit the reliance that could be placed on any given measure of market shares as an indicator of market power;
 - the differentiated nature of airports, both in terms of their facilities and services, but also in terms of their location, can reduce the reliability of market shares as an indicator of market power since alternatives, whether inside or outside the market definition, may be imperfect substitutes; and
 - capacity constraints at alternative airports will affect the extent to which those airports are able to provide competitive constraints to the airport operator.
39. Notwithstanding these concerns, seeking to calculate market shares by reference to the market definition adopted may be appropriate.
40. It is also appropriate to seek to identify the existence, and evaluate the strength, of all competitive constraints faced by the airport operator.¹⁹ These are market factors that prevent the airport operator from raising prices significantly above – and/or lowering throughput and/or quality significantly below – competitive levels.
41. In so doing, the following can be considered:
 - the specific barriers to airline switching. For example, this can include the costs of moving a route away from the airport, the type of infrastructure, traffic volume and competitive environment existing at alternative airports, or the network benefits of airline co-location and good transport links at an airport;

¹⁴ See Case 27/76 United Brands v Commission [1978] ECR 207, paragraphs 113 to 121; Case T-395/94 Atlantic Container Line and Others v Commission [2002] ECR II-875, paragraph 330.

¹⁵ Case 27/76 United Brands v Commission [1978] ECR 207, paragraphs 65 and 66; Case C-250/92 Gøttrup-Klim e.a. Grovwareforeninger v Dansk Landbrugs Grovareselskab [1994] ECR I-5641, paragraph 47; Case T-30/89 Hilti v Commission [1991] ECR II-1439, paragraph 90.

¹⁶ Commission Guidance (2009/C 45/02), section III A.

¹⁷ Commission Guidance (2009/C 45/02), section III A.

¹⁸ Commission Guidance (2009/C 45/02), paragraphs 13 to 15.

¹⁹ Commission Guidance (2009/C 45/02), paragraphs 16 to 18.

- the extent to which passengers are prepared to use other airports' route networks (for example, passengers may be locked-in to an airline because of, for instance, frequent flier programs) or the extent to which passengers are prepared to use other travelling modes (e.g. train, coaches) or not travel in response to a price increase by the airport operator (since often passengers do not pay airport charges directly, as these are levied on airlines, this substitution mechanism is an indirect one); and
- any attempts by the airport operator to restrict output, increase prices above the competitive level and/or reduce quality at the airport below the levels that would be seen in a competitive market.

42. Other relevant factors may include market features, such as:

- possible countervailing buyer power by airlines;
- (Cross)ownership of neighbouring airports;
- prevailing capacity constraints at the airport and at neighbouring airports and barriers to entry, such as sunk investments, prolonged and complex legal procedures for expanding or building an airport; and
- the extent of potential competition being introduced through new entry and/or expansion of airport capacity, and/or by other travelling modes.

43. This can be supplemented by analysis on other available indicators of market power, including the airport operator's behaviour and performance, profitability measures, quality of service, efficiency and engagement with airlines.

44. Where the airport operator is already subject to economic regulation, this (the existence of economic regulation and its form) will need to be taken into account as regulation will be influencing the airport's behaviour and performance, as well as the prices that it charges. Since economic regulation restricts the ability of an airport to exercise market power, an MPA based on past behaviour of a regulated airport may underestimate the market power that the same airport may exercise in the absence of regulation. In this case it may be convenient to apply a "modified greenfield approach" assessing what could happen in the market on the assumption that the relevant market was not subject to sector-specific ex ante regulation (but including regulation which would otherwise exist).²⁰

45. It is necessary to consider all of the available evidence and exercise judgment in making this assessment.

6. Evidence

46. The Commission Notice (97/C 372 /03)²¹ explains that in individual cases, certain types of evidence will be determinant, depending very much on the characteristics and specificity of the industry and products or services that are being examined. In most cases, a decision will have to be based on the consideration of a number of criteria and different items of evidence. The

²⁰ This is the approach taken by the Commission Staff Working Document Explanatory Note Accompanying the document Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, SWD (2014) 298.

²¹ Commission Notice (97/C 372 /03), paragraph 25.

Commission notes the importance of following an open approach to empirical evidence, aimed at making an effective use of all available information which may be relevant in individual cases, and of not following a rigid hierarchy of different sources of information or types of evidence.

47. Appendix A contains a list of possible initial evidential needs that could be requested from airport operators and other relevant stakeholders for the purposes of conducting an MPA, both in defining the market and in assessing market power. This list is by no means exhaustive, but it provides a starting point for considering the evidence that will be required. It may be good to consider early in the process any opportunities for cooperation between ISAs in the form sharing of data and expertise, particularly where significant cross-border competition is likely.

7. Process

48. Market Power Assessments are usually large pieces of work which, particularly in contested cases, can take up to 18 months or more to complete, before any challenge or appeal process occurs. It may be beneficial to set out from the outset and agree with key stakeholders, as much as possible, an indicative timetable and clear stages for the work programme. It may be appropriate to use formal information gathering powers from the outset so as to ensure that the required evidence is gathered in a timely and efficient way. A possible phasing of the work could be as follows:
- i. Evidence gathering and initial analysis
 - ii. Consultation on draft MPA
 - iii. Review of responses and further evidence gathering
 - iv. Final MPA
 - v. Options for airport operator or airline(s) to appeal the MPA

Appendix A

Possible evidential needs

1. The initial requests for information and analysis could include, as a starting point, for example, the following:
 - A From the airport operator:
 - data on the evolution of output volumes, such as flights, number of passengers and cargo tonnage, distinguished by relevant sub-segments (e.g. low cost, full-service, transfer passengers, general aviation, by airline, etc.);
 - final destinations and exclusive destinations with respect to neighbouring airports;
 - qualitative and quantitative description of the infrastructure (number and length of the landing tracks/runways; terminals, number of gates, etc.; presence/absence of scarcity of slots or other infrastructure assets);
 - past airport accounts of revenues, costs and profitability by business activity (such as aeronautical and non-aeronautical activity);
 - details of airport ownership and ownership of neighbouring airports (network of airports);
 - airport charges received by airline and passenger;
 - detailed structure of charges;
 - terms of bilateral commercial agreements between airport and airlines;
 - Service quality KPIs, such as waiting times for key airport processes, and consumer satisfaction;
 - evidence of consultation/liaison with airlines on capital investment projects and traffic projections;
 - consumer and market research concerning the evaluation of competitive constraints faced by the airport operator;
 - estimates of how costs vary with output volumes and recent studies on operational and economic efficiency for the airport;
 - estimates of how non-aeronautical revenues vary with passenger traffic;
 - evidence of whether and by how much airport demand by passengers; cargo and airlines responds to price/quality; and
 - airport business plans and details of forthcoming investment projects.
 - B From airlines:
 - airport charges paid at the airport, neighbouring airports and at “comparable” airports elsewhere;
 - route revenue, profitability, number of flights and passengers at the airport as well as at neighbouring airports and at “comparable” airports elsewhere;
 - evidence on switching costs and investments made in airports by airlines and presence of other alliance members;
 - data on traffic forecast at the airport as well as at neighbouring airports and at “comparable” airports elsewhere;
 - evidence on the level of airline competition across airports (own and cross-airport airfare elasticities); airline fare differential between the airport and the alternative airports;
 - evidence on the quality of commercial engagement with airport operator;
 - analyses evaluating efficiency of the airport;

- presence/absence and appropriateness of service level agreements with airlines at the airport;
 - consumer and market research concerning competitive constraints faced by the airport; and
 - terms of bilateral commercial agreements with airport operators.
- C From various sources, any interested parties, including ISAs own information:
- recent passenger surveys and/or procure new surveys on passenger profile, determinants of airport choice, and views on airport substitutability and efficiency;
 - proportion of passengers connecting between flights at the airport and their profile;
 - catchment areas and extent of overlap between airports (based on costs and time necessary to reach the airport);
 - traffic volumes by airline and relevant segments of demand at the airport as well as neighbouring and comparable airports;
 - traffic demand forecasts by relevant segments of demand including cargo;
 - route overlaps with substitutable airports;
 - capacity constraints at the airport and at neighbouring airports;
 - information about the impact of market shocks, such as a sudden introduction or increase in airport or ticket taxes;
 - Information about the proportion of airport charges to airline ticket prices; and
 - existing studies or data with evidence allowing for the estimation of own and cross elasticities of demand over the different modes of transport at airports serving locations equally reachable by air and other modes of transport.
2. However, when a decision to undertake an MPA is made, the evidence required will be determined at that time. It may be beneficial to have early discussions with the key stakeholders about evidence and analyses that they have, and considering whether research may need to be undertaken to aid the MPA.

Appendix B

MPA airport examples – Netherlands, Ireland and UK

Note: the Forum does not have a view on the process and outcome of the individual MPAs.

Airport	Dublin Airport (DUB)
Country name	Republic of Ireland
Country population	4.7 million people
Large airports and mppa	There are 3 main airports in the Republic of Ireland; Dublin (28 mppa), Shannon (2 mppa), Cork (2 mppa).
Statutory basis for airport regulation	The statutory basis for regulation of Dublin Airport was introduced in 2001 and amended in 2004. These statutes provide exclusively for the economic regulation of Dublin Airport through setting a price cap. In 2016, a review of airport charges regulation was carried out by Indecon on behalf of the Department of Transport, including an MPA of Irish Airports.
Date of decision	July 2016
Link to decision	http://www.dttas.ie/sites/default/files/publications/aviation/english/review-regulatory-regime-airport-charges-ireland/review-regulatory-regime-airport-charges-indecon-economic-consultants.pdf
Market definition - key features	<p>Product market conclusion - It is the basket of services which an airline is required to purchase to operate from an airport, including the use of runway and taxiways, airside and landside ground handling services, facilities for check-in, baggage handling, security screening and other essential airport operational services.</p> <p>Geographic market conclusion – The widest feasible relevant market is likely to be the Republic of Ireland. Because of the extent of concentration in the market, it is not necessary to come to a definitive view on whether a more narrow geographic market is applicable.</p>
Market power - key features	<p>Conclusion – Dublin Airport has SMP in its relevant market. No other Irish Airport has SMP.</p> <p>Reasons</p> <ul style="list-style-type: none"> • If the Republic of Ireland is taken as the geographic market, Dublin’s market share is 87%. This gives rise to a prima facie presumption of SMP under established European Commission practice in competition cases. There is no sufficient evidence which would rebut this presumption. <ul style="list-style-type: none"> ○ The ability of Ryanair and Aer Lingus to switch capacity to other international airports may act to some extent as a constraint on Dublin Airport’s market power but, except for transfer passengers (4% in 2015); international airports do not constitute the relevant geographic market. While the two

	<p>main airlines are likely to have some countervailing buying power, this is constrained by consumer preferences²², the high level of peak capacity utilisation at Dublin Airport, and the extent of sunk costs by these airlines on routes to and from Dublin.</p> <ul style="list-style-type: none"> ○ There has been no example of any switching of routes to or from Dublin Airport to other airports in Ireland over the past five years. ○ Based on the estimation of the charges elasticity of demand (how passenger numbers are likely to move as a result of changes in airport charges), Indecon’s analysis suggests that in the absence of regulation Dublin Airport would not have an incentive to reduce charges to the levels which would exist in a competitive market.
Other factors – competition law	<p>Test - Does competition law provide sufficient protection against the risk that the operator may engage in conduct that amounts to an abuse of its SMP?</p> <p>Reason and Conclusion The Indecon report did not explicitly assess whether competition law provides sufficient protection against the risk of Dublin Airport abusing SMP. However, it did recommend that economic regulation should continue.</p>
Other factors – benefits versus adverse effects analysis	<p>Test - For users of air transport services, are the benefits of regulating the relevant operator by means of a licence likely to outweigh the adverse effects?’</p> <p>Reason and Conclusion Having assessed the available evidence, Indecon concluded that continued economic regulation was in the interests of users.</p>
Time taken	Commenced mid 2015 and concluded mid 2016.
MPA Decision	SMP was found in the case of Dublin Airport.
MPA Outcome	The Department of Transport, Tourism, and Sport decided that Dublin Airport will continue to be subject to price regulation. In the case of Shannon and Cork airports, there is no basis for applying economic regulation of charges. ²³

Airport	Amsterdam Airport Schiphol (AMS)
Country name	The Netherlands
Country population	17 million people
Large airports and mppa	The largest airport in the Netherlands is Amsterdam Airport Schiphol, serving around 64mppa. The second largest Airport is Eindhoven Airport, which may pass the 5 mppa threshold in 2017. Other airports are Maastricht Aachen

²² In the case of Dublin, there is some evidence that (similar to Heathrow) the geographic market is not wider than the airport itself as it is the preferred airport for most passengers travelling to or from Ireland.

²³ <http://www.dttas.ie/sites/default/files/publications/aviation/english/national-policy-statement-airport-charges-regulation/nps-airport-charges-regulations-final-18-sept.pdf>

	Airport, Lelystad Airport, Groningen Airport Eelde and Rotterdam The Hague Airport.
Statutory basis for airport regulation	<p>The new Aviation Act in the Netherlands (Wet Luchtvaart 2017) – entered into force 1 July 2017.</p> <p>Overview of the Economic regulation in the Dutch Aviation Act</p> <ul style="list-style-type: none"> • Cost oriented, non-discriminatory and reasonable charges and conditions for Schiphol's aviation activities. • Cost orientation requirement at aggregation levels for traditional aviation and for security. • Dual till/cost plus. • Efficiency incentives and special consultation procedures for large investments. • Cost allocation system to be approved by ACM, valid up to 6 years. • Yearly submission of financial accounts of aviation activities for the preceding financial year, to be approved by an independent accountant. • Consultation and settlement of charges and conditions every three years. • Airlines can complain to the ACM. • Yearly settlement of difference between realised and planned turnover aviation activities, minus related variable cost. • Yearly settlement of difference between realised and actual costs with respect to investments. • Financial contribution from non-aviation to aviation (determined by the shareholders).
Date of advice	In 2009, the Dutch Ministry of Infrastructure and Environment asked the former Netherlands Competition Authority (NMa) its opinion on Schiphol Airport's market position and the desirability of economic regulation. The Ministry asked this opinion in the context of the revision of the Dutch Aviation Act. NMa concluded in November 2010.
Link to advice	https://www.acm.nl/nl/publicaties/publicatie/6779/Advies-NMa-over-regulering-van-Schiphol/
Market definition - key features	<p>The core activities of Schiphol airport in terms of revenue is 1) the provision of infrastructure to airlines. Moreover, Schiphol also provides 2) access to the infrastructure for third parties which offer ground handling services at the airport.</p> <p>1) The provision of infrastructure to airlines</p> <ul style="list-style-type: none"> • Market for the provision of infrastructure to airlines serving O&D passengers. • Market for the provision of infrastructure to airlines serving transfer passengers. • Market for the provision of infrastructure to airlines offering cargo transportation. • Market for the provision of infrastructure for local & instruction flights.

There are several reasons for defining four separate markets related to the provision of infrastructure to airlines.

First, the airport charges are different for the services (passenger on origin & destination flights (O&D), passenger transfer on transfer flights, cargo, local & instruction flights), and the airlines cannot easily switch between offering these types of services.

Second, the related downstream markets differ, which enables the airport to address these types of customers differently. For instance, the introduction of the 'Air Passenger Tax' on July 1, 2008 shows that substitution between O&D and transfer passengers is not substantial in case of a price increase for O&D passenger services.

Third, the analysis of the catchment areas indicates that these markets differ with respect to their geographic market boundaries.

Finally, supply-side substitution is not strong enough. There exists no alternative airport capable of taking over almost all traffic at short duration in case of a price increase.

Geographically, these markets are defined through their respective catchment areas. The exact definition is left open, as a too rigid geographic market definition might mislead the assessment of market power. ACM therefore only give indications about the size of Schiphol airport's geographic markets, with the catchment area of local & instruction flights being the smallest area relatively close to the airport, O&D covering a larger area of or around the Netherlands, and transfer (some part of Western Europe) and cargo (whole of Europe) being even larger.

2) There are five markets for access to infrastructure for the provision of ground handling services by third parties.

These are defined as follows:

- Market for the access to the infrastructure of Schiphol airport for companies which offer passenger handling services.
- Market for the access to the infrastructure of Schiphol airport for companies which offer freight and mail handling services.
- Market for the access to the infrastructure of Schiphol airport for companies which offer aircraft handling services.
- Market for the access to the infrastructure of Schiphol airport for companies which offer catering services.
- Market for the access to the infrastructure of Schiphol airport for companies which offer refuelling services.

A separate market for each of the separate ground handling services would result in too narrow market definitions, because the services are usually offered in bundles. Catering and Refuelling are separate markets, because these services require different facilities. Some of the other ground handling services are complementary, resulting in the three other clusters which are not

	<p>substitutable (freight and mail handling, passenger handling and aircraft handling).</p> <p>The exact geographic market definition of these markets is to some extent left open. In geographic terms, these markets are not necessarily restricted to the airport's area, as the provision of some of these services may also be linked to the use of offices and rental space close to the airport. This is more likely for some services (i.e. catering) compared to others (i.e. refuelling). As a consequence, all five geographic markets are defined relatively broadly and may also include nearby locations beyond the airport's space.</p> <p>In its advice to the Ministry NMa concluded it was not necessary to subdivide the markets as mentioned above. NMa concluded this subdivision does not influence its conclusion regarding the desirability of economic regulation, as Schiphol airport has significant economic market power on these individual markets and so on the aggregated market.</p>
Market power - key features	<p>Amsterdam Airport Schiphol has significant economic market power (SMP) for the provision of infrastructure to airlines in all four markets that were assessed. The strength of the market power differs between the markets. On O&D markets, SMP is most apparent, while on cargo it is the smallest.</p> <p>Schiphol also has SMP in all five of the markets for access to the infrastructure for companies offering ground handling and other services. However, access to infrastructure is provided without an access charge and the associated barriers to entry are kept to a minimum.</p>
Other factors	-
Time taken	Commenced 2009 and concluded November 2010.
MPA conclusion	SMP was found. Sector-specific regulation of tariffs and conditions for aviation activities is justified because, with the current market situation, there is a conceivable risk that Amsterdam Airport Schiphol abuses its dominant position.
MPA Outcome	Determined by the Ministry of infrastructure and environment: Continuation of economic regulation of Amsterdam Airport Schiphol under the Aviation Act

Overview UK MPAs	
Country name	United Kingdom
Country population	66 million people
Large airports and mppa (2016)	<p>There are 6 airports in the London area - London Heathrow 76mppa, London Gatwick 43mppa, London Stansted 24mppa, London Luton 15mppa, London City 4.5mppa, and London Southend 0.9mppa</p> <p>Other UK airports over 5mppa are Manchester 25mppa, Edinburgh 13mppa, Birmingham 12mppa, Glasgow 9mppa, Bristol 8mppa and Belfast International</p>

	5mppa
Statutory basis for airport regulation	<p>The Civil Aviation Act 2012 (CAA12) sets out the market power test (MPT) which is used to assess if an airport has substantial market power (SMP) and needs to be economically regulated.</p> <p>CAA12 prohibits the operator of a “dominant airport” from levying charges for the use of its facilities without an economic licence issued by us.²⁴ An airport operator is considered dominant if a determination is made that the MPT is met in relation to the airport or part of the airport (the airport area) and publish a notice of that determination.²⁵</p> <p>There are three components of the MPT - Test A, Test B, and Test C. These are set out in section 6 of CAA12. Each component must be met to make a determination that an airport operator is the operator of a dominant airport.</p> <p>Test A requires that the CAA considers whether the relevant operator, either alone, or taken with such other persons as the CAA considers appropriate, has, or is likely to acquire, substantial market power (SMP) in a market for one or more types of airport operation services (AOS) provided within all or part of the airport area.²⁶</p> <p>The test must be conducted on the basis of the prevailing regulatory regime absent any licence regulation imposed by us. The CAA would, therefore, not attempt to remove any effects from the Airport Charges Directive (ACDs)²⁷ or the Airport (Groundhandling) Directive (AGDs)²⁸ or other general legislation that is applicable to the operation of an airport when conducting the test.</p> <p>Test B requires that the CAA considers whether 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 SMP.²⁹</p> <p>For the purposes of Test B, conduct may, in particular, amount to an abuse of SMP if it is conduct described as an abuse of a dominant market position under competition law³⁰:</p> <p>Although Test B is a separate test, it cannot be divorced from Test A, because, to apply it, the CAA must have already determined that the relevant operator has or is likely to acquire SMP in the relevant market under Test A. If the operator does not have and is not likely to acquire SMP, there can be no risk</p>

²⁴ Section 3 CAA12

²⁵ Section 5 CAA12

²⁶ Sections 6(3), 6(6), and 6(7) CAA12

²⁷ DIRECTIVE 2009/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0012>

²⁸ COUNCIL DIRECTIVE 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31996L0067>

²⁹ Section 6(4) read together with sections 6(8) and 6(9) of CAA12

³⁰ Section 6(9) CAA12

	<p>that the operator will abuse it.</p> <p>Test C requires that the CAA considers whether, for current and future users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects.³¹ As with Test A, the CAA will assume the prevailing regulatory regime is in place.</p>
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Airport	Heathrow Airport Limited (HAL) passenger airline services
Date of decision	January 2014
Link to decision	www.caa.co.uk/CAP1133
Market definition - key features	<p>Product market conclusion – provision of airport operation services (AOS) to full service carriers (FSC), and associated feeder traffic airlines.</p> <p>Reasons</p> <ul style="list-style-type: none"> Given the complexity of Heathrow airport (LHR) and the various products and services that HAL provides to users of the infrastructure at Heathrow, CAA considered appropriate to determine a service bundle rather than individual products or services passenger airlines; The airport operation services for cargo and passenger transport markets are likely to differ, not least in the additional handling that cargo requires when at the airport. However, given that at Heathrow the focus of cargo operations is on the provision of bellyhold space by passenger airlines, the CAA does not consider it necessary to define an independent product market for cargo at the airport in its conclusion on market definition. <p>Geographic market conclusion – limited to Heathrow airport.</p> <p>Reasons</p> <ul style="list-style-type: none"> While both the supply side and passenger analyses suggested that there is level of substitutability between all the London airports, (especially those with sufficient infrastructure to compete over the aircraft in the range of 75 to 100 tonnes maximum takeoff weight) and there is sufficient capacity that could allow services to be easily switched from Heathrow, demand side analysis showed the product that HAL offers at Heathrow to be highly differentiated from that of the other London airports. In particular, evidence presented by HAL shows that the demand it faces is distinct from, for example, the demand faced by GAL at Gatwick. On the other side, although there is some level of competition between HAL and the other European hubs for the purposes of this determination, the level of competition does not seem to be sufficient to widen the geographic market. Evidence from airlines also suggests a differentiated product at Heathrow, due to its brand and hub status. The CAA therefore considers that Heathrow is likely to be in a market by itself.

³¹

Section 6(5) CAA12

Market power - key features	<p>Conclusion - HAL has SMP in its relevant market. This SMP will continue going forward (It is expected to persist over the period April 2014 – December 2018, Q6 price control period), not least due to improving economic conditions and tightening capacity across the London airports.</p> <p>Reasons</p> <ul style="list-style-type: none"> • HAL's market share analysis suggests that HAL has 100 per cent of the market and that this provides a rebuttable presumption of SMP under established European Commission practice in competition cases. This presumption of SMP from the market share analysis is supported by a number of other indicators, including HAL's efficiency, pricing behaviour and its approach to airline engagement and commercial negotiations. • With respect to efficiency, there appears to be a number of areas where efficiency at Heathrow can be improved, conclusion that is supported by evidence from a number of independent benchmarking studies, all pointing out areas of inefficiency at Heathrow; • With respect to HAL's pricing behaviour, the evidence suggests that HAL does not offer any discounts on its prices and there have been some significant price increases over the last ten years. In addition, in the absence of regulation, it could be reasonably inferred that prices at Heathrow would rise.
Other factors – competition law	<p>Test - Does competition law provide sufficient protection against the risk that the operator may engage in conduct that amounts to an abuse of its SMP?</p> <p>Reasons and Conclusion</p> <ul style="list-style-type: none"> • The CAA concluded that competition law alone will not be sufficient to prevent the risk of HAL abusing its SMP in the relevant market: • the risk in the light of the findings of SMP in the relevant market is that, given the lack of countervailing buyer power, higher prices, reduced choice or poorer quality in relation to service levels could result if HAL were not subject to economic regulation. • competition law is not well adapted to tackling conduct which amounts to abuse of SMP in the form of excessive pricing or reduced service quality. This is principally because the case law reveals the considerable challenges for the users of air transport services affected by this kind of abuse in bringing challenges or seeking damages based on competition law. • where the market is impaired by the existence or likely emergence of SMP which brings with it the risk of abuse by the holder of that SMP, what is effective is the ability to open up markets and construct remedies that are detailed, timely and can be flexed over time. Competition law cannot readily offer these remedies. • The CAA considered that competition law did not provide sufficient protection against the risk that HAL may engage in conduct that amounts to an abuse of its SMP.
Other factors – benefits versus	<p>Test - For users of air transport services, are the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse</p>

adverse effects analysis	<p>effects?’</p> <p>Reasons and Conclusion</p> <p>The CAA considered that while the existence of dominance or SMP is not prohibited under competition law, the presence of SMP is a prerequisite for the potential of harm to competition and final consumers. The potential for HAL abusing its SMP through excessive pricing is established by the following facts:</p> <ul style="list-style-type: none"> • HAL has priced to the cap in accordance with its published charges of use without entering into negotiations with the airlines to offer discounts. • The prices proposed by HAL for Q6 price control period are significantly higher than that of the CAA. • HAL’s prices were consistently well above the average price of comparable hub airports. <p>Therefore given HAL's SMP, the CAA considered that if HAL was unregulated there was a risk of HAL raising prices and transferring surplus from its users to its shareholders.</p> <p>The CAA concluded that for HAL, the benefits of licence regulation outweigh the adverse effects to users of the airport.</p>
Time taken	Commenced 2011 and concluded Jan 2014 – about 2.5 years.
MPA Decision	SMP was found.
MPA Outcome	HAL continued to be economically regulated and new terms and conditions of the licence were imposed from 1 April 2014. Under current legislation, the decision to subject HAL to economic regulation stands until another MPA that results in a different outcome is undertaken.

Airport	Gatwick Airport Limited (GAL) passenger airline services
Date of decision	January 2014
Link to decision	www.caa.co.uk/CAP1134
Market definition - key features	<p>Product market conclusion – provision of airport operation services (AOS) to passenger airlines</p> <p>Reasons</p> <p>The CAA no longer considers that it is appropriate for the relevant market to be segmented by airline business model, as previously supposed in the consultation, because LCCs and FSCs indicated that passengers could easily switch between their services.</p> <p>Geographic market conclusion – limited to Gatwick airport (LGW).</p> <p>Reasons</p> <p>In the CAA report, Heathrow was identified as a potential competitor, but, given its capacity constraints, airlines interested in operating there are unlikely to be able to switch to that airport in practice.</p> <ul style="list-style-type: none"> • Luton and Stansted are not included in the relevant market as Gatwick is the preferred airport of operation for airlines, because of Gatwick large catchment area and because Gatwick has better infrastructure

	(more facilities) and a higher connecting passenger feed.
Market power – key features	<p>Conclusion – GAL has SMP in this market, which is expected to persist over the period April 2014 – until at least March 2019 (Q6 price control period)</p> <p>Reasons</p> <ul style="list-style-type: none"> • There are sufficient barriers which limit the ability of airlines to switch from Gatwick in response to a small but significant non-transitory increase in prices. • Airlines are not able to switch away from Gatwick to discipline GAL’s pricing behaviour due to factors like capacity constraints, presence of backfill and the credibility and effectiveness of alternative switching options. • The SMP of GAL exists and will continue in the future due to timescale required for adequate airport expansion.
Other factors – competition law	<p>Test - Does competition law provide sufficient protection against the risk that the operator may engage in conduct that amounts to an abuse of its SMP?</p> <p>Reasons and Conclusion</p> <p>The CAA concluded that competition law alone will not be sufficient to prevent the risk of GAL abusing its SMP in the relevant market:</p> <ul style="list-style-type: none"> • The lack of constraints on GAL and the prospect of further pressure on capacity in the market mean that GAL would have the ability to raise prices or reduce service quality and the incentives to do so. Its customer airlines have contended that this is a risk. • Competition law is not well adapted to prevent conduct which amounts to abuse of SMP in the form of excessive pricing or unsatisfactory service quality. This is principally because competition law only applies after the event and may not prevent conduct occurring in the future or stop consumer detriment in the interim. Case law reveals the considerable practical and legal challenges for end-users of air transport services affected by this kind of abuse in bringing challenges or seeking damages based on competition law. <p>The CAA therefore found that Test B is met in relation to GAL.</p>
Other factors – benefits versus adverse effects analysis	<p>Test - For users of air transport services, are the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects?’</p> <p>Reasons and Conclusion</p> <p>While the CAA welcomed GAL’s price and service commitments proposal, the CAA:</p> <ul style="list-style-type: none"> • was not sufficiently convinced that the enforceability and the substantive terms of the commitments proposal assured benefits to passengers and cargo owners to a sufficient degree. • did not consider that the revised commitments offered sufficient protection against the potential abuse of SMP, for example in terms of excessive pricing, inefficiency, inferior service quality and investment.

	<p>Against this the CAA considered the potential adverse effects of a Licence Backed Commitments (LBC Licence)³² in terms of the direct costs, distortions to incentives, regulatory gaming, management distraction and crowding out of a more commercial approach etc. The CAA noted that these adverse effects are minimised through an LBC Licence, given the focus of the regime on the airport operator-airline relationship and the focus of the licence is to ensure the regulatory oversight and enforceability of the commitments. Overall, the CAA's judgement was that the benefits of an LBC Licence were likely to outweigh the adverse effects.</p>
Time taken	Commenced mid-2011 and concluded Jan 2014 – about 2.5 years
MPA Decision	SMP was found.
MPA Outcome	GAL continued to be economically regulated and new terms and conditions of the licence were imposed from 1 April 2014. Under current legislation, the decision to subject GAL to economic regulation stands until another MPA that results in a different outcome is undertaken.

Airport	Stansted Airport Limited (STAL) passenger airline services
Date of decision	January 2014
Link to decision	www.caa.co.uk/CAP1135
Market definition – key features	<p>Product market conclusion - provision of airport operation services (AOS) to passenger airlines.</p> <p>Reasons</p> <ul style="list-style-type: none"> Assessed that separate relevant product markets for airport operation services to passenger airlines and to cargo only airlines because STAL is able to price cargo-only airlines differently to passenger airlines. <p>Geographic market conclusion - includes Stansted airport (STN), Luton and Southend airports.</p> <p>Reasons</p> <ul style="list-style-type: none"> Based on catchment area analysis, passenger surveys, documentary evidence and the views of airlines and relevant airport operators on substitutability to inform the assessment. Assessed that Stansted sat at the bottom of a hierarchy of London airports, in which substitution tends to be asymmetrical from Stansted to Gatwick in one direction only. There is not significant demand side substitution between the north and south London airports. However, between Stansted, Luton and Southend airports there appears to be scope for demand and supply side substitution.
Market power – key features	Conclusion - STAL did not have nor was likely to acquire SMP in the relevant market for services to passenger airlines.

³² Licence-backed commitments or the LBC Licence is GAL's commitments to airlines backed by a licence and a monitoring framework.

	<p>Reasons</p> <ul style="list-style-type: none"> • Manchester Airport Group (MAG) acquired STAL from BAA in early 2013. Under new ownership, which separated it from Heathrow and Gatwick airports, STAL adopted a new commercial strategy: <ul style="list-style-type: none"> ○ invested in a new terminal transformation project to increase retail spend per passenger – gave it an incentive to increase passenger numbers by moderating its aeronautical charges ○ concluded separate long term commercial agreements with easyJet and Ryanair. The deals offered lower prices to the airlines to grow their traffic at the airport. The prices were significantly lower than the 2013/14 regulated price cap of £7.68 per passenger and within a range that the CAA considered to a competitive price for STAL. • CAA considered that the agreements were consistent with its assessment that easyJet and Ryanair had countervailing buyer power. • It was a “finely balanced decision”, complicated by the recent change of ownership of STAL during the MPA process. • The robustness of those deals was described as an uncertainty which could lead to a material change of circumstances that may trigger a new MPA being undertaken.
Other factors – competition law	<p>Test - Does competition law provide sufficient protection against the risk that the operator may engage in conduct that amounts to an abuse of its SMP?</p> <p>Reason and Conclusion As the CAA concluded that STAL did not have nor was it likely to acquire SMP in the relevant market, there was no risk of STAL engaging in conduct that would amount to an abuse of that SMP. Therefore the CAA did not consider whether competition law provided sufficient protection against the risk that STAL may engage in conduct that amounts to abuse of SMP.</p>
Other factors – benefits versus adverse effects analysis	<p>Test - For users of air transport services, are the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects?’</p> <p>Reason and Conclusion The CAA did not consider whether the benefits of regulation by means of a licence were likely to outweigh the adverse effects because STAL did not have, nor was it likely to acquire SMP in the relevant passenger market at Stansted airport.</p>
Time taken	Commenced mid-2011 and concluded Jan 2014 – about 2.5 years
MPA Decision	SMP was not found.
MPA Outcome	STAL services to passenger airlines stopped being economically regulated from 1 April 2014

Airport	Stansted Airport Limited (STAL) cargo only airlines services
Date of decision	March 2014
Link to decision	www.caa.co.uk/CAP1153

Market definition – key features	<p>Product market conclusion - at least as wide as airport operation services (AOS) to air cargo airlines (cargo-only and bellyhold passenger aircraft).</p> <p>Reasons</p> <ul style="list-style-type: none"> Assessed that separate relevant product markets for airport operation services to passenger airlines and to cargo only airlines because STAL is able to price cargo-only airlines differently to passenger airlines. Integrators and freight-forwarders appear to use a mix of both bellyhold and cargo-only operations. Airlines that have access to both in their fleets appear to move cargo between transportation in cargo-only and bellyhold to maximise their returns. Some segments of cargo traffic, namely hazardous and oversized, are restricted to cargo-only services. This segment is likely to be a small proportion of overall air cargo and it would share available cargo-only capacity with normal cargo. This is not charged for on a different basis by the airport operator, so it still forms part of the same market. Some limits on the substitutability between air cargo and intermodal alternatives. For European destinations, the cost differences mean that substitution is likely to be constrained by retail service considerations. Not able to conclude that the market is wider than AOS to air cargo airlines i.e. that it includes other modes of transport. However, there may be some competitive constraints from these other modes. Concluded that that the narrowest product market that STAL operates in includes AOS to cargo-only airlines and bellyhold services (the ‘AOS to air cargo airlines market’). Therefore the product market is at least as wide AOS to air cargo airlines. <p>Geographic market conclusion - at least as wide as AOS to air cargo airlines in south east of England:</p> <p>Reasons</p> <ul style="list-style-type: none"> Airports in the south east of England are all potentially able to satisfy the needs of freight-forwarders and integrators from a surface accessibility point of view. Geographic market definition is at least as wide as the airports in the south east of England.
Market power – key features	<p>Conclusion -STAL did not have nor was it likely to acquire SMP in the relevant market for services to cargo airlines.</p> <p>Reasons</p> <ul style="list-style-type: none"> MAG acquired STAL from BAA in early 2013. Under new ownership, which separated it from Heathrow and Gatwick airports, STAL had adopted a new commercial strategy. As part of this STAL offered commitments to cargo-airlines about medium-term tariff. Cargo “does not care” how it gets to its destination. Cargo owners have limited influence in precise route or transport method cargo takes; they are generally indifferent to whether cargo uses STAL or

	<p>another airport or another mode.</p> <ul style="list-style-type: none"> ○ Limited engagement from cargo community – Suggests downstream market participants do not expect that they /their customers will be disadvantaged by STAL not being economic regulated; ○ Perhaps easier to switch to other airports not currently providing services to cargo-only airlines. ● STAL not expected to be full at least until 2020. Any business that STAL might lose due to a small but significant and non-transitory increase in price (SSNIP) unlikely to be backfilled by other airlines who use STAL ● STAL’s market share in the relevant cargo market assessed as around 12%.
Other factors – competition law	<p>Test - Does competition law provide sufficient protection against the risk that the operator may engage in conduct that amounts to an abuse of its SMP?</p> <p>Reason and Conclusion The evidence did not establish that STAL had or was likely to acquire SMP, in the relevant cargo market. In the absence of a conclusion that STAL had or was likely to acquire SMP, an assessment of whether competition law provide sufficient protection could not be completed.</p>
Other factors – benefits versus adverse effects analysis	<p>Test - For users of air transport services, are the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects?</p> <p>Reason and Conclusion As it was concluded that STAL did not have SMP in the relevant cargo market, this benefits and adverse effects were not assessed.</p>
Time taken	Commenced mid-2011 and concluded March 2014. However, the cargo focused MPA was a spin-off of the main STAL MPA (see above) with the bulk of the work concentrated in the final nine months of the MPA.
MPA Decision	SMP was not found.
MPA Outcome	STAL services to cargo airlines stopped being economically regulated from 1 April 2014