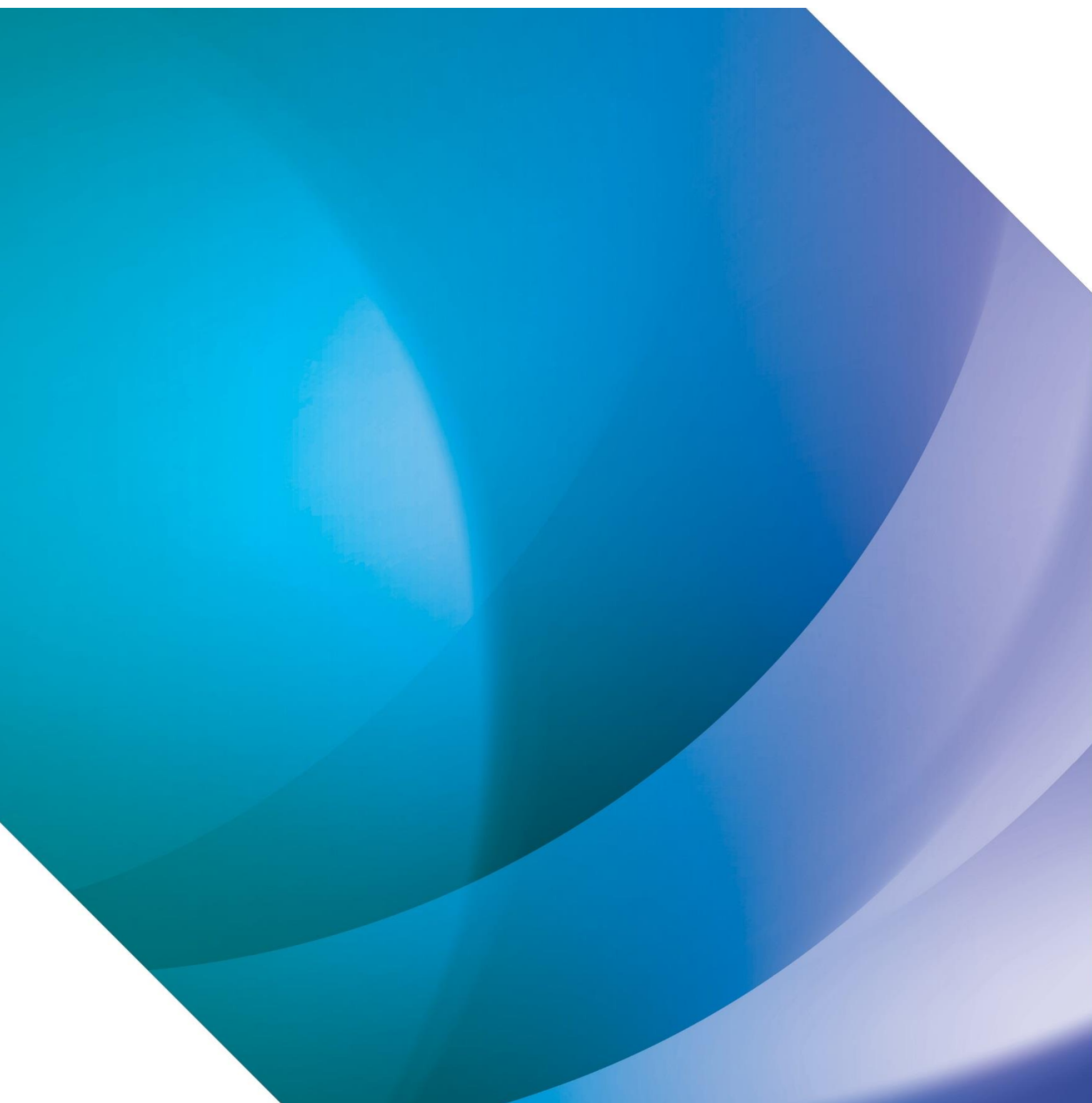


# Terminal Air Navigation Services (TANS) contestability in the UK: Call for evidence

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## Provision of Terminal Air Navigation Services (TANS) in the UK: Call for evidence

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1. The CAA is calling for evidence regarding the provision of terminal air navigation service (TANS) in the UK. The CAA is seeking evidence to provide assistance and advice that the Secretary of State for Transport (SoS) requested, on 24 October 2017, from the CAA under Section 16 of the Civil Aviation Act 1982.<sup>1</sup>

### Background

2. Under the Single European Sky legislation, air navigation services are subject to a Performance Scheme covering cost efficiency, capacity, safety and environment. European Regulation (EU) No 391/2013 ('the Charging Regulation'), laying down a common charging scheme for air navigation services, allows for exemptions to be made from some aspects of the Performance Scheme, including the requirement to set cost efficiency targets for TANS, where market conditions exist. The criteria that the European Commission ('the Commission') currently uses to judge whether such conditions exist is in Annex I to the Charging Regulation and at Appendix A to this document.
3. It is noted that the Commission is in the process of reviewing both the performance regulation (European Regulation (EU) No 390/2013) and the Charging Regulation ahead of the next Reference Period (RP3 – 2020 to 2024). This review and any changes to the regulations are expected to be completed and adopted by June 2018. It is possible that the criteria for assessment may change as part of this review, however under the current regulations Member States are required to submit requests for exemptions 19 months before the start of the Reference Period – i.e. by May 2018 in the case

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<sup>1</sup> [Department for Transport letter to CAA – 24 October 2017](#)

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of RP3. It is therefore necessary to begin this review now, mindful that there may be some changes in the assessment criteria in the future.

4. We note that whilst it is not yet known what the impact of the UK exit from the EU will have in terms of the applicability of the Single European Sky Performance Scheme, this call for evidence will contribute to our understanding of market conditions in the UK TANS market presently and inform future domestic policy thinking. For the purposes of this review we are assuming that the Single European Sky Performance Scheme will continue to apply to the UK.
5. The CAA has carried out two assessments, at the request of the SoS as to whether the provision of TANS at UK airports with over 70,000 instrument flight rules air traffic movements is subject to “market conditions”<sup>2</sup>:
  - In 2013, we advised (in CAP 1004<sup>3</sup>) that market conditions were not present. Our review identified concerns in several areas, relating to: the relationship between NATS TANS provider (NATS Services Ltd (NSL)) and its en-route provider (NATS En Route Plc (NERL)) in terms of identity and branding, and the transparency of dealings between the two companies; historic commitments to employees with respect to pension arrangements, which could affect the availability of staff, or the terms and conditions of transferring staff; and a lack of competitive tenders and evidence of contracts changing hands. The SoS accepted the CAA’s advice in this matter.
  - In 2015, we advised (in CAP 1293<sup>4</sup>) that TANS was subject to market conditions. Our view drew on decisions by Birmingham and Gatwick airports to change provider: from NSL to self-provision at Birmingham and from NSL to Air Navigation Solutions Limited (ANSL) at Gatwick. The SoS accepted our advice.

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<sup>2</sup> Currently Heathrow, Gatwick, Manchester, Stansted, Edinburgh, Birmingham, Luton, Glasgow and London City airports meet this movement threshold.

<sup>3</sup> [www.caa.co.uk/cap1004](http://www.caa.co.uk/cap1004)

<sup>4</sup> [www.caa.co.uk/cap1293](http://www.caa.co.uk/cap1293)

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6. In 2015, the UK Government informed the Commission that it considered that TANS in the UK was subject to market conditions. In 2016, the Commission agreed with the UK assessment that market conditions had been established for UK TANS, and exempted it from some provisions<sup>5</sup> of the performance scheme for the second Reference Period (2015 to 2019, known as RP2).
7. Since the publication of CAP 1293 the developments in the market of which we are aware are:
- The new service providers have started providing services at Birmingham and Gatwick. We commissioned Steer Davies Gleave (SDG) to review the transitions at both airports. SDG found that no issues had emerged in terms of continuity or quality of service, but identified a number of challenges that had emerged between the incoming and outgoing providers, particularly in relation to the transfer of staff and the transfer of information and data.
  - Edinburgh Airport decided, after a tender process to change provider from NSL to ANSL. ANSL is due to commence operations in 2018.
  - Belfast City Airport (which is below the threshold to be affected by the Charging Regulation) changed from self-supply to NSL in 2016.
  - Some airports have re-negotiated or extended their contracts with NSL, including London City which is planning to move from provision based in the control tower at the airport to remote provision.
8. Under the Regulation, exemptions for TANS services have to be renewed for each regulatory period. The SoS has therefore asked the CAA for advice on whether the UK TANS market continues to be subject to market conditions in the light of RP3.

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<sup>5</sup> i.e. exempted from the need to calculate determined costs, set financial incentives, calculate terminal charges and set terminal unit rates.

## Call for evidence

9. We are seeking information that will help us to consider whether the UK TANS market remains subject to market conditions and are open to submissions from all stakeholders.
10. In particular, we are keen to receive information from airport operators, ANSPs, including non-UK ANSPs, and airspace users. There are a number of questions for these particular stakeholders in Appendix B.

## Next steps and deadlines

11. Please provide your submissions to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk) by **8 December 2017**.
12. After the date for submissions has been passed, we may engage bilaterally with individual respondents, to discuss issues raised and help give us a fuller understanding of the issues raised in their submissions.
13. If you have any questions on this call for evidence, or wish to meet us to discuss the matter, please contact either Pedro Pinto ([pedro.pinto@caa.co.uk](mailto:pedro.pinto@caa.co.uk)) or Rod Gander ([rod.gander@caa.co.uk](mailto:rod.gander@caa.co.uk)).
14. Following the call for evidence we intend to examine the submissions received along with any information gathered through the CAA's own work. We aim to publish our draft findings in February 2018 for consultation, following which we aim to produce our final advice for the SoS at the end of March 2018. Our final advice will be published on our website.

**Figure 1: Indicative Timetable**

November 2017	Call for evidence
February 2018	Consultation on draft advice opens
March 2018	Consultation on draft advice ends
End March 2018	Final advice to SoS

## Disclosure and Publication

15. The CAA is prohibited from disclosing confidential information received in connection with carrying out the SoS's request for advice unless it is permitted to do so under at least one of the information gateways.<sup>6</sup>
  
16. Consistent with the gateways, the CAA will provide the SoS and the Commission with your submissions. In addition, so that all interested parties have a meaningful opportunity to comment on our draft findings, we intend to publish as much evidence as possible on our website. With this in mind, we request that you provide both confidential and non-confidential versions of your submissions. The non-confidential submissions will be published on our website together with the CAA's draft report. Please note that we have powers and duties with respect to disclosure of information under Schedule 9 of the Transport Act 2000 and the Freedom of Information Act 2000 and it may be necessary to disclose information consistent with that.

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<sup>6</sup> See section 23 Civil Aviation Act 1982



## Appendix A

## Assessment of the existence of market conditions for the provision of Terminal Air Navigation Services [TANS]

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The conditions to be assessed for determining whether terminal air navigation services [TANS] are provided under market conditions are as follows:

1. The extent to which service providers can freely offer to provide or withdraw the provision of these services:

(a) the existence or otherwise of any significant legal or economic barriers that would prevent a service provider from offering to provide or withdrawing the provision of these services;

(b) the contract duration; and

(c) the existence of a procedure allowing assets and staff to be transferred from one air navigation service provider to another.

2. The extent to which there is a free choice in respect to service provider, including, in the case of airports, the option to self-supply:

(a) the existence or otherwise of legal, contractual or practical barriers to change service provider or in the case of terminal air navigation services to move towards self-supply of air navigation services by airports;

(b) the role of airspace users' representatives in selecting the service provider.

3. The extent to which it can be chosen from a range of service providers:

(a) the existence of a public tendering process (not applicable in case of self-supply);

(b) if applicable, evidence of alternative service providers participating in the tendering process and having provided services in the past, including the option of self-supply for the airport.

4. For terminal air navigation services, the extent to which airports are subject to commercial cost pressures or incentive- based regulation:

(a) whether airports actively compete for airline business;

(b) the extent to which airports bear the air navigation service charge;

(c) whether airports operate in a competitive environment or under economic incentives designed to cap prices or otherwise incentivise cost reductions.

5. Where the provider of terminal air navigation services [...] also provides *en route* air navigation services, these activities shall be subjected to separate accounting and reporting.

6. For terminal air navigation services, the assessment in this Annex shall be carried out at each individual airport, as appropriate. EN 9.5.2013 Official Journal of the European Union L 128/43

## Appendix B

## Questions for stakeholders

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### **AIRPORT OPERATORS**

1. Who provides TANS at your airport? Is it provided in-house or is there a contract for TANS provision?
2. When did the contract start? When is the contract due to end? Is there a break clause (Y/N)? If yes please provide details.
3. What factors influenced the choice of contract length?
4. Who owns the equipment and infrastructure used to provide TANS at your airport?
5. If you contract out, what do you plan to do when the contract expires?
6. What factors did you take into account in choosing whether to hold a tender before awarding the TANS contract? What was the determining factor?
7. If you have tendered, what were the main reasons for doing so? What process did you follow and what criteria did you use to select providers?
8. If you renegotiated a contract renewal, please tell us about the negotiation. How did the talks commence and what were your key requirements from the provider?
9. Do you plan to consult airspace users before making any future decision on TANS provision? If so, how are you planning to do so?
10. What do you consider will be your main priorities for your next TANS contract?
11. Are you considering moving to new technology for TANS provision? If so, please give details.
12. Are you concerned about any potential barriers to changing TANS provider, including any issues around the transfer of assets and staff, or including any

existing interactions with en-route services? If so, to what extent are those barriers surmountable? Do you have any evidence of such barriers?

13. Do you have any observations about recent changes in the UK TANS Market<sup>7</sup>? Do the changes make you more likely to tender in the future? Do you consider that your existing provider is more aware of the potential competitive forces in the TANS market?

14. To what extent can you pass the costs of air navigation service charges on to users? Do you operate in a competitive environment and/or are you subject to economic incentives designed to cap prices or reduce costs? Do you actively compete for airline business?<sup>8</sup>

15. Do you have any other comments you would like to make?

We may want to discuss the process by which you awarded your current TANS contract, or are planning to award your next contract. Please can you provide us with contact details of who we can approach if we wish to arrange such a discussion.

We note that under Article 3 (3) of Regulation 391/2013 we may need to ask you for tender documentation and contracts relating to the provision of TANS at UK airports so please have such documentation available in anticipation of us requesting it from you.

## **ANSPs**

1. How do you find out about possible changes of TANS providers at UK airports?
2. Have you considered bidding for a TANS contract in the UK (Y/N)? If yes, for which airport(s)? If not, why have you not considered bidding?
3. Where you have been aware of a possible change of TANS provider at a UK airport did you bid? If not, why not?
4. What do you consider are the main barriers in offering or withdrawing TANS services at one airport, including any issues around the transfer of assets or

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<sup>7</sup> In particular, the changes of provider at Gatwick and Edinburgh and the move to self-supply at Birmingham, as well as any changes since we published CAP1293.

<sup>8</sup> See point 4 of the Annex I of Regulation 391/2013 for context.

staff? To what extent are those barriers surmountable? Can you provide evidence to substantiate your answer?

5. Do you have any observations about recent changes in the UK TANS Market<sup>9</sup>? Did that make you more likely to bid for other airports' TANS contracts in the future?
6. Are you considering moving to new technology for TANS provision? If so, please give details.
7. Do you also provide en-route services? If so, are those activities subject to separate accounting and reporting? Please give details. Do you provide en-route or other services under contract with NERL<sup>10</sup>? Could those be provided by another provider?
8. Have you any other comments you would like to make?

We may want to discuss your experience of the UK TANS market with you. Please can you provide us with contact details of who we can approach if we wish to arrange such a discussion.

We note that under Article 3 (3) of Regulation 391/2013 we may need to ask you for tender documentation and contracts relating to the provision of TANS at UK airports so please have such documentation available in anticipation of us requesting it from you.

## **AIRSPACE USERS**

1. Have any airport operators, whose contract for the provision of TANS is coming to an end, consulted you on the potential way forward/options for new set-up? If so, what was your response to them?

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<sup>9</sup> In particular, the changes of provider at Gatwick and Edinburgh and the move to self-supply at Birmingham, as well as any changes since we published CAP1293.

<sup>10</sup> These include activities such as delegated en-route functions and services to North Sea helicopters.

2. Are there any developments in the UK TANS market since the transition of services in Birmingham and Gatwick that you wish you raise that you think will be relevant to our review?
3. Have you any other comments you would like to make?

We may want to discuss your views on the UK TANS market with you. Please can you provide us with contact details of who we can approach if we wish to arrange such a discussion.