

23 February 2017

Dear Colleague

I wrote to all airports and ANSPs on 21 December 2015 to inform you that we expected the European Commission to issue a Decision under Article 3(4) of Regulation 391/2013 that market conditions exist in the UK for the provision of Terminal Air Navigation Services (TANS). The Commission has now issued its Decision, which is on our website at <http://www.caa.co.uk/Commercial-Industry/Airspace/Air-traffic-control/Air-navigation-services/Air-Navigation-Service-Provision--The-Contestability-Assessment/>

In my letter I set out my expectation that the provision of TANS would continue to be a matter dealt with through commercial arrangements between airports and their selected ANSP and that the TANS market would function most effectively if airports followed open tender processes to choose their provider. I also mentioned that we would be appointing an independent consultant to examine the transitions of TANS provision at Birmingham and Gatwick and, where appropriate, make recommendations for future transitions. We appointed Steer Davies Gleave (SDG) to undertake these examinations and have now published its reports on our website at <http://www.caa.co.uk/Commercial-Industry/Airspace/Air-traffic-control/Air-navigation-services/Air-Navigation-Service-Provision--The-Contestability-Assessment/>.

#### *Reports on Birmingham and Gatwick transitions*

SDG reported that the transitions were now mostly complete, and that no issues had emerged so far in terms of the continuity or quality of service, recognising that the Gatwick transition is still ongoing. However, the review identified a number of challenges that emerged between the incoming and outgoing TANS providers through the transitions, particularly in relation to the transfer of staff and the transfer of information and data.

SDG made a number of recommendations designed to help stakeholders entering future transitions. In particular they made recommendations to airports tendering for a new TANS provider, incoming providers and the CAA. The main recommendations are listed below. The full recommendations are in the reports.

#### *Recommendations to airports*

SDG recommended that when deciding to put their TANS provision out to tender, airports should:

- Recognise that the overall length of transitions for airports and incoming providers can be significant relative to the duration of the contract, which would provide challenges to the viability of shorter contracts for incoming providers.
- Ensure that TANS contracts include provisions for exit management, including establishing ways of working and communication between the incoming and outgoing providers.
- Where NSL is the incumbent, highlight to bidders the complexities introduced to the staff transfer process by Trust of a Promise (ToaP)<sup>1</sup>, and by extension to the recruitment and training of staff. Practical ways of doing this would be to make the

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<sup>1</sup> Trust of a Promise gives NATS employees who have been employed continually by NATS since its part-privatisation in 2001 a right to remain with NATS and not transfer to a new provider, if the new provider does not offer a pension scheme of equivalent value to NATS' defined benefit scheme.

legal text of ToaP available in the dataroom, and to provide an estimate of the attrition rate of staff covered by ToaP.

- Consider establishing arrangements to collect historical safety and staff data on an ongoing basis from their TANS providers.
- Where NSL is the incumbent, develop a clear understanding of how delegated en-route functions are delivered onsite by NSL on the behalf of NERL.

#### *Recommendations to incoming providers*

SDG recommended that when bidding for TANS contracts incoming providers should:

- Appreciate that the process for becoming designated at an airport is equivalent, in practice, to going through the full certification and designation process.
- Have a good understanding of the complexities introduced to the staff transfer process by ToaP. They should seek access to the legal text of ToaP.
- Understand the risks around ToaP which will impact staff transfer, with some staff electing not to transfer to the new provider. In these cases, it is likely that commercially negotiated secondment arrangements will be required to ensure the continuity of service provision. This is likely to lead to risks associated with the cost and time for the secondments, recruitment and training of new staff, and the training capacity of the unit.
- Consider the balance between buying intellectual property (IP) from outgoing providers or investing resources in developing new IP. If new IP is developed, there may be an additional requirement for staff to be trained in the new processes.

#### *Recommendations to the CAA*

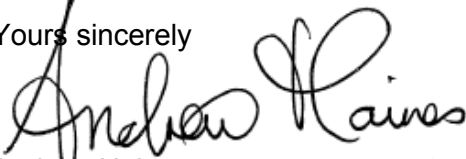
SDG recommended that the CAA should:

- Provide additional guidance to ANSPs for structuring their business plans and annual plans, or provide links to equivalent Single European Sky guidance.
- Describe its expectations for the staff transfer process in more detail, providing a benchmark to industry for the process.
- Take steps to ensure that tendering airports and bidders are provided with the legal text of ToaP.
- Clarify the obligation for the outgoing provider to provide training, through secondment agreements.
- Extend the high-level description of the information that the outgoing provider should voluntarily transfer to the incoming provider in CAP 670 to identify specific historical safety and staff data for a specified period.
- Highlight to airports that TANS contracts should include provisions for exit management to ensure that outgoing providers cooperate through a transition process.
- Highlight to incoming providers that they ought to consider the balance between buying IP and developing it and training staff.

The CAA will consider SDG's recommendations and will update its guidance on TANS to airports and ANSPs in the first half of this year, to ensure that the lessons from the Birmingham and Gatwick transitions are available for future transitions.

I look forward to the continued development of this sector for the benefit of passengers, as you take SDG's recommendations into account.

Yours sincerely



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**CHIEF EXECUTIVE**

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