

# **IATA response to the UK CAA CAP 1132 of December 2013 on the Approach to Terminal Air Navigation Service (TANS) Regulation in RP2**

## **Summary**

- A single charging zone can be considered inconsistent with a 'contestable market' and our requirement for more cost-related and site-specific charging systems.
- We do not believe there is genuine contestability at the larger airports
- The proposed RP2 cost-effectiveness target of 2% p.a. real reduction in unit costs per flight is insufficiently challenging against the current and forecast average 2% inflation rate and forecasted traffic increase.
- The predicted RP2 ATFM delay outcome for the largest airports which is no better or worse than historic performance and is significantly worse than current performance should be more robust and challenging.
- Publication of cost-efficiency data at airport-level would increase the pressure for efficiency gains and provide the transparency required by users.
- The reasons for proposing a return on sales instead of cost of capital do not support the regulatory role of replicating a competitive market as much as possible.
- The barriers and potential down-side for changes in ANSP suppliers at the larger airports that also enjoy relatively strong market power demonstrates the need for more robust economic regulation.

## **1. Introduction & Background**

1.1 We welcome the opportunity to respond to this consultation and to provide our views and requirements on terminal air navigation service (TANS) regulation. Our consistent approach with regards to TANS with all stakeholders, including providers and regulators throughout Europe, has been our requirement for a level-playing field with cost-related and site-specific charges.

1.2 This approach is driven against the background of an intensely competitive airline business, the requirement for continual cost-effectiveness improvements and value for money from the providers, and in line with basic ICAO charges principles regarding cost-relatedness, transparency and no cross-subsidy.

1.3 The CAA may be aware that in our response to the Department for Transport consultation in 2007 we supported the proposal to end direct charging for airport ANS at the major UK airports. This was in the expectation that airports were more likely to provide a greater scrutiny of costs of airport ANS if they are required to pay for them directly rather than their airline customers.

1.4 This was also on the basis or assumption that an element of competition would continue to exist between the airports. It was assumed the airports would have strong

incentives to negotiate cost-efficiencies on price and quality, and that the reporting requirements under the EC Regulations would ensure transparency to users on the airport ANS costs.

1.5 Unfortunately our experience, particularly at the larger airports, is that this has not been the outcome in the UK. This is mainly due to the lack of transparency at airport level where we are unable to see evidence of the incentives for airports to negotiate cost-efficiencies on price or quality.

1.6 Intuitively the ability for airports to negotiate their ANS contracts or go out to tender should improve cost-efficiency. The lack of transparency at airport-level however does not allow us to make this assessment. Additionally, airports may also be able to negotiate benefits with their ANSP which are not necessarily shared with the airline customers, particularly where the airport is capacity-constrained and enjoys relatively strong market power. In this respect it should also be noted that transparency is frequently further obscured through the inclusion of the ANS provision costs within airport landing charges or generic "ANS" airport charges that also include other airport-provided services.

## **2. Transparency & confidentiality**

2.1 While we can to some extent understand the commercial sensitivity and reluctance to share cost details with regard the contracting process, we suggest there must at least be a reasonable level of transparency to enable comparison and benchmarking for the users and not just the CAA/EC. In this regard the Capita Benchmarking study of 9 December 2013 circulated together with the CAA Consultation Document has been so extensively redacted that it is ineffective in enabling us in making such assessments given that all the useful comments and numbers are missing.

2.2 It is claimed in 2.24 of CAP 1132 that competition law states the publication of cost data is anti-competitive. In our view this is very much over-reaching what competition law says and requires. We note that Competition authorities often actively encourage the publication of cost data in order to increase the effectiveness of competitive forces. We see little reason why publishing cost efficiency data at an airport level would not increase rather than diminish the pressure for efficiency gains.

2.3 We note the intention is for the EC and CAA to be provided with airport-level data while we as the main customers will not have access for confidentiality reasons. This does not provide us with the required comfort or assurance that the appropriate cost-effectiveness targets will be applied, particularly against our experience of the States and Single European Sky Committee ability to water-down EC/PRB proposals. Furthermore If only the regulator sees the individual cost performance there is the clear risk of regulatory capture as has been seen in many industries subject to economic regulation.

### **3. Contestability**

As the CAA will also be aware from our response of 30 July 2012 to the “Study to assess contestability of ANS provision at UK airports”, we do not believe there is genuine contestability at the larger airports. Genuine contestability requires the threat of ‘hit and run’ entry and exit, as happens on airline point-to-point markets for example, which requires no entry or exit barriers. In the case of TANS provision ‘sunk costs’, invested capital and access to technology, in addition to any staff agreements, are also potential barriers restricting the ability to operate effectively and then have the ability to leave without losing invested capital.

### **4. Cost of capital**

We also have concerns regarding the point made in 2.16 of CAP 1132 that return on sales is a more appropriate measure for ‘allowed returns’ than return on capital, in a capital light industry. In our view the reasons given for taking this approach are inappropriate in that the regulator should be mimicking or replicating a competitive market as much as possible, which would reward all inputs/factors of production at a market rate. The relevance of allowed profits is to reward investors for putting up capital. If little capital is needed then ‘allowed profits’ should be low. The main factors such as labour costs or rental costs should be paid efficiently within the operational expenditure part of the building block approach.

### **5. Views & requirements**

5.1 The main objective and outcome of ANS provision with whatever system is adopted should be a better outcome for the users, and this clearly requires some form of transparency. In this regard the better outcome should be clear in cost-effectiveness terms and supported with transparency on the key performance indicators and/or service level agreements between the individual airports and their ANS provider. The improvements in cost-effectiveness should not be disguised or excused through inappropriate application of the total economic value type concepts.

5.2 A single charging zone can be said to be inconsistent with a ‘contestable market’. The proposal to calculate determined unit rates at the charging zone level does not fit with our requirement for more cost-related site-specific charges. Furthermore in our view the proposed 2% p.a. real reduction in unit costs per flight is insufficiently challenging against the current and forecast average 2% inflation rate and forecasted traffic increase.

5.3 The lack of access to airport-level data will not allow any indication on whether any particular airport contract is performing for our benefit or not, nor where there may or may not be cross-subsidies. These short-comings could to some extent be mitigated if the overall cost-effectiveness target was sufficiently robust and challenging, but just keeping pace with inflation while not having transparency on who is benefitting from the traffic growth economies of scale and productivity is clearly not in the users’ interests.

5.4 With regard to implementation & monitoring we are advised in 2.31 of CAP 1132 that the annual reporting schedule should allow sufficient time for the CAA to assess the level of performance against the targets and consider implications for any remedial action. This gives no commitment or indication of the triggers and form of potential remedial action. Additionally it is unacceptable if airport users are not involved or consulted within this essential process. As users we also believe we are entitled to the transparency on performance against targets and corrective action outlined in 2.32 of CAP 1132 as well as any definition, application and information on corrective measures designed to achieve the performance targets outlined in 2.33.

5.5 We are disappointed at the lack of ambition in the ATFM targets within the NSL TANS draft business plan, where the RP2 predicted outcomes are no better or worse at the seven largest airports compared to historic performance 2008-12 and are significantly worse than current performance 2013 YTD. We would urge for more robust capacity/delay targets to be set for RP2, particularly against the background of the insufficiently challenging proposed overall 2% p.a. real reduction in unit costs per flight for RP2.

Geneva, 8 January 2014