



November 6, 2014

Mr. Thomas Carr
UK CAA
CAA House
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Sent by email: thomas.carr@caa.co.uk

Ref: Provision of Terminal Air Navigation Services (TANS) in the UK: Call for evidence

Dear Mr. Carr,

Thank you for providing the opportunity for IATA to respond to the CAA's Terminal Air Navigation Services (TANS) call for evidence (CAP 1226).

We note the request of the UK Secretary of State for Transport (SoS), that the CAA provide advice on whether TANS satisfy the requirements of contestability as set out in Annex 1 of EC 391/2013. In particular, we note that SoS considers that recent events may make it appropriate at this time to seek derogation for UK TANS under Article 3 of EC 391/2013.

IATA does not consider that recent developments in the UK TANS environment have evidenced the existence of market conditions for UK airports with more than 70,000 IFR movements. In this regard we believe that the key finding of CAP 1004, that evidence does not support the existence of market conditions, remains valid. We also take the opportunity to reiterate the IATA response to the UK CAA CAP 1132 of December 2013 on the Approach to Terminal Air Navigation Service (TANS) Regulation in RP2. By way of direct response to the matters posed in CAP 1226, IATA provides the evidence set out in **Annex A**.

Additionally, in relation to the timing of the current request by SoS, we note that EC 391/2013 Article 3 provides a process to facilitate determination concerning market conditions before the commencement of a reference period. IATA is not aware of any justification to seek such a determination during a reference period and specifically, RP2. Indeed, any study would benefit from additional evidence gathered closer to the commencement of RP3 in accordance with the timeline set out in EC 391/2013 Article 3. This is especially the case in the context of outstanding TANS supplier matters at Gatwick.

I trust that you will consider these matters and our evidence to the issues of interest at **Annex A** as useful inputs to finalizing the CAA advise to the SoS concerning UK TANS contestability.

Yours sincerely,

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Annex A

1. Events that have taken place in the TANS market since the publication of CAP 1004 and how these events affect the presence or not of market conditions in the UK.

IATA has considered the cited recent changes and other events, and we do not believe that there has been a material effect on market conditions for UK TANS since the publication of CAP 1004. Specific justification is set out below.

The notification of change of provider for the TANS service at Birmingham Airport from NSL to Birmingham Airport Air Traffic Ltd:

- In relation to Birmingham, the CAA's previous assessment was that the opportunity to self-supply was more readily possible for airports with up to 70,000 movements per annum. At 95,000, Birmingham is not materially above this threshold. Additionally, we understand that the change is subject to a transitional arrangement lasting until at least 2017 and therefore it cannot be certain at this stage what the final outcome will be or even whether it will proceed.
- We also understand that Birmingham Airport decided to self-supply after first testing the market via a competitive tender, but found no suitable bids. This appears to confirm the CAA's assessment in relation to criterion 3 concerning the limited number of alternative ANSP operators available.
- The change to self-handling at Birmingham falls well within the CAA's 2013 CAP 1004 expectations and market assessment.

NSL was awarded further contracts at Cardiff, Belfast, Luton, Manchester and Stansted:

- Given that Cardiff, Belfast, Luton, Manchester and Stansted have all renewed their contracts with NSL, there is no evidence forthcoming about the suitability of viable alternatives. Therefore we see no basis for changing the CAA's previous market assessment.

The notification by Gatwick Airport Ltd in July 2014 that it would be awarding its contract for TANS to DFS:

- At Gatwick, while the airport announced its intention to change providers, we understand that legal challenge by NATS may prevent the airport from awarding the contract to DFS. Considering the current uncertainty of TANS supplier at Gatwick, it would be premature at this stage to say that it is possible or even likely that GAL will change suppliers.

2. Any additional evidence that affects the findings of CAP 1004, including the barriers to entry.

IATA notes the finding of the Performance Review Body (PRB) RP2 Assessment Report Volume 2 as it relates to UK TANS cost-efficiency. In particular the PRB identifies issues in relation to TCZ B cost of capital. Specifically, that:



“For the TCZ B, the cost of capital element of the DCs reflects the profit NSL “earns as a pretax return on sales on its contracts”. The profit margin of the ATSP (calculated as the share of the cost of capital in the total DCs) is planned to be between 14% and 15% for all years of RP2. These figures contrast with those observed for en-route ANS, where the share of cost of capital in the total DCs is expected to be between 7% and 9% over RP2. These large differences are observed despite the fact that the UK Performance Plan presents the DCs for the TCZ B as not being subject to traffic risk sharing, hence reduced risk, although there are two airports with more than 225,000 IFR movements per year in the TCZ B for which traffic risk sharing shall apply (in line with Art. 13 (6) of the charging Regulation) – this is subject to a separate assessment by the Commission.”

Further, considering the views expressed by UK CAA in CAP 1004 at paragraph 2.11 that:

“In a market that is well functioning excess profits act as a signal for new entrants to enter and overtime an erosion of profits to normal levels is expected. In a market that is not functioning well it can be expect that excess profits will persist usually due to market entry barriers that prevent firms from entering the market.”

The planned profit margin of NATS during RP2 within TCZ B, at between 14-15% is considered excessive. Even with this anticipated excess profit level, to-date only one new market entrant is evident (aside from the gradual transition to self-handling at Birmingham) and this is subject to legal challenge. This serves to emphasize that significant barriers to entry continue to exist with the UK TANS environment and further supports the CAA’s findings in CAP 1004.

3. How should we deal with the remaining issues identified in CAP 1004?

IATA notes that CAP 1004 recognised that there was some uncertainty about the likely timing for market changes, noting that while greater competition was in theory possible, very little change had so far occurred in practice.

Recognising that this uncertainty could also affect the RP2 period, the CAA stated that it would keep developments under review. It would seem that the renewal of contracts with NATS at five airports, the challenging developments at Gatwick and the cautious transition at Birmingham, all serve to underline and confirm the CAA’s careful approach about the scope for further change.

4. Any other representations relating to the competitiveness of the TANS provision in the UK.

IATA wishes to re-emphasize the importance of publishing cost-efficiency data at airport-level. Such transparency is considered an essential tool for the CAA to better encourage the development of market conditions within the UK TANS environment.