



March 30, 2015

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

Ref: Review of advice on SES Market Conditions for Terminal Air Navigation Services in the UK (CAP 1261)

Dear Mr. Carr,

IATA has carefully considered the February 2015 UK CAA Review of advice on SES Market Conditions for Terminal Air Navigation Services (TANS) in the UK.

We note that the CAA has revised its earlier position and now considers that the test for the existence of market conditions is met for UK TANS. We also note that the CAA's analysis identifies instances where the criteria for the existence of market conditions is only partially met or somewhat improved since its previous review. Additionally, we note that the test applied by the CAA was for the existence of market conditions and not that the terminal air navigation service is actually subject to market conditions. We also note that very limited performance data is as yet available for the recent renegotiations and tenders for TANS in the UK.

IATA remains of the view that the existence of market conditions, as set out in Annex 1 of EC 391/2013, is not adequately demonstrated within the UK TANS environment. Importantly, in our assessment, this position is further reinforced by the CAA's own analysis of February 2015. Specifically, we consider that the CAA's review of advice demonstrates that for criteria 1, 2 and 3 (and their interrelationships) certain barriers remain, but have developed or reduced somewhat since the previous analysis. With regard to criterion 6, we consider that the conclusion to not conduct a review at airport level, as referred in EC 391/2013, is in conflict with aspects of evidence gathered relating to criteria 1, 2 and 3.

In relation to the test applied by the CAA, IATA considers that further scrutiny is warranted of the important differentiation between the existence of market conditions and being subject to market conditions. In particular, notwithstanding that we consider market conditions have not been demonstrated to exist, EC 390/2013 Article 23 and EC 391/2013 Article 3, requires a test beyond merely the existence of market conditions, but rather that services are demonstrated as being subject to market conditions. The continuing existence of barriers, as identified by the CAA's analysis, albeit somewhat less than previously believed, confirm that some form of market failure is taking place. On this basis, the test for the existence of market conditions is only a precursor for services being subject to market conditions.

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IATA agrees that some maturing of market conditions has occurred within UK TANS. Whilst this represents a potentially positive development for airlines and consumers, the fact remains that little practical evidence and experience has yet been gained. Indeed no review can yet be undertaken of the performance outcomes from the recent renegotiations and tenders. Therefore the extent to which changes in market conditions will materialize in practice and that orderly transfer of services will be facilitated whilst ensuring service quality, remains unknown. Importantly, the potential for significant tender activity during the 2017-18 timeframe offers a further near-term opportunity to support decision making by gathering evidence that efficiencies have been achieved and that these efficiencies are being passed on to airspace users via lower charges.

In considering the acknowledged remaining barriers, that the requisite test is for services to be subject to market conditions and the present lack of performance data, IATA does not believe that sufficient evidence has been gathered to properly inform decision making.

IATA therefore considers a prudent approach, intended to minimize risk to consumers, airspace users, airports, TANS providers and other stakeholders would be to undertake a further and more detailed review of market developments in support of Reference Period 3 (RP3). In the interim, publication of cost-efficiency and charges data at airport-level would provide an important tool for the CAA to better encourage the development of market conditions, with a view to better understanding the extent to which UK TANS is subject to market conditions and subsequently inform any decision making to seek derogation from the EC Performance and Charging regulations for UK TANS.

I trust that you will consider these matters as useful inputs to finalizing the CAA advice to the Secretary of State concerning UK TANS contestability.

Yours sincerely,

Peter Curran
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IATA