Transitions of Terminal Air Navigation Services (TANS) provision: Further information for stakeholders

CAP 1633

Contents

Introduction

From 2013, we have seen the most significant changes in the TANS market in the UK for many years:

- Birmingham Airport changed provider from NATS Services Limited (NSL) to Birmingham Airport Air Traffic Limited in 2015;

- Gatwick Airport changed provider from NSL to Air Navigation Solutions Limited (ANSL) in 2016;

- Belfast City Airport changed from self-supply to NSL in 2016; and

- Edinburgh Airport is due to change provider from NSL to ANSL in 2018.

In December 2015, Andrew Haines (CAA Chief Executive) wrote to airports and Air Navigation Service providers (ANSPs) advising that the European Commission had decided that market conditions exist in the UK TANS market, and that he expected them to respond positively to the decision. He also said that the CAA would be appointing an independent consultant to examine the transition processes at Birmingham and Gatwick.

The CAA engaged Steer Davies Gleave (SDG) to review the transitions to new providers at Birmingham and Gatwick. The aim of the reviews was to identify the key challenges and issues faced during the transitions, and the key learning points to minimise the cost and time taken for future transitions of TANS providers. In February 2017, the CAA published three reports:

- Review of TANS provider transition at Birmingham

- Review of TANS provider transition at Gatwick

- Review of TANS provider transitions at Birmingham and Gatwick - recommendations final report

One of SDG's main findings concerned the transfer of staff when there was a change in TANS provider. For transitions that do not involve NSL, the staff of the outgoing provider may transfer to the new provider under the Transfer of Undertaking (Protection of Employment) (TUPE) legislation. However, NSL staff that have been continuously employed by NATS since the Public Private Partnership (PPP) have the right to remain with their existing employer, if NATS is not able to assure them of the continuation of their existing defined benefit pension rights under their new employer. This right is in the Trust of a Promise (ToaP) agreement between NATS, the Secretary of State and the Law Debenture trustees. In both the Birmingham and Gatwick transitions, the incoming ANSP had to second air traffic controllers (ATCOs)

from NSL to fully staff their operations until they were able to recruit and train sufficient ATCOs to fully operate the services.

The CAA recommends that airports, and ANSPs read the SDG reports to make themselves aware of the issues that arose during the Birmingham and Gatwick transitions, and may occur during transitions at other airports.

Recommendations

SDG made a number of recommendations to airports, the CAA and incoming ANSPs about the transition process. The CAA has considered these recommendations and has taken them into account in suggesting the following issues that market participants may wish to consider further. Some of SDG's recommendations were addressed to the CAA. Most of them took the form of issues that SDG recommended that the CAA bring to the attention of airports and/or incoming TANS providers. These are dealt with in the issues that airports and incoming TANS providers should consider below. Some of SDG's recommendations were about the CAA's own processes, these are dealt with in Annex 1. The CAA intends to implement the majority of SDG's recommendations, but there are a small number that we do not intend to take forward at present, as explained further in Annex 1.

For the avoidance of any doubt although the CAA considers the approach to issues in this information note to be good practice they do not guarantee a successful tender or TANS transition process and are not a substitute for proper due diligence by all parties concerned.

Issues for airports to consider when tendering and contracting for TANS services

Airports should consider the following issues.

Contract length

- Ensure TANS contracts are long enough to make them viable for incoming providers. This is particularly important where NSL is the incumbent provider as ToaP is likely to lengthen the time until the incoming provider employs all their own staff at the airport.

Information and data

- List in their TANS contracts, information and data owned by the provider that may be transferred to an incoming provider. Consideration should be given to including at least the following:

    - manual of Air Traffic Services (MATS) Part 2;

    - unit training plan;

    - unit competence scheme;

    - maintenance documents and instruction manuals for equipment; and

    - historical and safety data for a specified period, including professional records of ATCOs and mandated data under TUPE.

- Include in contracts the price (if any), or formula for calculating the price, that outgoing providers could charge an incoming provider for information and data. In setting prices or other terms the airport should bear in mind that existing procedures may be regarded by outgoing providers as their intellectual property.

- Advise incoming providers to bear in mind that in considering whether to buy the existing MATS Part 2 or to produce a new version, buying the existing MATS Part 2 maintains the current working procedures, while producing a new MATS Part 2 may mean changing working practices. The costs of not buying the existing MATS Part 2 would include not only the costs of producing a replacement, but might also include the costs and time involved in training existing staff to operate using the new procedures. The same considerations may also apply to other operational documentation and procedures, such as the unit competence scheme and unit training programme.

Exit management

- Include provisions for exit management in their TANS contracts so that outgoing providers are obliged to cooperate with incoming providers. These provisions could include:

  - access to staff, this could include a minimum number of hours with time periods before transition;

  - obligations for the outgoing provider to cooperate with the airport, e.g. not to unilaterally cancel major projects when going into transition;

  - obligations for the outgoing provider to cooperate with the incoming provider; and

  - an obligation for the outgoing provider to provide training to the incoming provider. This could include requiring a training plan with defined training outputs.

Facilitating transition

- Facilitate the transition process by establishing ways of working and communication between the incoming and outgoing providers.

Assets & equipment

- Advise bidders that they will have to ensure that appropriate engineering systems and configurations, safety assurance and maintenance arrangements for equipment will be in place when they start operations at the airport.

Additional considerations when NSL is the incumbent ANSP

Airports should also consider the following.

Staff issues

- Advise bidders to read the legal text of the ToaP agreement and seek legal advice on its implications.

- State clearly in invitations to tender, that staff with rights under ToaP have special rights to remain with their existing employer, and, therefore, an incoming provider may have to make an agreement with NSL to second existing staff until they can be replaced with new recruits with the required validation to operate at the airport.

- To the extent practicable, make available to potential bidders the number of staff (by grade and age) subject to ToaP with an estimate of the possible attrition rate.

- Include the ToaP deed in the data room for the tender process.

Airports could also consider:

- Include in their contracts a formula for how the rates for staff seconded by the incoming provider from the outgoing provider should be calculated.

Delegated functions

- Where applicable, develop a clear understanding of how delegated en-route functions are delivered on-site by NSL on the behalf of NERL. A lack of transparency about these agreements may discourage airports from putting their TANS provision out to tender.

Issues for incoming TANS providers to consider

Incoming providers should consider the following.

Contract length

- Recognise that the overall length of transition for airports and incoming providers can be significant, relative to the duration of the contract, and that this could present challenges to the viability of shorter contracts for incoming providers.

Designation

- Be aware that the process for becoming designated at an airport can take a considerable time, in practice similar to going through the full certification and designation process.

- Plan to allow sufficient time for demonstrating compliance to the CAA at each new location.

Information and data

- Bear in mind that, in considering whether to buy the existing MATS Part 2 or to produce a replacement, buying the existing MATS Part 2 maintains the current working procedures, while producing a replacement may mean changing working practices.

- Be aware of not just the cost of producing a new MATS Part 2, but also the costs and time involved in training existing staff to operate using the new procedures.

- Recognise that the same considerations apply to other operational documentation and procedures, such as the unit competence scheme and unit training programme.

- Consider the balance between buying intellectual property (IP) or investing in developing it and training staff.

Staff engagement

- Communicate with staff on the continuity of safety data and performance records through the transfer of operations, to ensure that staff and their representatives maintain confidence in the process.

Assets and equipment

- Ensure that appropriate engineering systems and configurations, safety assurance and maintenance arrangements for equipment will be in place when they start operating at the airport.

Other considerations

- Be aware that the ability to deliver plans that form part of the transition may be impacted by the prevailing need to maintain ongoing operational continuity and accommodate growth.

- Foresee development and training for traffic growth or other projects and consider building in contingency for this into their transition plans.

Additional considerations when NSL is the incumbent ANSP

Incoming providers should consider the following.

Trust of a Promise (ToaP)

- Read the legal text of the ToaP agreement and seek legal advice on its implications.

- Be aware that staff with rights under ToaP can elect not to transfer to the incoming provider.

- Recruit new staff to replace those who remain with NATS.

- Realise that as it may not be possible to recruit and validate all the new staff required before it commences operations, they may need to second staff from NATS until new recruits are ready to operate at the airport.

- Be aware that such agreements should include robust plans to train sufficient ATCOs to replace seconded NSL staff.

- Realise that training can be lengthy and the time taken to train sufficient ATCOs will be impacted by the capacity of provider at the airport (in terms of both equipment and trainers) to train staff and normal failure rate at the airport.

- Define contractual terms that anticipate how to address the above should any issues materialise (e.g. define ways for measuring training outputs and the actions to be triggered under the contract if targets are not met).

Staff engagement

- Ensure they engage sufficiently both with staff subject to ToaP and with staff not subject to ToaP, to avoid them feeling isolated and uninvolved in the process.

Mandatory guidance to airports, outgoing TANS providers and incoming TANS providers on safety regulatory considerations

It is important that airports, the outgoing provider and the incoming provider should ensure that accountabilities and responsibilities are defined, agreed and maintained to ensure the safe continuation of service provision during the transition period.

ANNEX 1

SDG recommendations to the CAA

SDG made a number of recommendations to the CAA both on the certification and designation process and the transition process. A number of these took the form of recommending that the CAA should draw the attention of airports and ANSPs to certain issues. Most of these recommendations are included in the issues for airports and incoming providers to consider above. However, some of the recommendations related to the CAA's own processes and there are some that the CAA has decided not to implement. These are listed below in the table below with comments.

Theme	Recommendation	CAA comments
CAA resources	The availability of CAA resources should be carefully planned to ensure that these do not present a bottleneck in the process, particularly if close engagement and a significant amount of contact is required from the CAA to help ANSPs with attaining certification and designation.	The CAA will prioritise the use of its resources to ensure that it carries out its functions, including the certification and designation of ANSPs, in a timely manner.
CAA communications	Stakeholders (particularly incoming providers and customer airports) would value more formally defined communication lines with the CAA, which would limit the potential for miscommunication or misunderstandings between the parties involved and contribute to improving the transparency of the certification and designation process.	The CAA will consider how it communicates with ANSPs to ensure the transparency of the certification and designation process. The CAA has updated the guidance on its website to clarify the requirements for TANS transitions.
CAA guidance	There is opportunity for the CAA to either provide additional guidance to ANSPs for structuring their business plans and annual plans, or to provide links to equivalent SES guidance. This would be particularly helpful during the early stages of the plan development, requiring less direct contact time from the CAA.	The CAA has produced templates for ANSP Business Plans and Annual Plans. These are available on the CAA website.
Other certification and designation issues	To encourage wider market participation, it may be helpful for the CAA to introduce a pre-certification concept. Pre-certification could focus on organisational aspects of certification and designation that are not location-specific, for example on certain elements of a provider's management systems. By becoming pre-	Many of the certification requirements are about an ANSP's capability and management structure and can only be properly assessed in the context of the task it is going to do. Introducing a pre-

Theme	Recommendation	CAA comments
	certified a new TANS provider would be able to formally demonstrate to potential airport customers that it would be able to approach the certification and designation process in a competent manner, thus reducing the perceived risk that airports associate with this.	certification concept is, therefore, unlikely to lead to any reduction in the amount of time taken to certify and designate an ANSP when it has obtained a contract.
Staff transfer	The CAA should describe its expectations for the staff transfer process in more detail, providing a benchmark to industry for the process. The obligations relating to staff that are provided by the CAA in CAP 670 are not specified in detail, placing limited onus on the outgoing provider. There exists the requirement for the outgoing provider to offer mutually agreed access, which applies globally to all aspects of the transition, but not explicitly to staff. The statement does not provide an indication of the level of access that the CAA would expect the outgoing provider to offer. The process of staff transfer is heavily contingent on cooperation between the outgoing and incoming provider. An expected level of cooperation and engagement is not indicated by the CAA, leaving it primarily to the outgoing provider to determine.	The CAA has included access to staff in the list of issues that airport operators should consider when tendering and contracting for TANS services. However, the CAA does not consider that it can recommend a minimum level of engagement that should apply in all cases. The CAA considers that airports and ANSPs which have more knowledge of the local situation are more likely than the CAA to be able to establish an appropriate level of engagement.
CAA guidance and transparency of ToaP	Some of the details for the implementation of ToaP are not specified in the agreement (e.g. the number of alternative options that NATS ought to provide to ATCOs). Prospect would welcome guidance on these.	The CAA considers that these matters are best dealt with by NATS as they are internal to NATS own staff processes.
	The CAA should consider developing a "layman's guide" to the ToaP agreement which could be published. The CAA would have to be clear that such a guide is not a legal document and that stakeholders should seek their own legal advice on the agreement.	Given that ToaP raises a number of difficult legal, operational and management issues, and the relative importance of these may vary between different sites/locations the CAA does not consider there to be value in trying to provide a 'layman's guide to ToaP. These are matters that airports and ANSPs need to consider in detail. .

Theme	Recommendation	CAA comments
CAA guidance on secondments	Secondment arrangements should be incorporated into the CAA's guidance to stakeholders for the transition of TANS provision, including guidance on the basis of the preferred commercial arrangements, which the CAA should assess to provide guidance on the preferred option: 1. Secondment costs aligned to the cost of employment in the market. The cost of secondments would then be the same as that for directly employed staff, informed by the terms of the collective agreement in place with Prospect. This approach would fit with ANSL's view that ToaP costs are NATS's obligation and should not be transferred to incoming providers. However, we note that this would not place NATS in a fair position as a participant in the market, as ToaP costs would make it uncompetitive relative to other providers, unless the difference in costs between ToaP and market rates were to be borne by a third party (e.g. DfT), effectively neutralising ToaP from the perspective of all TANS providers. 2. Secondment costs defined based on an agreed and published formula that the CAA specifies. This approach would be similar to that described by NATS in determining the price for secondments, with the CAA assessing which cost lines should be included and the basis for calculating the costs for these (e.g. salary costs, overheads, pension contributions, acceptable margin). 3. An obligation for both NATS and the incoming provider to share the ToaP burden, potentially through commercial incentivisation to limit the number of secondments required. Under this scenario, ToaP staff could be encouraged to transfer to the new provider and exit the Defined Benefits scheme in return for a one-off payment based on their expected pension contributions and an appropriate discount rate. This is potentially complicated by NATS wanting to retain existing staff to cover other resourcing requirements across its business and more generally a shortage of experienced ATCOs in the market.	These are detailed matters that airports and other stakeholders need to consider and may need to reflect the specific circumstances of individual sites/locations. This makes CAA guidance on these matters difficult and we would have no general power to impose. Instead, we consider that a more effective approach would be for airports themselves to become more involved in negotiating the arrangements for secondment of staff in their TANS contracts, in the event of transition.