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19 August 2014

Dear *Andrew*

Contestability of Air Navigation Services at UK Airports: Request for advice under Section 16 (1) of the Civil Aviation Act 1982

Re: CAP 1004 – Single European Sky – Market conditions for terminal air navigation services in the UK.

1. Further to the request for assistance of 21 March 2012 and acceptance of the advice published by the CAA as CAP1004 on 8 May 2013; the Secretary of State requires the CAA to provide further advice in accordance with Section 16(1) to provide advice and assistance in assessing whether Air Navigation Services at relevant airports in the UK are contestable in accordance with criteria set down in European Legislation.
2. As a result of the advice of 8 May 2013, the Secretary of State did not seek to derogate the provision of terminal air navigation services (TANS) in the UK from requirements under the Single European Sky performance scheme.¹ The CAA has proposed regulation of these services in line with the performance scheme. The Director General of Civil Aviation adopted and submitted it to the European Commission on 27 June 2014.

Purpose

3. Since the publication of CAP 1004 there have been a number of significant changes within the provision of TANS in the UK, that the Secretary of State considers impacts on the contestability of these services. As raised in the letter of 8 May 2013, the Birmingham Airport transfer to self-supply is underway. More recently since the submission of the UK-Ireland FAB RP2 performance plan, Gatwick Airport Limited announced (on 18 July 2014) that a Deutsch Flugsicherung (DFS) subsidiary The Tower Company (TTC) has been awarded the TANS contract at the airport. This shows both self-supply and third party entry to the market.
4. The Secretary of State requests that you review the analysis that you have already conducted in light of these changes. The Secretary of State is particularly interested in how

¹ EC 390/2013 and EC 391/2013

these events have impacted on contestability for the whole market and the current and future prospects for competition within the provision of TANS.

5. The provision of this advice is to assist the Secretary of State on whether the relevant services satisfy the requirements of contestability as set out in Annex 1 the common charging scheme (EC 391/2013). The Secretary of State considers that it may be appropriate at this time to seek derogation for UK TANS under Article 3 EC 391/2013 in light of these changes.

Scope of the review and methodology

6. The review should cover the nine UK airports covered by the UK-Ireland FAB performance plan.² The CAA should adopt an approach consistent with and build upon its prior analysis.
7. The Secretary of State is aware that the CAA is planning a work stream to support contestability through its role as a competition authority. The Secretary of State would not expect this request to interfere with that work but act as a compliment and support this work. Particularly, the Secretary of State is interested in the outcome of the CAA's study reviewing the contracting processes that have taken place in the industry.

Timing of the work

8. The CAA should complete this work no later than 28th February 2015.

Budget

9. The costs of the study are estimated to be c£40k; if an overspend is identified the CAA will need to agree this with the DfT in advance.

Governance

10. The project will be defined and led by the CAA in liaison with the DfT. The work will be undertaken by the Competition and Markets team within the CAA.

Transparency

11. I appreciate that, in the interests of transparency, you may want to refer to this letter or place it on your website. I can confirm that I have no objection to this.

Yours sincerely,



Mrs Patricia Hayes
Director General of Civil Aviation

² The UK-Ireland FAB performance plan covers – London Heathrow, London Gatwick, Manchester, London Stansted, London Luton, Birmingham, Edinburgh, Glasgow and London City airports.