



**NATS Trade Union Side Response on CAP 1261 – Review of
advice on SES Market Conditions for Terminal Air
Navigation Services in the UK**

Introduction

1. The NTUS (NATS Trade Union Side) is the trade union body representing staff within NATS, and is made up of 3 constituent groups, Air Traffic Control Officers, Air Traffic Systems Specialists, and Support Staff, through two recognised Trade Unions, Prospect and PCS.
2. The NTUS recognises that the airport market and consequential provision of Air Traffic Management services operate in a commercial setting. This however does not preclude us in stating our position that in our expert view, ATM should be one cohesive operation, ideally delivered by one provider with appropriate state support. The benefits of this are:
 - a. The operational benefits of having a unified ANSP.
 - b. The operational and financial benefits to the UK of the organisation being state owned.
 - c. The financial benefits to customers in economy of scale, and operational savings through integrated procedures and equipment.
3. The fragmentation that now exists is having a clear impact on the ability to deliver the Future Airspace Strategy (FAS) and our members are experiencing the 'watering down' of benefit that could be delivered by a cohesive technological upgrade program and airspace design process. One only has to examine the London Airspace Management Program (LAMP) to see that different competing entities (Airport operators in the main) are now experiencing reluctance to contribute due to their own commercial and environmental pressures.

Overview of CAP1261

4. The NTUS believes that following recent contract tenders and renegotiations in the Terminal Air Navigation Services (TANS) market, it can be demonstrated that market conditions do exist. This is demonstrated by recent developments regarding service provision at Birmingham, Gatwick, Luton and Manchester – Stansted.
5. We believe that the market has changed significantly and that there are new entrants to the market, which means that there is sufficient opportunity for airport owner/operators to run a competitive tender and to have credible alternatives to NSL participating in the tender process.
6. The fact that 5 airports have renewed with NSL does not indicate that there is not fierce competition, there's nothing wrong per se with NATS being successful in re-bidding for these contracts.
7. The NTUS would also highlight that the remarks quoted by IATA (as referenced in section 5.2) are now out of date and should be discarded following events in the market.

8. We cannot agree that the market should be skewed to promote new-entrants to the market in terms of bid costs. If a company such as DFS wishes to take a long-term decision to enter a market then they must bear the cost – as would be same in any other (safety etc.) regulated industry.
9. We recognise that the requirements for certification and designation act as a barrier to a new entrant to the UK market. We fully support a robust and stringent certification process. In line with Single European Sky principles we believe that the CAA needs to closely consider the extent to which evidence from certification in another EU country may be given any weight as part of the process.
10. The Airport owner/operators should be free to select closed or open tenders based on their own commercial considerations as to what is in their own best interests. Given the commercial and regulatory pressures that exist on airport operators on the charges they levy to airlines, there is adequate pressure on such owners to ensure that they procure a cost-efficient contact with either NSL or alternative supplier.
11. In respect of the tender of the Gatwick contract it is correct that the CAA should accept that the legal challenge was an exercise of NATS' legal rights. However it must be stated that, NATS/NSL did not challenge the fact that GAL entered into a formal tender to select a provider for the next contract term, be it either NSL or an alternate. NATS' challenge was related to the evaluation of the bids, their compliance (or otherwise) and the manner in which the successful bid was selected. This is a perfectly legitimate line of inquiry even though after disclosure of information the process was ultimately concluded out-of-court. There is no reason to assume that a similar challenge would automatically arise should another airport operator choose to award a contract to a bidder against an incumbent such as NSL; it is therefore wrong to assume that such legal costs as may arise providing a barrier to bidding or in any way distort the market conditions.
12. We disagree with the idea that there should be any distortion of the market to force new entrants to succeed. Whilst NSL may be a relatively successful company, it is wrong to translate that to show that NATS is in a dominant position, or in any way is able to abuse its position in renegotiating contracts (or indeed even winning new ones).
13. As we believe a market exists we do not see the need for the CAA to mandate or otherwise that future contracts should be required to go to tender. As has been demonstrated in the last 2 years a mix of approaches has been observed which include competitive tenders and negotiations on renewal directly with the incumbent supplier. We argue that the airport operator is the best judge to determine whether or not to go through competitive tender process and the mandating of such a process forces additional unnecessary cost and other

resource requirements on operators 'just for the sake of it'. We do not share the view that the government should review the requirements on open tendering and any such requirement amounts to micro managing. This is supported in the actions of Manchester Airport Group (MAG) as referenced in 5.50. Indeed the approach taken by MAG demonstrates it used its commercial pressure to obtain a contract that provides the service and cost balance it requires. It is not the role of the CAA to force NSL to lose Airport contracts. If NSL wins on merit, so be it.

14. The NTUS would urge caution when reviewing the impact of long term contracting. There are significant benefits to long term contracts. We support the use of contracts for a duration of up to ten years, which provides stability, and a reasonable period of return thereby allowing investment in new technologies. To have the UK market based on short term contacts could well dissuade new entrants in to the market, and lead to a disjointed approach focused on maximising short term profit, given the costs involved in securing a contract, to the detriment of the CAA FAS, environmental concerns and implementing initiatives under SES.

Transition

15. Following our experience of the Birmingham and to a lesser extent the beginnings of discussions with Air Navigation Solutions (ANS) at Gatwick, it is clear that the most important phase of a transfer of provider is during the actual transition phase itself. There is a direct correlation between the terms & conditions of staff, including 'soft' issues (both pre and post transition) and the level of safety of the operation. Staff need time and support to adjust to the change, and clarity on their future. Whilst this may take some time it is a key responsibility of both the outgoing and incoming employers to resolve these issues in a reasonable time period with appropriate consultation (and where appropriate negotiation).
16. Another key feature is the training program, both pre and post transition for any incoming staff directly recruited by the new provider. In order for transition to be 'de risked' the new provider needs a level of assurance that at the time of transition an adequate service can be provided. This can be achieved by the outgoing provider entering in to an agreement to:
 - a. Second existing qualified staff that choose not to transfer under ToaP back to the incoming provider for a fixed period and;
 - b. Agree to provide training to directly recruited staff from the incoming provider to certification standard prior to transition.
17. Should an agreement not be forthcoming the existing staff that transfer following transition could be put under significant pressure with safety implications if the resourcing level is not correct. The CAA in its review should examine this in detail and consider options, not only for seconding staff post transition, but also on arrangements to train staff hired by the incoming provider before transition. This

will ensure continuity of service as well as ensuring that staff are fully supported during this process.

Trust of a Promise (ToaP)

18. The NTUS regards ToaP as a key benefit to its members and part of the 'covenant' with staff at the time of PPP. We also wish to reiterate that as time progresses the influence of ToaP in the contract process will diminish. Given the imminent successful transfer of provider at Birmingham and the on-going negotiations with ANS at Gatwick we do not believe ToaP to be a barrier, and that employers recognising the value of attracting and retaining staff will need to offer competitive pension provision anyway. We see little risk or evidence that ToaP acts as an insurmountable barrier to staff transferring, and indeed our experience at Birmingham is that sufficient staff have transferred as to enable continuity of operation and training support. Furthermore that given the increasing number of providers, competition by providers for appropriately qualified staff will see an increase in labour movement.
19. Although we accept that the ToaP issues have been a learning curve for all, from our experience with the transition of Birmingham it became clear (via our own negotiations and conversations with Birmingham Airport Air Traffic Ltd (BAATL)) that the level of understanding on the terms of ToaP was quite low. This was judged to have prolonged the transition discussions creating a level of delay and causing greater uncertainty to our members.
20. The movement of staff as referred to in para 5.82 has very little to do with ToaP. NSLs constant focus on cost has made staff movement between airports incredibly difficult. NSL continues to block staff requests to move in all but the most extreme compassionate cases, often citing relocation and retraining costs as being prohibitive. This is largely born out by the data in figure 6 showing a consistent decline in movement. It is not true to say that staff may be unwilling to move to a different airport, as within NSL that opportunity is largely denied, and therefore cannot adequately be evidenced. Where providers have or are about to change we have evidence of staff seeking movement. It is our opinion that ToaP will not be a barrier to the movement of staff, but rather that the provider will have to demonstrate competitive terms and conditions in order to attract staff to their organisation. This is clearly within the gift of the providers themselves.
21. In conclusion the ToaP issue is one that is continuing to diminish, and it should also be recognised that it is a consequence of previous governmental policy. It is a covenant with staff at the time of PPP and must be respected. The NTUS however takes the view, as demonstrated by Birmingham and Gatwick that is not a barrier to entry to the market.

NSL interface with NERL

22. Our members are proud of their profession and consistently operate to the very highest standard, arguably equal to anywhere else in the world. Increasingly the 'name above the door' i.e. the employer, ceases to be a motivational driver and there is no evidence to suggest the service provided by our members is influenced to be less favourable from a NERL unit to a non NATS (NSL) airport provider. Indeed our experience and that observed by our members points to the exact opposite in that NERL has an exceedingly good relationship regarding operational interfaces. This was highlighted in conversations between the NTUS and BAATL. Whilst we do not share the view that an employer would be in a position to require our members to offer a less favourable service to a specific airport operator, we would support a standardised and transparent publication of terms and conditions of service provided by NERL.

CAA Review of the Birmingham TANS Transition

23. The NTUS has had significant involvement in supporting the transition process. The constituent unions have secured recognition rights and successfully negotiated terms and conditions for staff employed by BAATL and have commenced negotiations with ANS at Gatwick. We have unique insight into the process, gained through negotiations with NSL and BAATL. It is our members that ultimately facilitate the practicality of transition, particularly with continuity of service provision, staff mobility and retention (including w.r.t ToaP) and training of directly recruited staff by BAATL. The NTUS considers itself a key stakeholder in the provision of ATM in the UK and would very much request the opportunity to contribute to the CAA review.

Conclusions

24. The NTUS agrees with the CAA that Market Conditions exist.
25. The NTUS does not support further work on exploring new requirements on the duty of airport providers to publicly tender and sees this akin to micro managing their business.
26. Long-term contracts should not be discarded and there are benefits in stability and investment from such arrangements. The NTUS does not agree the CAA should use its competition powers in this case.
27. ToaP is only a barrier if:
- a. It prevents an alternative ANSP from resourcing a service supply post transfer;
 - b. The date between contract award and transfer of operation is too short to allow the receiving ANSP to secure ATCO resource to replace any ToaP

staff. This concern would realistically only arise where the provider in question is unwilling or unable to put in place appropriate pensions terms thereby triggering the ToaP obligation on NATS, and motivating staff to remain with NATS.

28. We believe that even where staff do transfer to a different employment location in NATS due to ToaP, appropriate arrangements can be made with NATS to provide ATCO resource on a temporary basis to effect an effective transfer of the operation to a new provider. We accept the CAA view that the terms of this should be made transparent, and recommend they should also include pre transition arrangements around training new staff
29. The NTUS would welcome the opportunity to contribute to the CAA review of the Birmingham TANS operation following transition.

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