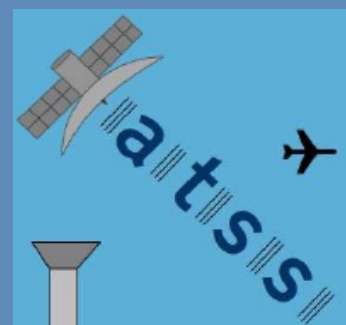


Prospect ATCOs' Branch & ATSS Branch response to CAP 1605

*'Terminal Air Navigation Services (TANS)
contestability in the UK: Call for evidence'*



Introduction

This document sets out the views of Prospect's Air Traffic Control Officers' Branch (ATCOs' Branch) and Air Traffic Systems Specialists Branch (ATSS Branch) in response to the CAA call for evidence on market conditions for the provision of TANS in the UK. Prospect represents almost 2000 ATCOs and 1000 air traffic systems specialists within the UK air traffic management system and thus it represents key stakeholders in UK ATM and on matters relating to UK and regulatory issues.

We must therefore register our disappointment that Prospect is not recognised by the CAA as a stakeholder. The detailed questions in the consultation document are directed at airport operators, ANSPs and airspace users. What about the representatives of the staff working in TANS? As the trade union representing employees in multiple ANSPs and a key actor in the operation of the market – including the management of transitions between service providers - we provide this submission on behalf of the missing stakeholders: the people who provide the service.

The question asked is “whether the UK TANS market remains subject to market conditions”. In summary, our answer is: yes, but we question whether the encouragement of a competitive market has served the interests of stakeholders or the general public. The entire exercise should be subject to a cost-benefit analysis.

Context

In its previous review in 2015, the CAA concluded that recent developments in UK TANS demonstrated that market conditions were in place: i.e. the transfer of TANS at Birmingham Airport from NSL to an in-house solution and the transfer of TANS at Gatwick Airport to DFS-subsiary ANSL. Prospect supported this conclusion.

Since that time, there have been further developments in the TANS market, some of which are mentioned in CAP 1605. In particular:

- Edinburgh Airport has awarded the provision of air navigation services to ANSL
- Luton Airport has recently run a competition for the provision of the service there. It is our understanding that this process is nearing completion.
- NATS has implemented a strategic partnership with Heathrow, creating a different model for the management of the service
- NATS' contract at Manchester has been renegotiated and extended.
- Although not yet in place, the installation of a 'virtual tower' facility for London City marks the introduction of another model – potentially an additional source of competition, but one that also changes the capital structure of the ANSP element of TANS. This development should not be ignored in any analysis of the market.
- The outsourcing of the service at Belfast City to NSL.
- Very recently, the acquisition of SafeSkys by Air Partner plc heralds a potential new entrant to the market – in General Aviation, at least.

Out of the nine UK airports potentially subject to economic regulation under RP3 (Heathrow, Gatwick, Manchester, Stansted, Edinburgh, Birmingham, Luton, Glasgow, London City), three have changed ANSP in the last five years and in doing so have moved away from what was originally seen as the monopoly provider for airports of that particular size (over 70,000 IFR movements/year). One is currently out to tender.

The CAA commissioned Steer Davies Gleave to review the transitions at Birmingham and Gatwick. The consultants noted that:

The transition between TANS providers at Birmingham and at Gatwick is now mostly complete, with no issues having emerged in terms of the continuity or quality of service.¹

They went on to say:

The TANS market remains active, with the tender process at Edinburgh now complete and the transition there imminent, and other airports potentially putting their TANS provision out to tender.²

Although, in our view, the transition at Gatwick has not been without its difficulties, these have been managed through in-depth and sustained engagement with Prospect. The fact that service continuity and quality has been maintained is a credit to the team at Gatwick. Thus, there is nothing in the SDG report to suggest that the current position regarding contestability is wrong. We can report, too, that the transition at Edinburgh has gone smoothly to date and all the measures required under the TUPE Regulations have been addressed well in advance of the operational transfer. There is no doubt that the experiences at Birmingham and Gatwick have led to a growing maturity in the handling of such transfers which can only strengthen the argument that the market is also maturing.

That said, we also note the SDG recommendations concerning the CAA's guidance and support for the transition process. We have yet to see how the CAA proposes to meet those recommendations.

The current position

The assessment criteria are set out in Appendix A of CAP 1605³. We comment as follows:

- Criterion 1 (a) – the CAA has already concluded that 1 (a) has been achieved⁴ and we see nothing to change that conclusion
- Criterion 2 – the move from contracted provision of air navigation services at Birmingham Airport to an in-house model demonstrates this option; in addition, many smaller airports have had in-house TANS for years
- Criterion 3 – the recent tendering processes in a number of airports helps reaffirm the previous conclusion⁵
- Criterion 4 – the CAA has already concluded that this has been achieved, noting that both Heathrow and Gatwick airports are separately regulated by the CAA itself⁶. However, we note that airport operators tell us that the resilience and performance of ATC, plus the alignment of the service with the airport's objectives, takes priority over cost efficiency when deciding on provision
- Criterion 5 – there have been no changes to the structure of NATS – in either of its NATS En Route Ltd (NERL) and NATS Services Ltd (NSL) arms - in the last few years to warrant a change

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http://www.caa.co.uk/uploadedFiles/CAA/Content/Accordion/Standard_Content/Commercial/Airspace/Air_Traffic_Control/TANS%20provider%20transition%20review%20-%20Final%20Consolidated%20Report.pdf 3.8

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http://www.caa.co.uk/uploadedFiles/CAA/Content/Accordion/Standard_Content/Commercial/Airspace/Air_Traffic_Control/TANS%20provider%20transition%20review%20-%20Final%20Consolidated%20Report.pdf 3.9

³ CAP 1605, Appendix A

⁴ CAP 1293, 6.2

⁵ CAP 1293, 6.10

⁶ CAP 1294, 6.13

to the previous conclusion⁷. We are assuming that the CAA has agreed with NATS the measures required to guarantee the separation – for legal and accounting purposes – of the virtual tower facility installed within the Swanwick site run by NERL.

- Criterion 6 – the CAA has already applied its own discretion on this⁸

Therefore in conclusion, considering that the assessment criteria for the purposes of this call for evidence have not changed since the last conclusion (in CAP 1293), coupled with the fact that the UK TANS market has actually shown itself to be more fluid since the last review, with a further contract in transition underway from NSL to an alternative provider, there is little doubt that the CAA should conclude that the TANS market remains contestable in advance of RP3.

Wider issues

This is not to say that everything is fine. Although we believe that TANS in the UK does operate in a contestable market, we believe the CAA should conduct a full cost-benefit analysis to determine whether the enforcement of a fully commercial and competitive market is the right approach for TANS. We note that the DfT's recent consultation⁹ proposes further liberalisation in this area. That must be based on an assumption that the injection of competition has been a success. We would challenge that assumption.

First, the new 'market' requires overheads to operate. Tendering is costly and there is a regulatory overhead - the CAA has to spend money on consultants, inspections and consultation exercises. We would be interested to know what the 'on-costs' are and what the return on that investment has been. We do not believe that the full cost of TANS has been reduced as a consequence of the market. And, in some cases, there may have been a negative impact when it comes to resilience; at a minimum, there is now an increased risk of operational disruption which we believe is, in large part, a product of the creation of a market.

The market is inevitably fragmented and there are new inefficiencies which were less likely to arise within a near-monopoly public service provider. For example, technology is likely to be cheaper if it leverages economies of scale when used for multiple operations and engineering support can be provided through clusters and service centres. The labour market for TANS staff is extremely tight and there is now a disincentive for employers to recruit and train new ATCOs and engineers – there is a considerable risk of staff leaving in early career, with means a lower return on training investment. There is a growing incentive to 'poach' staff from other units, thereby creating upward pressure on salaries in order to attract or retain the scarce staff available.

We have seen no study which demonstrates that costs come down and service quality is of a higher standard than if TANS were provided by a single entity. There is no doubt that there is a skills shortage when it comes to ATCOs and engineers. Increased labour mobility makes workforce planning more difficult. And a fragmented market means that a strategic approach to addressing these skills shortages is lacking. We fear that the provision of resilient TANS services (and ATC in general) is at risk. The contestable market provides no incentive for ANSPs to invest in their future workforce and can operate as a barrier.

⁷ CAP 1293, 6.15

⁸ CAP 1293, 6.16-6.19

⁹ <https://www.gov.uk/government/consultations/a-new-aviation-strategy-for-the-uk-call-for-evidence>

Finally, Prospect would like the CAA to consider the following in examining the market:

- Brexit – as stated in our response to CAP 1593, we do not see a compelling argument for the UK to continue to be bound by the EU performance scheme, post-Brexit. Economic regulation (with the associated targets and incentives or penalties around capacity, delay, environmental efficiency) will and should be a matter for the UK state to determine. At the time of writing, it looks as though RP3 will commence at the same time as a formal transitional period in the UK’s relationship with the EU. While we accept the logic for the CAA to follow broadly the same approach in planning for the regulation of NERL during this period¹⁰, this should not mean signing-up to every point of detail. We would welcome clarity on the CAA’s position: does the UK see RP3 being subject to endorsement or agreement by the European Commission?
- CAA general oversight – the CAA must strengthen its capabilities in terms of oversight if it wishes to continue the pursuit of contestable markets within ATM, a field which is a highly-skilled and safety critical. A balanced look at the perceived benefit of an open market against a measure of essential operational and system safety is of utmost importance.
- CAA oversight for transitional arrangements – the Steer Davies Glover report into the transition at both Birmingham and Gatwick airports highlighted a number of areas where CAA assistance in terms of oversight would prove useful in future transitional periods, and Prospect considers such support essential.
- Staff – there is no mention of the impact on staff at any level when assessing contestability in the TANS market. The ATCOs and engineers that we represent provide a safety-critical service within the aviation industry and the pursuit of contestability in the market has often led to uncertainty for our members both before and during transition periods. The CAA has a duty to be mindful of the resulting impact that a change of ANSPs at any TANS airport or otherwise has on the staff there.
- Virtual towers – as well as the impact of the new virtual tower facility for London City on the NERL-NSL interface, there is also a wider question: what are the implications of this new technology for the TANS market? In particular, it is likely to change the capital structure of TANS provision (at present the facilities are normally owned by the airport with the ANSP delivering know-how and the service itself). Prospect is supportive of the development of virtual tower technology and would not want to see that development distorted by an overriding government objective of the pursuit of competition for competition’s sake.

Prospect ATCOs’ Branch and ATSS Branch
December 2017

¹⁰ CAP 1593, 4