

## Chief Executive's Office

21 December 2015

Dear Colleague

I am writing to all airports and ANSPs to inform you that we have been advised by DG MOVE officials that they expect the Commission to issue a Decision under Article 3(4) of Regulation 391/2013, setting out its agreement that market conditions exist in the UK for the provision of Terminal Air Navigation Services (TANS).

The Decision is expected to cover the Reference Period 2 (2015-2019) of the Single European Sky (SES) Performance Scheme and means it will not be necessary for the UK to implement the following parts of the Regulation 391/2013<sup>1</sup> for TANS:

- a) calculation of determined costs in accordance with Article 7;
- b) setting of financial incentives for these services in the key performance areas of capacity and environment in accordance with Article 15;
- c) calculation of terminal charges in accordance with Article 12;
- d) setting of terminal unit rates in accordance with Article 17.

Instead we expect such matters to continue to be dealt with through commercial arrangements between airports and their selected ANSP.

We expect airports and TANS providers to respond positively to this Decision. For the airport and its users to benefit from the best outcomes we need the market to be not only contestable, but also subject to effective competition.

Under the current SES Performance framework, the Decision will be time limited and we currently expect to reassess the TANS sector in advance of RP3, starting on 1 January in 2020, to determine the continued presence of market conditions. As such, the further development of effective competition in this market is critical to ensuring the sustainability of the current commercial framework in the UK. The purpose of this letter is, therefore, to set out some of the features we are expecting to see further improve.

### *Competitive Processes*

The TANS market will function most effectively if airports follow open tender processes to choose their provider. Although we acknowledge that there is a lack of clarity around which airports are legally required to put TANS services out to tender, we find it hard to understand why airports, which are themselves subject to significant competitive pressures, would not choose to test the market in as open and transparent a way as possible.

### *Contract Length*

Clearly, the level of investment in equipment and expertise required to run terminal operations at an airport can only be supported if contracts between airports and providers are of sufficient duration. Indeed, as stated in CAP 1293 <http://publicapps.caa.co.uk/docs/33/CAP1293ReviewSESforAirNavigationServices.pdf>, we do not anticipate intervening in negotiations between airports and ANSPs relating to contract length.

---

<sup>1</sup> COMMISSION IMPLEMENTING REGULATION (EU) No 391/2013 of 3 May 2013 laying down a common charging scheme for air navigation services.

Circumstances where we may have concerns from a competition perspective would be if contracts were being automatically rolled over, or where early renegotiation of contracts undermines the motivation of the airport to follow an open tender process, for example, by providing for some form of loyalty bonus.

*The role of the CAA*

All ANSPs are required to meet the required standards with respect to their certification as an ANSP and their designation for a particular airport. These requirements will be unchanged as a result of the Commission's Decision. We will be maintaining the same rigour in terms of the scrutiny we place on ANSPs in this respect. At the same time, we anticipate a potentially higher level of activity for the Certification and Designation process.

As well as the need to provide the appropriate resources we also expect new applicants to understand what is required in terms of, for example, documentation and to plan ahead accordingly. With this in mind, we are keen for all parties to learn the lessons from the transitions at Birmingham and Gatwick. We will shortly be appointing an independent consultant to examine these processes and, where appropriate, to make recommendations for future transitions.

*The role of the parties*

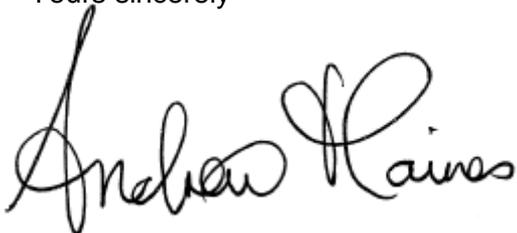
Generally, we expect all companies to behave in line with normal commercial processes and to engage in a timely manner when dealing with staffing, intellectual property or infrastructure issues in the event that the airport chooses a new provider. We continue to encourage airport operators to take ownership of assets used to provide TANS as this allows for a "turnkey" approach in the event of a change of provider.

As for staff, it goes without saying that we expect all parties to comply with their legal obligations under TUPE. It is also important that outgoing ANSPs are ready to actively facilitate transitions and to be transparent and objectively reasonable about the nature and extent of any secondment arrangements that they will put in place, as well as providing appropriate training to any new staff.

*Summary*

Once the Decision is finalised, the UK will be the first EU Member State where the Commission has concluded that market conditions exist for TANS. Competitive markets will lead to a more efficient and innovative service for the ultimate benefit of consumers. We understand that DfT will want to maintain this position within Europe and will keep under review whether there are any further initiatives required to continue to develop the TANS market in the UK. I look forward to seeing this sector develop further for the benefit of passengers in the coming years.

Yours sincerely

A handwritten signature in black ink that reads "Andrew Haines". The signature is written in a cursive, flowing style.

Andrew Haines  
**CHIEF EXECUTIVE**