



## Prospect ATCOs' Branch and ATSS Branch response to CAP 1634: Consultation on Draft Advice on Market Conditions for Terminal Air Navigation Services in the UK

In the first instance, Prospect<sup>1</sup> wishes to take the opportunity to acknowledge the information as detailed in footnote 21 regarding our disappointment at not being considered a stakeholder for targeted consultation. Notwithstanding the CAA's response that Prospect is not seen as a stakeholder that it is required to consult, Prospect is indeed encouraged by the recognition of the CAA of our valued input to CAP 1634, and in other areas of RP3 work where we continue to engage with them to provide expert input that represents the staff component of the ATM system. Prospect will continue to challenge any view that we are not stakeholders that the CAA is required to, or should directly consult as evidenced in Appendix E to CAP 1634.

With regards to the purpose of the consultation and specifically the criterion used for this assessment, Prospect responded to CAP 1605 that its opinion is broadly in-line with that which had been previously produced as part of CAP 1293 (giving due consideration to advances in the market since then, and considering that the assessment criteria had apparently not changed for RP3). Therefore we agree with the results of the assessment criteria per se.

More specifically, Prospect made several points in relation to this assessment that are not necessarily covered in the criterion, yet are equally important to note.

We question whether or not the CAA sees their regulatory approach in the years 2020-2024 as one of agreement or alignment with the European Commission and this is still somewhat unanswered.

Prospect also questions whether or not the CAA will increase its capabilities in terms of oversight of both market conditions, and TANS transitional periods. We feel that the recommendations from SDG made to the CAA to assist ANSPs overcome the staffing aspects of transition are being placed in the 'too difficult' pile and being ignored once again<sup>2</sup>.

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<sup>1</sup> Prospect represents almost 2000 ATCOs and 1000 air traffic systems specialists within UK ATM.

<sup>2</sup> CAP 1633, Annex 1, 'Staff transfer', 'CAA guidance on secondments'

Prospect reads with interest the response provided by IATA, BA and Virgin in CAP 1635 that echo a statement Prospect made in its response to CAP 1605. IATA states that it:

*'[...] agreed that there has been some maturing of market conditions with UK TANS, with some encouraging changes in service providers. However, IATA did not consider this to be a fully functioning market that demonstrably delivers benefits to airspace users as there is no evidence showing that efficiencies have been achieved and passed on to airport users in the form of lower charges.'*

Prospect requested the CAA to go one step further and conduct a cost-benefit analysis (a request that is similarly made by IATA, BA & Virgin<sup>3</sup>) and our reasons for doing so are detailed in our response, but as a summary include the impact of the market on ATC resilience, investment and there being sufficient numbers of appropriately trained staff. Prospect again takes this opportunity to ask the CAA whether or not it intends to respond to the specific request made by Prospect ATCOs' Branch, Prospect ATSS Branch, IATA, British Airways and Virgin Atlantic.

Finally, it is important that the CAA takes a closer look at the impact on staff of the pursuit of open market conditions for TANS. Indeed in chapter 4, the CAA has the opportunity to engage with staff issues, itself entitled '*contracting and staff issues*'. Here, potential problems raised by other stakeholders are provided with a response from the CAA, yet many raised by Prospect are left unanswered.

In terms of remote tower technology and the apparent cost benefit this might bring<sup>4</sup>, it is again important that the CAA takes cognisance of the impact of this on staff. Not dissimilar to the effect that liberalisation and commercialisation of TANS provision has had on staff, the introduction to the market of remote towers has brought a new problem for our members to face. In paragraph 5.15, the CAA references '*an already successful project in Sweden*', but it is unlikely that this was assessed against the parameters of the impact staff. In fact, the issue that we face is echoed quite appropriately by ANSL in paragraph 5.11; indeed the call we made for the CAA to address these issues in our own submission has been ignored in CAP 1634.

People who work within the ATM system are not a commodity to be lifted and shifted at the whim of the airport or ANSPs in the pursuit of an open market. The CAA publishes CAPs looking at the effectiveness of the market it has sought to create, yet pays no heed to how this market affects the human dimension. We hereby ask the CAA to look at this emerging problem together with us as the representatives of ATM workers in the UK so that the very real issues may be addressed.

**Prospect ATCOs' Branch and ATSS Branch  
March 2018**

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<sup>3</sup> CAP 1634, 3.13, 3.14, 5.30; CAP 1635

<sup>4</sup> CAP 1634, paragraph 5.34 notes the apparent success of the contract between London City Airport and NSL to provide remote tower technology as seen from a cost benefit perspective. However, this is not necessarily as a result of a reduction in the cost of the service using remote tower technology, rather that the current tower (or a new one) did not fit in with the future aspirations for the airport expansion.

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12 March 2018

By email only: [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk)

Dear Pedro and Rod,

**Subject NATS (Services) Limited (NSL) response to CAA consultation on Draft Advice on Market Conditions for Terminal Air Navigation Services (TANS) in the UK (CAP 1634)**

This letter sets out NSL's response to the CAA's Draft Advice on Market Conditions for Terminal Air Navigation Services (TANS) in the UK (CAP 1634). We welcome the CAA's finding that the UK TANS market is contestable, and set out specific comments on the draft advice below.

**Delegated Functions (DFs)**

In the context of the NSL/NERL interface, we note that ANSL stated that where there was a change in TANS provider, provision of delegated functions should be offered to the new provider. The CAA indicate that it is minded to consider steps to increase the transparency of Delegated Functions, if there is evidence that a lack of transparency is having an adverse effect on competitive conditions.

Delegated Functions are a NERL service, which NERL decides how best to provide. NSL provides Delegated Functions via a separate arms length commercial agreements with NERL. This means that the Delegated Functions are funded, not through contracts with airports, but by airlines through the en route unit rate.

For these reasons, and as noted in our previous response, Delegated Functions provided by NSL are economically and commercially distinct from TANS provision, and outside the scope of this assessment. Therefore, we do not consider that increasing the transparency of Delegated Functions is necessary or justified.

**Trust of a Promise (ToaP)**

We support the CAA's conclusion that the successful entry of new providers is evidence that the potential barrier posed by ToaP is not as high as previously considered (by the CAA), and that it will erode over time. However, the CAA is supportive of ANSL's suggestion that NSL could publish a price list for ATCO secondments in the event of a bidding process for TANS services.

The processes conducted by NSL at Birmingham and Gatwick clearly demonstrate, as does the CAA's analysis, that this issue has been overcome and that it is not a barrier to entry, transition, or bidding. Furthermore, at Edinburgh the principles governing secondment have been agreed and represent a development on those previously agreed at Gatwick and Birmingham.

We do not support the suggestion that we should be required to publish confidential salary and related data. This data is necessarily bespoke and is likely to vary according to location, requirement, duration of transition, market conditions and other factors. In addition, it may be that in some cases only a very small number of secondments are required (or not at all).

NSL will continue to support prospective bidders with all necessary information, including staffing related costs. It is normal practice for information of this type to be shared via a data-room on a confidential basis.

#### Contract duration

The CAA expects that it would be normal to observe longer contract lengths for new entrants. It notes that long-term contracts awarded as a result of bilateral negotiations, without new investment, may be viewed as unhelpful to the development of effective competition.

Customers have confirmed in their responses to the CAA that they are able to exercise choice and effectively determine the overarching conditions of any tender or negotiation process. Therefore, it seems to us that contract duration is a customer decision and is related to the extent of investment needed – either by a new provider or the incumbent.

Therefore, we don't think it follows that re-negotiation without material new investment should result in "shorter" contract durations. For these reasons we believe contract duration should be considered a function of the market process and not prescribed by regulatory guidance.

#### Closing remarks

We would be happy to meet with you to discuss our comments further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Guy Adams', written over a light blue horizontal line.

Guy Adams  
Commercial Director



David Milford  
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12<sup>th</sup> March 2018

Sent by email to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk)

**Re. Consultation on Draft Advice on Market Conditions for Terminal Air Navigation Services in the UK (CAP 1634)**

Dear Rod,

British Airways (BA) welcomes the opportunity to respond to the CAA's consultation on its draft advice to the DfT regarding the market conditions for Terminal Air Navigation Services (TANS) in the UK. The CAA's draft advice is that TANS provision in the UK is subject to market conditions and so the DfT will be able to apply to the European Commission (EC) for an exemption from TANS regulation. BA does not fully agree with the CAA draft advice as whilst market "conditions" maybe in evidence market "benefits" to end-users (airlines and consumers) are not.

There is a clear lack of transparency to airlines of contracts between air navigation service providers (ANSP's) and airports. This, in combination with developing competition in the TANS market, means that airports can (and do) impose service level agreements with penalties onto ANSPs, which are not replicated into airlines' contracts with airports under their Conditions of Use. A result of this is that airports may financially benefit from poor TANS service quality/failure (through SLA rebates) which are not passed through to airlines. Meanwhile airlines bear the costs of disruption (for example through EC261), which are often significantly greater. If the CAA's draft advice is in effect going to remove visibility of TANS unit rates and contracts from airlines then, in order to fulfil its primary duty, the CAA needs to protect users from poor procurement practices of airports.

BA proposed two ways that the CAA could help address this situation:

1. Require airports to open tender TANS services – the CAA noted its previous recommendation that the Government should review whether this should be an airport duty and note it would be best practice to do so. The CAA should re-state this position and specifically recommend to the DfT that this duty is required in order to address the issues raised around TANS market benefits.

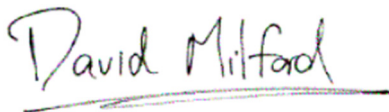
2. Facilitate cost-efficiency information sharing – the CAA should encourage airports to share cost-efficiency information with airlines. We do not agree with the CAA’s position that sharing or publication of costs and information is not possible due to these being commercially sensitive. We do not consider this to be an insurmountable challenge to protect commercial confidentiality, and so the benefits of TANS provider changes could still be demonstrated to airlines in airport charges terms.

BA would ask the CAA to review its position on the above points.

The CAA notes HAL’s argument that the TANS contract is part of the airport cost base subject to economic regulation. In this specific example the TANS contract was re-negotiated in 2014/15, without open tender, following the Q6 price determination, so any cost benefit accrues to HAL until the H7 control period starts, effectively a period of 6 years between contract re-negotiation and H7 starting. This is too long a period for the cost benefit of TANS service provider change to not flow through to end-users.

If you would like to discuss our views further please contact me at [david.milford@ba.com](mailto:david.milford@ba.com).

Yours sincerely,



David Milford  
Economic Regulation Manager  
British Airways plc

**From:** Henry Game  
**To:** [Pinto Pedro](#)  
**Cc:** [Gander Rod](#); [Paul Reid](#)  
**Subject:** RE: Consultation: Market Conditions for Terminal Air Navigation Services  
**Date:** 14 March 2018 18:31:40  
**Attachments:** [image001.jpg](#)

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Dear Pedro,

Further to our discussion I respond accordingly as promised.

In response to the Consultation on draft advice on market conditions for TANS in the UK we should like to make the following points:

- We note paragraph 1.8; *"In CAP 1293<sup>5</sup> we said that if, by the end of 2016, most of the airport operators whose contracts were nearing termination at that time had not notified some form of open tender for TANS provision, we would conduct a formal review of the market. Some airport operators have tendered and some are preparing to tender in the future. We consider that this review fulfils the commitment we made in CAP 1293 to review the market".* We fundamentally disagree with this assertion. Most contracts from the time the commitment was made to the end of 2016 were not subject to open tender and the CAA firmly committed that in the absence of this they would conduct a formal review. Changing the conditions of satisfaction at this stage, over a year later, is unacceptable and ANS urges the CAA to deliver on its commitments to carry out a formal review of the market.
- We note on paragraph 4.26; *"Where airport operators have not tendered, they appear to have at least undertaken some form of informal market testing and have benefited from this action and from the open actions of other parties. We consider that this review fulfils the commitment we made in CAP 1293 to review the market".* The commitment made in CAP 1293 made no mention of informal market testing and clearly used the term "open tender". Furthermore Andrew Haines letter to industry (21st December 2015) clarified this stating; *"Circumstances where we may have concerns from a competition perspective would be if contracts were being automatically rolled over, or where early renegotiation of contracts undermines the motivation of the airport to follow an open tender process."* As above we fundamentally disagree with this assertion and call on the CAA to carry out a formal review of the market.
- We note the content of paragraph 4.45, 4.57, 4.58; Again we would remind the CAA that in CAP 1293 they undertook to negotiate bilaterally with NSL the terms and conditions surrounding the secondment of ToaP staff should it become necessary. It is within NSL's power to renegotiate pension conditions with their staff (which they have already done) but ANS and other new entrants go into each tender without any knowledge of how many ToaP will transfer and the terms on which secondment may be offered. This has put ANS at a significant disadvantage and this latest advice fails to represent this and again brushes over previous CAA commitments that remain unfulfilled.

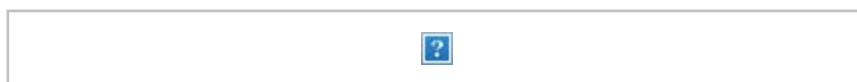
Whilst there are a number of other issues in the document that ANS disagrees with ANS would, at this stage, only make the same representation it has done consistently since CAP 1293 was published (letter to Andrew Haines dated 20th May 2016 as previously referenced in our call for evidence response) and ask that the CAA acknowledges that it has NOT delivered on clear commitments made and that this has had an adverse impact on effective and fair competition in the TANS market. We would urge the CAA to be proactive and to fulfil to delivering on previous commitments made.

If you would prefer or advise that we provide this in a letter to Andrew Haines then please let us know.

Kind Regards  
Henry

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**From:** Pinto Pedro <Pedro.Pinto@caa.co.uk>  
**Sent:** 15 February 2018 13:44  
**Cc:** Gander Rod <Rod.Gander@caa.co.uk>  
**Subject:** Consultation: Market Conditions for Terminal Air Navigation Services

Dear stakeholder,

The CAA published today its [draft advice](#) to the Secretary of State, for consultation, on market conditions for terminal air navigation services in the UK. The CAA's draft advice is that the provision of these services is subject to market conditions. This consultation closes on 12 March 2018.

This and other relevant documents for this review can be found at <http://www.caa.co.uk/Commercial-Industry/Airspace/Air-traffic-control/Air-navigation-services/Air-Navigation-Service-Provision--The-Contestability-Assessment/>

Let me know if you'd like to discuss.

Best regards,  
Pedro



## **Pedro Lino Pinto**

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