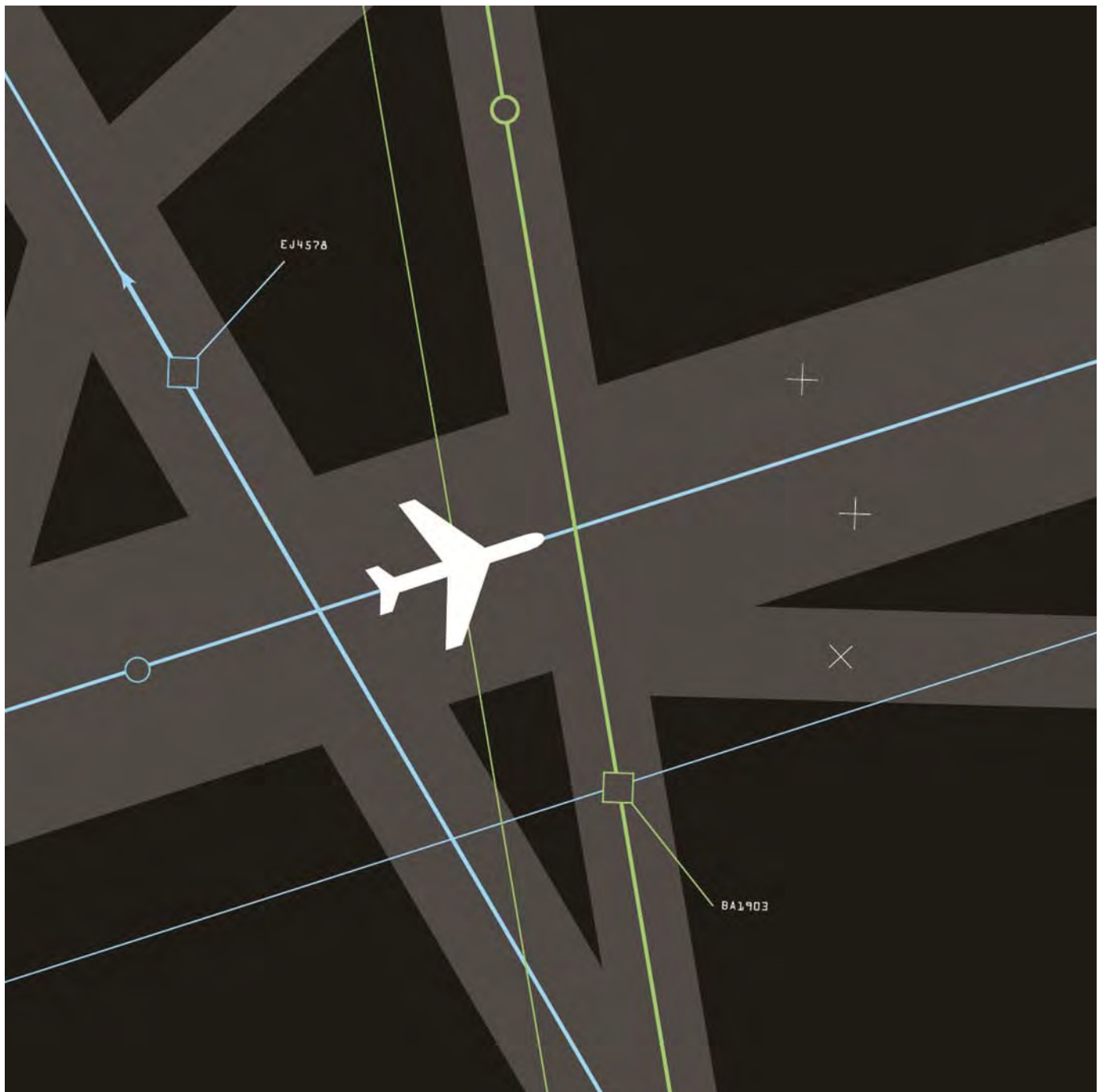


Review of TANS provider  
transition at  
Birmingham and  
Gatwick

Civil Aviation Authority

Recommendations final report  
(PUBLIC)  
January 2017

Our ref: 22911901  
Client ref: Contract No. 1778  
(Services Order No. 21)







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# 1 Introduction

## Context

- 1.1 The Civil Aviation Authority (CAA) has reviewed the experience of transition between Terminal Air Navigation Services (TANS) providers at Birmingham Airport Limited (BAL) and Gatwick Airport Limited (GAL) from NATS Services Limited (NSL) to a new provider:
- Birmingham Airport Air Traffic Limited (BAATL), an in-house provider at Birmingham, and
  - Air Navigation Solutions Ltd. (ANSL), a subsidiary of the Deutsche Flugsicherung (DFS) at Gatwick.
- 1.2 The review takes place in the context of the United Kingdom's TANS market experiencing a period of change with an increasing number of airports choosing to tender TANS services, and when a change of provider is chosen this requires orderly transition. Moreover, the Department for Transport with support of the CAA papers CAP 1004 and 1293 has made the case for market conditions for Terminal ANS in the United Kingdom to the European Commission. The changes of provider at BAL and GAL provide the foundation for the Department for Transport's position and make the case for market conditions. In October 2016, the European Commission published its decision that market conditions had been established in the UK.
- 1.3 This report provides Steer Davies Gleave's independent and impartial findings and recommendations emerging from its review of the transition process for TANS provision at BAL and GAL. The review covered the transition process, and the processes and roles of the key stakeholders: the airport (BAL, GAL), the outgoing provider (NSL), the new provider (BAATL, ANSL), and the CAA as the certifying authority. We also sought the views of the airport slot coordinator and airlines on whether there was any noticeable impact on capacity declared or quality of service delivered during the transitions; and TANS providers' staff to understand how they were impacted by the transitions. A detailed description of the transition at each airport is provided in Appendix A (Birmingham) and Appendix B (Gatwick).
- 1.4 The review was asked to cover:
- The airports' and new providers' transition plan, as compared to outturn project delivery. Identifying differences in cost and time and the issues that caused these changes;
  - The CAA's guidance on transition, through a review of its clarity and testing the understanding of the airports and new TANS providers;
  - Interviews with the airports, outgoing provider and new providers of TANS and the CAA to gain an understanding of the key issues that materialised during the transition;
  - Interviews with staff representatives (Prospect), and airlines and their Airline Operators Committees (AOCs) focusing on:
    - issues raised by staff during the transitions; and

- observations about the quality of services delivered during and after the transitions;
- Identification of the key challenges and issues that were faced during the transitions, particularly where these had cost and timetable impacts;
- Identification and explanation of any effect on airport capacity resulting from the transitions, interacting with Airport Coordination Limited (ACL) to discuss any amendments to declared capacity; and
- Identification of key learning points for market participants for approaches and processes that would minimise the costs and time taken for transitions between TANS providers in the United Kingdom.

1.5 A number of issues were outside the scope of the study and not investigated including:

- Whether there was a fair tender process for TANS provision at BAL and GAL;
- Whether the airports made the best choice of TANS provider; and
- Whether the TANS market is subject to competition.

1.6 The study at Birmingham began in February 2016 and reported in April 2016. The study at Gatwick began in June 2016 and reported in September 2016. This is the draft final report of the consolidated findings and recommendations emerging from both studies.

### **Key themes and questions raised by the CAA**

1.7 At the outset of the study, the CAA raised a number of key themes and questions that Steer Davies Gleave was asked to consider during the review of the GAL transition process, including:

- CAA Guidance:
  - Does certification and designation (C&D) guidance material give an accurate suggestion of effort required for C&D?
  - Should it be easier for an Air Navigation Service Provider (ANSP) certified in another European country to operate in the UK?
- Expectations of transition processes:
  - Were the airport's expectations at start of process different to outcome?
  - Were the incoming ANSP's expectations at start of process different to outcome?
- Staffing issues and requirements:
  - Whether sufficient information on Trust of a Promise (ToaP) was available?
  - Issues raised with training new controllers?
  - Issues raised with secondment of controllers?
- Assets and equipment:
  - Issues raised with equipment requirements?
  - Issues raised with safety cases for equipment?
- Systems and procedures:
  - Issues arising with MATS part 2?
  - Issues arising with other operating procedures?
- Quality of service:
  - Was there a noticeable change in service on takeover?
- Lessons learned for future transitions:
  - Is there anything that airports could do to make transitions easier/ (put transition arrangements in contracts, provide more comprehensive information during the tender process, ownership of ANS equipment, ownership of safety cases for equipment)?



## Our approach

1.8 Our approach combined discussions with and collection of data from key stakeholders, as well as review of documentation in the public domain and provided by the CAA and key stakeholders. We interviewed the following stakeholders:

- CAA – Safety Regulation Group: Nick Thorpe, Maggie Marshall, Ted Jellis; Consumers & Markets Group: Rod Gander, David Kendrick; Policy Programmes Team: Tim Johnson on Trust of a Promise.
- Birmingham:
  - BAL: David Winstanley;
  - BAATL: Nick James, Julie Morrissey;
  - Prospect: Stuart Osman, Mike Reed;
  - NATS: Mike Stoller, Graeme Gamble, Daryl Heaselgrave, Thea Hutchinson;
  - AOC: Kate Tranter; and
  - ACL: Seb Pelissier
- Gatwick:
  - GAL: Kan Ni, Piyush Tuli, Daniel Storey;
  - ANSL: Paul Reid, Werner Spier;
  - Prospect: Stuart Osman, Paul Winstanley, Steve Jary;
  - NATS: Mike Stoller, Thea Hutchinson, Paul Jones;
  - AOC: Jo Rettie; and
  - ACL: Seb Pelissier.

- 1.9 Documents reviewed for Birmingham included transition plans and documents supplied from BAATL to the CAA in support of Certification and Designation.
- 1.10 For Gatwick, the transition plans and documents supplied from ANSL to the CAA in support of Certification and Designation were not made available for us to review. We discussed confidential information on the secondment agreement with ANSL and, separately, NSL.
- 1.11 We have also reviewed the Trust of a Promise Agreement.

**Structure of this report**

- 1.12 The remainder of this report is structured into the following:
- Section 2: provides background to the BAL and GAL TANS transitions;
  - Section 3: summarises the recommendations developed through this review;
  - Appendix A: provides the description and findings for the TANS transition at Birmingham; and
  - Appendix B: provides the description and findings for the TANS transition at Gatwick.

## 2 Birmingham and Gatwick TANS provider transition background

### Birmingham: Background

- 2.1 Starting in 2011, Birmingham airport management reviewed the airport's operations, and assessed key elements with a focus on:
- Cost;
  - Value for money; and
  - Operational viability and innovation.
- 2.2 As part of this review, TANS provision was identified as the largest operational cost and the second largest business cost after business rates. This raised concerns about the value for money that the services provided by NATS Services Ltd. (NSL) represented. As a result, Birmingham airport put the provision of TANS out to competitive tender.
- 2.3 A first pre-qualification and tender process for TANS provision was launched in June 2012, with the tender published in the Official Journal of the European Union (OJEU)<sup>1</sup>. With only one compliant bid received from NSL, the airport then re-tendered for Managed TANS provision in March 2013<sup>2</sup>. At the same time, the airport started exploring the possibility of not awarding a contract and opting for in-house provision of TANS instead.
- 2.4 The decision to move to fully in-sourced TANS provision was taken in May 2013 and was signed off by the airport board in June 2013. An OJEU notice announcing that a managed contract had not been awarded was published in May 2013<sup>3</sup>. Birmingham Airport Air Traffic Ltd. (BAATL) submitted its certification and designation application to the CAA in late June 2013.
- 2.5 The newly-formed BAATL recruited a management team that comprised staff who were previously at the CAA to lead it through the TANS provider transition. These staff were experienced in the industry and were very familiar with the relevant regulatory requirements for certification and designation.
- 2.6 Figure 2.4 below illustrates the tender timeline.

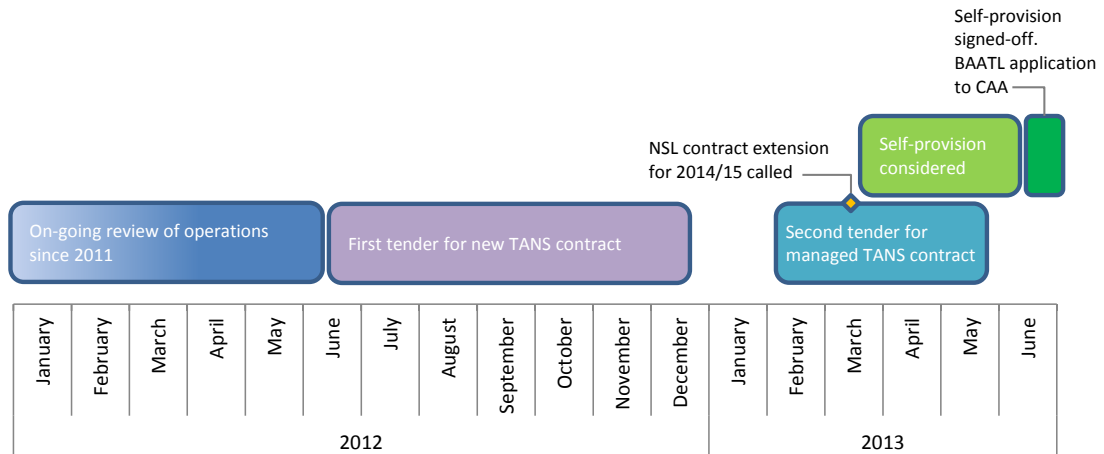
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<sup>1</sup> OJEU Tender ID: 2012/S 117-194183

<sup>2</sup> OJEU Tender ID: 2013/S 29-45717

<sup>3</sup> OJEU Tender ID: 2013/S 91-153686

Figure 2.1: Birmingham TANS provision tender timeline



Source: OJEU, stakeholder interviews, Steer Davies Gleave analysis

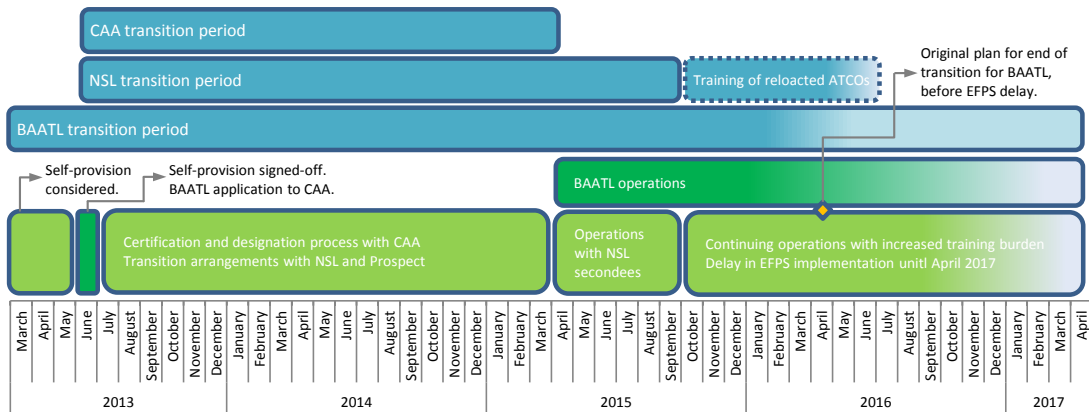
## Birmingham: Transition timelines

2.7 Depending on their role in the process, different stakeholders involved in the transition of TANS provider at Birmingham define the period of transition differently, as follows:

- **BAL and BAATL: at least three years:**
  - from exploring the option of self-provision and taking the decision to bring TANS provision in-house (Spring 2013);
  - through the CAA Certification and Designation process and the start of operations in April 2015; and
  - on to the first year of operations until all NATS secondments were completed (September 2015), the training burden is reduced to “steady-state” levels and the electronic flight progress strip (EFPS) system is implemented in 2016 (EFPS understood to now be delayed until early 2017).
- **CAA: just under two years:**
  - from receiving BAATL’s application in June 2013 to Certification and Designation of the ANSP at the start of April 2015.
- **NATS: two and a half years:**
  - from initial engagement with BAATL (Spring 2013) until all secondments of staff at BAATL were complete in September 2015. Some training of relocated staff may be ongoing after this date.

2.8 Figure 2.5 below illustrates the transition timelines.

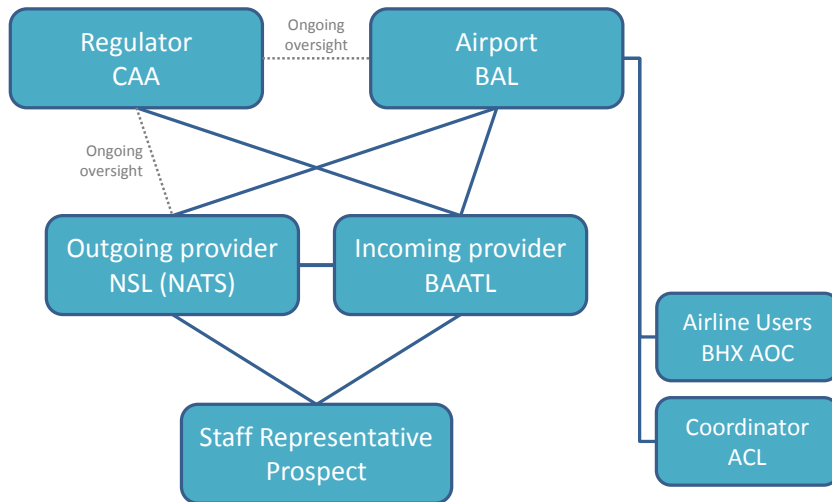
Figure 2.2: Birmingham TANS provision transition timelines



Source: Stakeholder interviews, Steer Davies Gleave analysis

- 2.9 As shown above, BAL’s transition plan allowed for nearly two years before BAATL was to take over TANS operations on 1 April 2015. This relied on BAL’s ability to call on a clause in its contract with NSL that allowed for a one-year extension to the NSL service for 2014/15.
- 2.10 Figure 2.6 below shows the main stakeholders involved in the transition of TANS provider at Birmingham airport and outlines the relationships between them.

Figure 2.3: Birmingham TANS provision transition stakeholders and relationships



Source: Steer Davies Gleave

### Gatwick: Background

- 2.11 TANS provision at Gatwick was one of the airport’s largest operating costs. With GAL’s contract with NSL approaching the end of its term, GAL went out to tender driven by:
  - The need for innovation – Gatwick is the busiest single runway airport in the world, so GAL was keen that its TANS provider worked towards new ways for delivering increased operational resilience or increases in capacity; and
  - The opportunity to cut costs which would benefit GAL’s profitability – under the new regulatory pricing regime, GAL assesses it would have the flexibility to retain (some of the) reduced costs, without these being passed directly through to customer airlines.

2.12 The pre-qualification and tender process for TANS provision was launched in October 2013, with the tender published in the Official Journal of the European Union (OJEU)<sup>4</sup>. The invitation to tender specified that organisations submitting tenders for the provision of TANS must already be certified under EU regulations, specifically:

- Be a certified ANSP provider under European Commission (EU) Implementing rule 1035/2011;
- Comply with requirements for Safety Management Systems (SMS), hazard identification, risk assessment and mitigation (EASA related) legislation 1035/2011;
- Be certified under Commission Regulation (EU) No. 805/2011 on ATCO Licenses;
- Comply with Air Traffic Controller (ATCO) Licensing Requirements under EU Regulation 805/2011; and
- Be certified under Commission Regulation (EU) No 1034/2011 on safety oversight in Air Traffic Management (ATM) and Air Navigation Services (ANS).

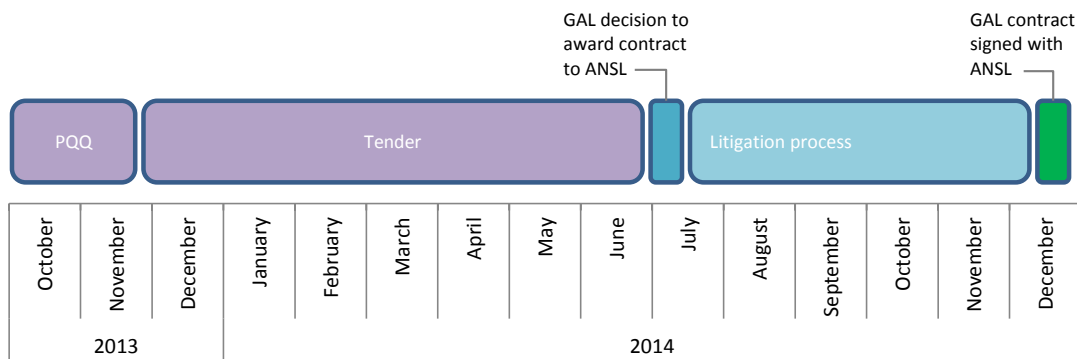
2.13 The decision to award the TANS provision contract to ANSL was taken in July 2014. NATS then mounted a legal challenge to GAL’s decision, which delayed the signing of the contract between GAL and ANSL until 22 December 2014, following a settlement with NATS.

2.14 Air Navigation Solutions Ltd. (ANSL) submitted its certification and designation application to the CAA in mid-November 2014.

2.15 ANSL drew on expertise from Germany and the UK, with a management team that comprised experienced staff from DFS and staff recruited locally, including ex-NATS staff.

2.16 Figure 2.4 below illustrates the tender timeline.

Figure 2.4: Gatwick TANS provision tender timeline



Source: OJEU, stakeholder interviews, Steer Davies Gleave analysis

### Gatwick: Transition timelines

2.17 The date for the transfer of operations from NSL to ANSL at the start of March 2016 was primarily specified by GAL and was influenced by the seasonality of traffic at the airport. The aim was to reduce the transition risk by transferring TANS provision during a slightly less busy time of the year (the Winter season). Alternatively, the transfer of operations could have been scheduled for October 2016, however, GAL was keen for the transition to be completed as soon as practicably possible, and without needing to further extend its contract with NSL

<sup>4</sup> OJEU Tender ID: 2013/S 191-329706

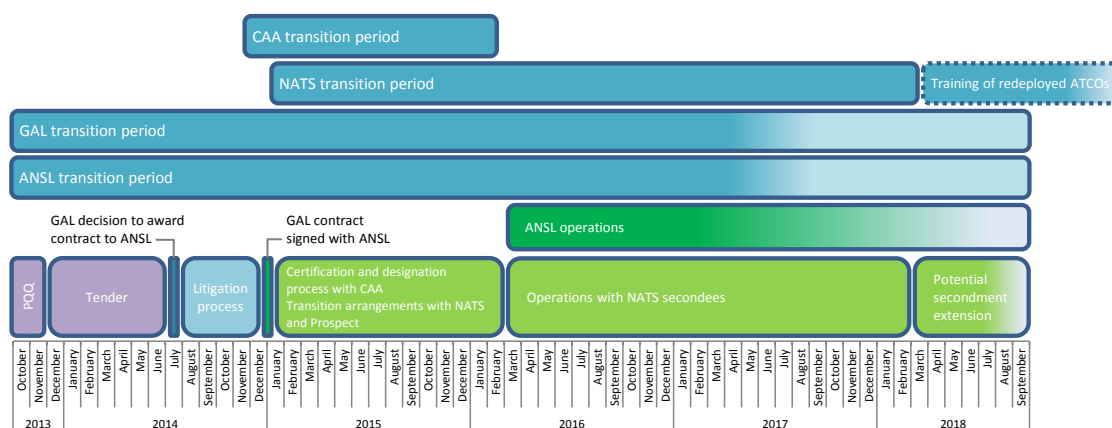
beyond the one-year extension already agreed after the decision to award the contract to ANSL was announced.

2.18 Depending on their role in the process, different stakeholders involved in the transition of TANS provider at Gatwick define the period of transition differently, as follows:

- **GAL: nearly four and a half years (54 months):**
  - Top-line: from going to tender in October 2013 to the completion of all NATS secondments at Gatwick (foreseen for March 2018 at the earliest);
  - Project execution: from the signing of the contract with ANSL (December 2014) to the completion of all NATS secondments (as above); and
  - Project delivery: from kicking-off the transition process in January 2015 to the transfer of operations to ANSL in March 2016.
- **ANSL: nearly four and a half years (54 months):**
  - In line with the GAL timeline presented above – from responding to the PQQ and tender starting in October 2013, through certification and designation and the transfer of operations, to the completion of all NATS secondments (foreseen for March 2018 at the earliest);
- **CAA: just under a year and a half (17 months):**
  - from receiving ANSL’s certification and designation application in November 2014 to Certification and Designation of the ANSP at the start of March 2016.
- **NATS: nearly three and a half years (40 months):**
  - from the conclusion of the legal challenge in December 2014 (4 December 2014) until all secondments of staff at ANSL are complete in March 2018 (at the earliest). Some training of relocated staff may be ongoing after this date.

2.19 Figure 2.5 below illustrates the transition timelines.

Figure 2.5: Gatwick TANS provision transition timelines

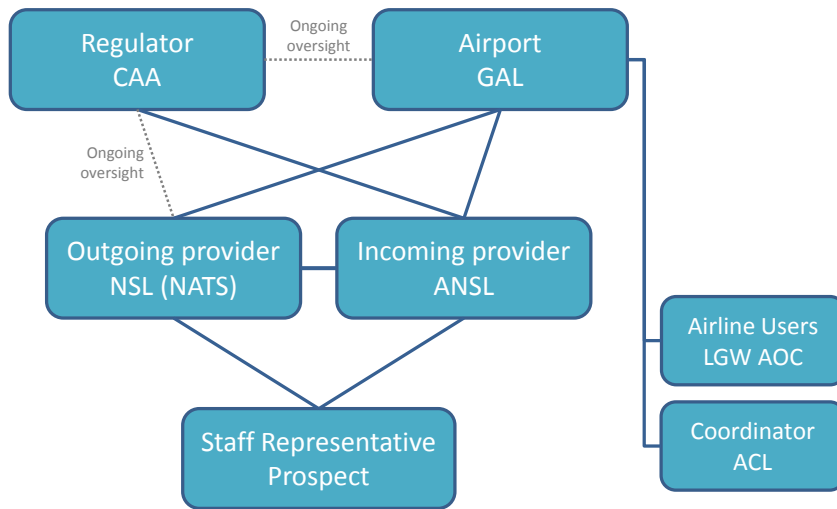


Source: Stakeholder interviews, Steer Davies Gleave analysis

2.20 NATS stated that it would have been open for the transition period to have been longer and that, as part of the legal settlement, it offered to further extend its contract with GAL. The approach to optimising the date of transfer of operations with respect to traffic was not discussed with NATS.

2.21 Figure 2.6 below shows the main stakeholders involved in the transition of TANS provider at Gatwick airport and outlines the relationships between them.

**Figure 2.6: Gatwick TANS provision transition stakeholders and relationships**



Source: Steer Davies Gleave

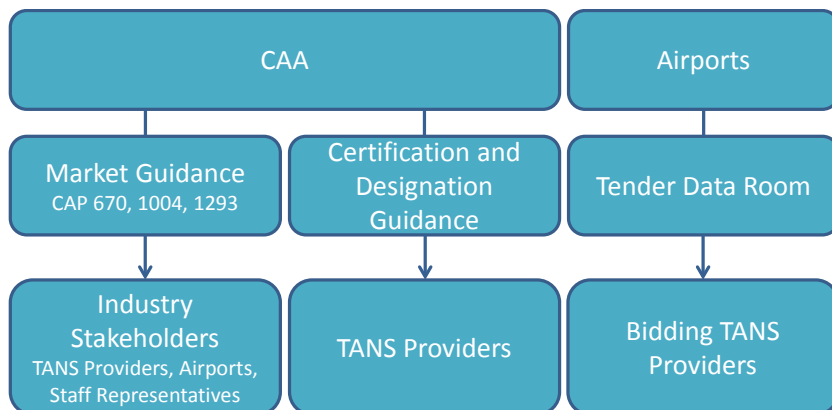
### Anticipated risks

2.22 Guidance can help stakeholders to better understand and prepare for the requirements and processes for going through a transition. There are three main areas where guidance is available to support a TANS provider transition process:

- Market guidance from the CAA on the TANS transition process overall (most prominently CAP670, and some content on its website);
- Guidance from the CAA on the Certification and Designation process, supporting ANSPs in providing evidence for meeting the Single European Sky (SES) Common Requirements; and
- Information and data from the airports (through a tender data room), providing sufficient transparency to potential incoming providers that would allow them to plan and bid with confidence.

2.23 Figure 2.7 summarises these guidance points.

**Figure 2.7: Change in TANS provision guidance points**



Source: CAA, stakeholder interviews, Steer Davies Gleave analysis

2.24 The tendering and transition processes at Birmingham and Gatwick took place alongside the ongoing debate about TANS market contestability, which was perceived by the incoming



providers to influence the behaviours and positioning of different stakeholders, particularly since Birmingham and Gatwick were the first time transitions took place at such large airports (with Birmingham serving 10.2 million passengers and Gatwick serving 40.3 million passengers in the 2015 calendar year), and the fact that it would set a precedent for the way future transitions would be conducted and, in the case of Gatwick, with an incoming provider that was a new entrant to the UK market.

- 2.25 In this context, a number of risks anticipated by BAL/BAATL were included in the risk register at the start of the process. These included the following:
- The scope of the CAA’s CAP670 guidance and limitations to its enforcement/application;
  - Uncertainty around the overall transition process and the extent to which ambiguity may impact costs;
  - NATS’s approach to the process and the support it would provide for the change of provider;
  - The understanding of the Trust of a Promise Agreement and its implications;
  - Engagement with staff and industrial relations;
  - Resourcing and staff training lead-times;
  - Potential for business interruption at Birmingham airport;
  - Potential for a failure of service delivery; and
  - Continued safety of operations.
- 2.26 GAL explained that it relied on CAP 1004 in the early stages of its procurement process in order to develop an understanding of the market and the risks of putting its TANS provision out to tender.

## 3 TANS provider transition: Recommendations

### Introduction

- 3.1 Drawing on the evidence collected through our discussions with and collection of data from key stakeholders, as well as our review of documentation in the public domain and provided by the CAA and key stakeholders, we present some suggestions that would support improvements to the TANS provider transition process.
- 3.2 In the tables below we summarise these recommendations and identify where themes were common across both transitions or if these applied in only one of the two cases. The findings and supporting evidence from which these recommendations were drawn are provided in the appendices and referenced below.
- 3.3 In relation to the form that additional guidance may take, some stakeholders put forward the view that this should come from the CAA. NSL was of the view that the current CAA guidance was sufficient and any further clarification should come from the procuring airport manager within the tendering process for a TANS provider. Both these options could be considered where we have identified areas where additional clarification and information would be beneficial to provide.
- 3.4 Below we describe the potential considerations to be made, actions to be taken and/or guidance to be offered by:
- Tendering airports;
  - the CAA; and
  - Incoming TANS providers.

Some of the recommendations are repeated where potentially applicable to more than one of the above stakeholders.

## Tendering airports

3.5 Here we summarise recommendations that airports may wish to consider when deciding to put their TANS out to tender.

**Table 3.1: Recommendations for tendering airports**

Theme	Recommendation	Airport	Reference
Transition time	It is helpful to recognise that different players have different expectations for how long their involvement with a transition in TANS provider would last. The overall length of transition for airports and incoming providers can be significant relative to the duration of the contract. This will present challenges to the viability of shorter contracts for incoming providers, the balance of which airports should consider as part of specifying their ITTs.	Gatwick	8.104 - 8.124
	Airports could shorten the transition time by: <ul style="list-style-type: none"> <li>Initiating arrangements with incumbent providers that mitigate anticipated transition issues (including some of the recommendations detailed below); and</li> <li>Facilitating the transition process by establishing ways of working and communication between the incoming and outgoing providers.</li> </ul>	Both	9.15 - 9.18
Transparency around Trust of a Promise	Airports where NSL is the incumbent should highlight to bidders the complexities introduced to the staff transfer process by Trust of a Promise, and by extension to the recruitment and training of new staff. Airports should encourage bidders to ensure that they seek access to the legal text of the agreement when preparing their tender responses. Airports should work with the CAA to make the legal text of the agreement available in the bid dataroom.	Both	5.13 - 5.43 8.14 - 8.78
	Airports should explore whether they would be able to provide an estimate of the attrition rate of staff covered by Trust of a Promise. This would form a useful input in their tendering decision and provide a useful indicator to bidders.	Both	5.13 - 5.19 8.14 - 8.23
Information and data	Airports should highlight to bidders that they ought to consider the balance between buying IP or investing in developing it and training staff on the new processes. Airports could also bear this balance in mind when evaluating the bids received.	Both	5.53 - 5.62 5.78 - 5.81 8.95 - 8.98 8.116 - 8.124
	Airports would find it useful to establish arrangements to collect historical safety and staff data on an ongoing basis from their TANS providers. This could involve additional costs, but would be useful in the case of changes in TANS provision.	Both	5.63 - 5.66 8.99 - 8.103
Other issues	Airports should ensure that provisions are in place for exit management so that outgoing providers cooperate through a transition process (e.g. do not cancel major projects when going into transition that will impact operations after the switchover).	Birmingham	5.71 - 5.74

Theme	Recommendation	Airport	Reference
	Airports where NSL is the incumbent should develop a clear understanding of how delegated en-route functions are delivered on-site by NSL on the behalf of NERL, if applicable. A lack of transparency about these arrangements may discourage airports from putting their TANS provision out to tender.	General	n/a
	Airports should recognise that there exists a risk to tendering airports and bidders that legal challenges may impact their planned costs and transition timelines.	Gatwick	8.1243

## Civil Aviation Authority

3.6 Here we summarise recommendations that the CAA may wish to consider in supporting the market for TANS provision. Table 3.2 describes the recommendations on the certification and designation process and Table 3.3 those on the transition process.

**Table 3.2: Recommendations for the CAA on Certification and Designation process**

Theme	Recommendation	Airport	Reference
CAA Resources	The availability of CAA resources should be carefully planned to ensure that these do not present a bottleneck in the process, particularly if close engagement and a significant amount of contact is required from the CAA to help ANSPs with attaining certification and designation.	Gatwick	7.24
CAA Communications	Stakeholders (particularly incoming providers and customer airports) would value more formally defined communication lines with the CAA, which would limit the potential for miscommunication or misunderstandings between the parties involved and contribute to improving the transparency of the certification and designation process.	Both	4.39 7.52
CAA guidance	There is opportunity for the CAA to either provide additional guidance to ANSPs for structuring their business plans and annual plans, or to provide links to equivalent SES guidance. This would be particularly helpful during the early stages of the plan development, requiring less direct contact time from the CAA.	Both	4.34 7.46
Other issues	To encourage wider market participation, it may be helpful for the CAA to introduce a pre-certification concept. Pre-certification could focus on organisational aspects of certification and designation that are not location-specific, for example on certain elements of a provider's management systems. By becoming pre-certified a new TANS provider would be able to formally demonstrate to potential airport customers that it would be able to approach the certification and designation process in a competent manner, thus reducing the perceived risk that airports associate with this.	Both	4.39 7.5 - 7.11

**Table 3.3: Recommendations for the CAA on the Transition process**

Theme	Recommendation	Airport	Reference
Staff transfer	<p>The CAA should describe its expectations for the staff transfer process in more detail, providing a benchmark to industry for the process.</p> <ul style="list-style-type: none"> <li>The obligations relating to staff that are provided by the CAA in CAP 670 are not specified in detail, placing limited onus on the outgoing provider. There exists the requirement for the outgoing provider to offer mutually agreed access, which applies globally to all aspects of the transition, but not explicitly to staff. The statement does not provide an indication of the level of access that the CAA would expect the outgoing provider to offer.</li> <li>The process of staff transfer is heavily contingent on cooperation between the outgoing and incoming provider. An expected level of cooperation and engagement is not indicated by the CAA, leaving it primarily to the outgoing provider to determine.</li> </ul>	Both	5.43 8.78
	Some of the details for the implementation of ToaP are not specified in the agreement (e.g. the number of alternative options that NATS ought to provide to ATCOs). Prospect would welcome guidance on these.	Both	5.43 8.78
CAA guidance and transparency of Trust of a Promise	The CAA should take steps to ensure that tendering airports and bidders are provided with the legal text of ToaP.	Both	5.43 8.78
	The CAA should consider developing a “layman’s guide” to the ToaP agreement which could be published. The CAA would have to be clear that such a guide is not a legal document and that stakeholders should seek their own legal advice on the agreement.	Both	5.43 8.78
	The CAA should explore alongside airports whether it would be able to provide an estimate of the attrition rate at each airport, which would be a useful indicator to industry.	Both	5.43 8.78

Theme	Recommendation	Airport	Reference
CAA guidance on secondments	<p>Secondment arrangements should be incorporated into the CAA's guidance to stakeholders for the transition of TANS provision, including guidance on the basis of the preferred commercial arrangements, which the CAA should assess to provide guidance on the preferred option:</p> <p>1. Secondment costs aligned to the cost of employment in the market. The cost of secondments would then be the same as that for directly employed staff, informed by the terms of the collective agreement in place with Prospect. This approach would fit with ANSL's view that ToaP costs are NATS's obligation and should not be transferred to incoming providers. However, we note that this would not place NATS in a fair position as a participant in the market, as ToaP costs would make it uncompetitive relative to other providers, unless the difference in costs between ToaP and market rates were to be borne by a third party (e.g. DfT), effectively neutralising ToaP from the perspective of all TANS providers.</p>	Both	5.43
	<p>2. Secondment costs defined based on an agreed and published formula that the CAA specifies. This approach would be similar to that described by NATS in determining the price for secondments, with the CAA assessing which cost lines should be included and the basis for calculating the costs for these (e.g. salary costs, overheads, pension contributions, acceptable margin).</p>		8.78
	<p>3. An obligation for both NATS and the incoming provider to share the ToaP burden, potentially through commercial incentivisation to limit the number of secondments required. Under this scenario, ToaP staff could be encouraged to transfer to the new provider and exit the Defined Benefits scheme in return for a one-off payment based on their expected pension contributions and an appropriate discount rate. This is potentially complicated by NATS wanting to retain existing staff to cover other resourcing requirements across its business and more generally a shortage of experienced ATCOs in the market.</p>		
	<p>The obligation for the outgoing provider to provide training, through secondment agreements, so as to avoid prolonging the secondment should be clarified. This is a key output requirement of the secondments. CAA guidance on this obligation would be helpful in breaking the implicit circularity highlighted in our assessment. The CAA already ensured that the secondment agreement at Gatwick covered training, but this would be strengthened by defining ways for measuring training outputs and the actions to be triggered under the contract if targets are not met (e.g. the contracting parties might have to renegotiate the extension period).</p>	Gatwick	8.78
CAA guidance on other issues	<p>The high-level description of the information that the outgoing provider should voluntarily transfer to the incoming one that is provided in CAP 670 should be extended to identify specific historical safety and staff data for a specified period.</p>	Both	5.66 8.103
	<p>The CAA should highlight to airports that arrangements to collect historical safety and staff data on an ongoing basis from their TANS providers would be useful in the case of changes in TANS provision – though recognising this could involve additional costs.</p>	Both	5.66 8.103

Theme	Recommendation	Airport	Reference
	The CAA should highlight to airports that provisions are in place for exit management to ensure that outgoing providers cooperate through a transition process (e.g. do not cancel major projects when going into transition that will impact operations after the switchover).	Birmingham	5.71 - 5.74
	The CAA should highlight to incoming providers that communication between management and staff on the continuity of safety data and performance records before and after the transfer of operations is important in ensuring staff and their representatives maintain confidence in the process.	Both	5.66 8.103
	The CAA should review whether the implied conflict between commercial considerations for intellectual property and the extent to which the outgoing provider makes staff available for training in any new processes before the transfer of operations leads to a significant risk of limited operations, warranting more detailed guidance or enforceable solutions.	Birmingham	5.66
	The CAA should highlight to incoming providers that they ought to consider the balance between buying IP or investing in developing it and training staff.	Both	5.81 8.124
	The CAA should highlight to incoming providers that the ability to deliver plans that form part of the transition may be impacted by the prevailing need to maintain ongoing operational continuity and accommodate growth. Incoming providers should foresee development and training for traffic growth or other projects and build in contingency for this into their transition plans.	Both	5.81 8.124

## Incoming providers

3.7 Here we summarise recommendations that incoming providers may wish to consider when bidding for TANS contracts.

**Table 3.4: Recommendations for incoming providers**

Theme	Recommendation	Airport	Reference
Transition time	It is helpful to recognise that different players have different expectations for how long their involvement with a transition in TANS providers would last. The overall length of transition for airports and incoming providers can be significant relative to the duration of the contract. This will present challenges to the viability of shorter contracts for incoming providers, the balance of which incoming providers should consider as part of responding to ITTs.	Gatwick	8.104 - 8.124
	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. Incoming providers, whether already certified in the UK or not, should plan to allow sufficient time for demonstrating compliance to the CAA at each new location.	Both	4 7

Theme	Recommendation	Airport	Reference
	Incoming providers should be aware that the ability to deliver plans that form part of the transition may be impacted by the prevailing need to maintain ongoing operational continuity and accommodate growth. Incoming providers should foresee development and training for traffic growth or other projects and build in contingency for this into their transition plans.	Both	5.81 8.124
Local expertise	A good understanding of the UK regulatory context and ways of working with the CAA, in particular, have proven important in the transitions reviewed in this study. Incoming providers should consider how to best develop or acquire the local expertise to support the certification and designation process.	Both	4.39 7.52
Transparency around Trust of a Promise	Incoming providers where NSL is the incumbent ought to have a good understanding of the complexities introduced to the staff transfer process by Trust of a Promise, and by extension to the recruitment and training of new staff. Incoming providers should ensure that they seek access to the legal text of the agreement, along with relevant legal advice, when preparing their tender responses.	Both	5.43 8.78
Staff transfer	<p>Incoming providers should ensure they understand the risks around the transfer of staff from the outgoing provider. In the cases where the outgoing provider is NSL, Trust of a Promise will impact staff transfer, with some staff electing to not transfer to the new provider. In these cases, it is likely that there will be a need for commercially negotiated secondment arrangements to be put in place to ensure the continuity of service provision. Incoming providers should identify risks associated with the:</p> <ul style="list-style-type: none"> <li>• cost and time for the secondments;</li> <li>• recruitment and training costs for new staff;</li> <li>• training capacity of the unit; and</li> <li>• circularity emerging from the contingencies between the points above.</li> </ul> <p>It is recommended that incoming providers define contractual terms that anticipate how to address the above should any issues materialise (e.g. define ways for measuring training outputs and the actions to be triggered under the contract if targets are not met).</p>	Both	5.43 8.78
Information and data	Incoming providers should consider the balance between buying 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. The extent to which outgoing providers make staff available for training in any new processes before the transfer of operations should also be considered.	Both	5.66 8.1043
	Incoming providers should recognise that communicating with staff on the continuity of safety data and performance records through the transfer of operations is important in ensuring that staff and their representatives maintain confidence in the process.	Both	5.66 8.103



## Concluding comments

- 3.8 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. However, this review has identified that a number of challenges emerged between the incoming and outgoing providers through the transitions, particularly in relation to the transfer of staff and the transfer of information and data (including equipment safety cases).
- 3.9 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. The recommendations in this report are designed to help stakeholders entering future transitions.



## 4 Birmingham: Certification and designation requirements

### Introduction

4.1 In this chapter we provide an overview of the process for each new provider gaining or confirming certification and designation from the CAA under the UK and EU SES legislation, and describe the Birmingham Airport transition experience. Our review focusses on four areas where issues have been raised by stakeholders:

- Management system documentation;
- Equipment;
- Financial aspects; and
- Other.

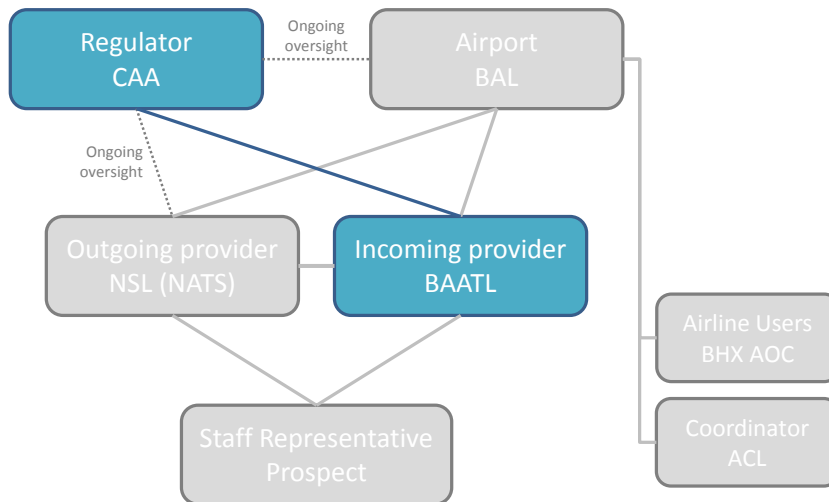
4.2 For each of these areas, we:

- Identify the certification and designation requirements as part of UK legislation and EU SES regulations;
- Review CAA guidance on transition for changing TANS provider and assess it for clarity, taking into account stakeholder comments and identifying if improvements can be made;
- Identify any comments, concerns or issues raised by stakeholders and identified during our review of the documentation; and
- Provide our assessment and findings.

4.3 Our analysis focusses on the CAA-incoming TANS provider relationship, as shown in Figure 4.1 below, and highlights issues relating to the following key themes:

- CAA Guidance:
  - Does certification and designation (C&D) guidance material give an accurate suggestion of effort required for C&D?
- Assets and equipment:
  - Issues raised with equipment requirements?
  - Issues raised with safety cases for equipment?
- Systems and procedures:
  - Issues arising with MATS part 2?
  - Issues arising with other operating procedures?

**Figure 4.1: Focus of certification and designation analysis**



Source: Steer Davies Gleave

4.4 Activities and relationships with the outgoing TANS provider are reviewed in Chapter 5.

### Management system documentation

#### Description of requirements and CAA guidance

4.5 Organisations that make an application to the CAA for certification as an Air Navigation Service Provider (ANSP) are required to indicate how they intend to comply with the following:

- At EU SES level: Commission Implementing Regulation (EU) No 1035/2011 laying down common requirements for the provision of air navigation services; and
- At UK national level: CAP 670 - ATS Safety Requirements, setting out the safety regulatory framework and requirements associated with the provision of an air traffic service.

4.6 The CAA provides:

- Guidance notes that expand on the Common Requirements shown in Commission Regulation 1035/2011 and explain the meaning of the requirements in plain language. The notes also provide examples of possible evidence that may be used to demonstrate compliance.
- Blank compliance matrix templates, which identify the individual requirements shown in Commission Regulation 1035/2011 and allow applicants to indicate where relevant evidence of compliance for each requirement is provided in their management system documentation.
- Guidance in CAP670 which offers explanatory notes on acceptable methods of compliance with the requirements specified in the same paper.

4.7 Key elements of the management system documentation are:

- Safety Management System (SMS);
- Quality Management System (QMS);
- Security Management System (SecMS);
- Manual of Air Traffic Services (MATS); and
- Training plans.

## Stakeholder comments

### *BAATL*

- 4.8 As noted in Chapter 2, the staff at BAATL responsible for drafting the management system were experienced in relation to the regulatory requirements, the effort involved in demonstrating compliance and the guidance available to support this.
- 4.9 BAATL commented that the compliance matrices and accompanying guidance notes that make reference to management system documentation and operational and training processes were good. The matrices were described as straightforward to complete, providing a helpful template for mapping ANSP processes to the common requirements for demonstrating compliance.
- 4.10 BAATL noted that its relationship with the CAA was constructive, however, BAATL added that the time taken by the CAA to review the documentation and offer comments was extended. BAATL also felt that it did not have good visibility of the review timeframe and when to expect CAA comments. In particular, BAATL considered that its two-year transition to operations meant that other more immediate concerns were prioritised by the CAA, given the constraints and resourcing pressures the CAA faced. As a result, BAATL was certified with some minor non-safety related non-compliances in April 2015 after unexpected comments were received from the CAA in January 2015 and it was not practically possible to address and reissue the documentation before the start of operations. Although not critical, this was something that BAATL was moderately uncomfortable with and would have preferred to have addressed in full by the start of operations.

### *CAA*

- 4.11 The certification and designation process for a large transition of TANS provider, as at Birmingham, presents a significant resourcing burden to the CAA. At the time of BAATL's certification and designation process, the CAA encountered an unusual and challenging set of circumstances, which made a number of competing demands on its time:
- five ANSP applications ongoing over the same period (including BAATL); and
  - internal reorganisation of the CAA.
- 4.12 These circumstances, alongside the CAA's normal day-to-day oversight activities, meant that the CAA had to prioritise tasks within its small team. In the context of BAATL's two-year certification timeline, this meant that other projects were prioritised. Had this not been the case, the CAA would have been able to review BAATL's documentation in a more intensive manner.
- 4.13 The CAA commented that the quality of BAATL's documents was excellent. The regulatory background of BAATL staff meant that the level of understanding of the requirements and the process was high and that the CAA was not required to apply as much contact time to support BAATL as it sometimes has had to with other applicants. This extended to even trivial aspects such as the fact that documents were proof-read and references were correct.

## Assessment and emerging findings

- 4.14 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to the management system documentation:

- The CAA's guidance on the requirements for the management system documentation was detailed and was considered helpful;
- The compliance matrices were easy to use and straightforward to complete, providing a basic level of industry knowledge;
- No issues were raised around MATS or other management system documentation in relation to certification and designation requirements and compliance;
- The CAA's feedback to BAATL was structured and constructive;
- BAATL noted that it would have preferred a quicker turn-around by the CAA, but communication on the progress of the CAA's review and when comments could have been expected would also have been welcomed; and
- The review of a large application like BAATL's was very resource intensive for the CAA and required careful planning, alongside reviews of other applications and normal oversight activities.

## Assets and Equipment

### Description of requirements and CAA guidance

- 4.15 The requirements for ATS equipment come from the same legislation as described above. Safety cases are compiled by gathering together of evidence and arguments most of which will have been developed during the hazard identification, risk assessment and mitigation parts of the common requirements.
- 4.16 To prove compliance the CAA is looking for evidence of:
- Trained and competent staff;
  - Equipment meeting International Civil Aviation Organisation (ICAO) specification standards;
  - Equipment operating processes that are in line with internal management system documentation; and
  - Equipment maintenance processes that are in line with internal management system documentation.
- 4.17 The safety cases, equipment operating processes and equipment maintenance processes are assessed through engineering audits by a Regional Office.
- 4.18 CAA guidance is provided in CAP 760 "*Guidance on the Conduct of Hazard Identification, Risk Assessment and the Production of Safety Cases: For Aerodrome Operators and Air Traffic Service Providers*".

### Stakeholder comments

- 4.19 There is a difference in regulatory approach for equipment between NATS and other organisations/units, as described by both BAATL and the CAA. Under the regulatory approach applicable to NATS, individual equipment safety cases are managed under the NATS overarching Safety Management System (SMS) of which the CAA maintains oversight. For other organisations, the CAA has direct oversight of the equipment and reviews safety cases individually.

#### BAATL

- 4.20 BAATL highlighted that because the CAA as regulator has not had direct oversight experience of equipment under the NATS arrangements, it adopted a cautious approach when the equipment entered the CAA domain by requesting that all safety cases were provided.

4.21 The equipment at Birmingham airport was owned by BAL, so BAATL was able to get hold of the safety cases from NATS without issues (see Chapter 5 also for information transfer). Providing all of these to the CAA then should not have been a problem, however when BAATL received the safety cases from NATS it found that not all were of the standard BAATL would have expected, and it was not confident that the CAA would accept them. Therefore some work was required to bring these up to expected quality before submitting to the CAA. In addition to this, part 4 of all the safety cases had to be re-written for each piece of equipment, as this element would be changing by transferring from the centrally managed NATS maintenance system described above, to maintenance by BAATL on the unit.

4.22 BAATL added that Communications, Navigation and Surveillance (CNS) equipment was particularly challenging as the European Aviation Safety Agency (EASA) rules on this are hard to understand, so it is difficult to interpret what is needed for compliance with the common requirements.

#### CAA

4.23 For the CAA, this was the first time that equipment had transitioned between a NATS unit and non-NATS unit. The process was new as a result, with two engineering inspectors from the regional office involved in order to cover the large volume of audits. There was some coordination with BAATL between the certification activity and normal oversight activity so that the safety case audits were completed as efficiently as possible.

#### Assessment and emerging findings

4.24 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to equipment:

- Birmingham airport owned all the relevant TANS equipment at the airport, so there was no need for assets to be transferred from the outgoing provider;
  - Given the clear ownership of equipment at the airport, no issues were encountered with transferring the safety cases for this equipment between the outgoing provider and the airport/incoming provider;
  - The quality of existing safety cases was lower than expected, with more work than planned having to be dedicated to these before they were submitted to the CAA;
  - There were no comments on the CAA guidance for developing safety cases, with the exception of CNS equipment which was described as particularly challenging;
  - CAA guidance on the safety management system and the common requirements was considered good, as discussed in the previous section; and
  - The transfer of equipment from a NATS unit to a non-NATS unit meant that it came under the direct supervision of the CAA for the first time. This was a new process and was resource intensive for the CAA.
- The ownership of TANS equipment by the airport simplified this aspect of the transition, removing the need for negotiations between the outgoing provider, the incoming provider and the airport for transfer of these assets.

## Financial aspects

### Description of requirements and CAA guidance

4.25 All Air Navigation Service Providers (ANSPs) applying for Certification and not eligible for derogation must submit to the CAA their five-year Business Plan, Annual Plan, and audited accounts.

- 4.26 The Business Plan should cover a minimum period of five years and set out:
- the overall aims and goals of the ANSP and its strategy towards achieving them in consistency with any overall longer term plan of the provider, and with relevant Union-wide requirements for the development of infrastructure or other technology; and
  - appropriate performance targets in terms of safety, capacity, environment and cost-efficiency, as may be applicable.
- 4.27 The Annual Plan should specify further the features of the Business Plan and describe any changes to it. The annual plan should cover the following provisions on the level and quality of service such as the expected level of capacity, safety, environmental and cost-efficiency, as may be applicable:
- Information on the implementation of new infrastructure or other developments and a statement how they will contribute to improving the performance of the ANSP, including level and quality of services;
  - Performance indicators consistent with the national element of the Functional Airspace Block (FAB) performance plan referred to in Article 1 of Regulation (EC) No 594/2004 against which the level and quality of service may be reasonably assessed;
  - Information on the measures foreseen to mitigate the safety risks identified in the safety plan of the ANSP, including safety indicators to monitor safety risk and, where appropriate, the estimated cost of mitigation measures; and
  - The ANSP's expected short-term financial position as well as any changes to or impacts on the business plan.
- 4.28 In accordance with article 12(2) of Regulation (EC) No 550/2004, an ANSP shall demonstrate that it is undergoing an independent audit of its financial accounts on a regular basis.
- 4.29 The CAA provides:
- Guidance on its website; and
  - Business Plan and Annual Plan templates to aid providers, especially those who may be producing such a document for the first time.

#### **Stakeholder comments**

##### *BAATL*

- 4.30 Through the description on its website and the compliance matrices, the CAA is clear about where financial and business plan information is needed to comply with the common requirements. However, the business and annual plan templates provided by the CAA were not sufficiently helpful. BAATL thought that the CAA might in fact have found it difficult to accept a business plan based on these templates.
- 4.31 For the financial and business plan aspects of the common requirements, BAATL relied on SES guidance and the Reporting Tables, as well as general business planning examples found online, for developing and structuring the documents.

##### *CAA*

- 4.32 The CAA commented that BAATL's business and annual plans were well structured, with little iteration needed. Beyond making clear the financial requirements that ought to be met, the CAA has adopted a light touch approach with respect to the content of ANSPs plans. The



templates provided are not prescriptive and provide free space for ANSPs to detail their plans in their preferred format.

- 4.33 In addition to providing a business and annual plan to the CAA, ANSPs also have to demonstrate their economic and financial capacity to fund their activities. For established organisations this would normally be assessed through their audited annual accounts and the auditors' report. In the case of BAATL, which was a newly established entity and wholly owned subsidiary of BAL with no annual accounts yet available, the CAA required a letter of support from the parent company (BAL) which declared BAL's commitment to provide funds for BAATL to cover its financial obligations for at least twelve months of operation.

#### **Assessment and emerging findings**

- 4.34 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to financial aspects:

- The high-level requirements for the financial information that had to be provided was clear;
  - The CAA's guidance and compliance matrices indicating where the financial documentation needed to be provided as evidence for compliance with the common requirements was helpful; and
  - The business plan and annual plan templates provided by the CAA were not found to be sufficiently detailed.
- There is opportunity for the CAA to either provide additional guidance to ANSPs for structuring their business plans and annual plans, or to provide links to equivalent SES guidance.

#### **Other issues raised in relation to certification and designation**

- 4.35 In the case of the transition at Birmingham, the incoming provider had a good understanding of the effort required for certification and designation, as key members of BAATL management team familiar with the processes and documentation required to support certification and designation. Even so, the guidance available from the CAA supported the development of the documentation required for certification and designation, although some aspects of the guidance were found to be stronger than others. The guidance available on financial aspects was not considered to provide as accurate a suggestion of the effort required for showing compliance as guidance on other aspects of the common requirements.
- 4.36 BAATL raised two further issues around the certification and designation process, which relate to:
- the relationship between the incoming TANS provider, the airport and its shareholders; and
  - potential barriers to TANS market entry faced by new providers.
- 4.37 The first of these issues was focussed on the relationship between BAATL and BAL's shareholders, since BAATL and BAL are closely linked entities, rather than independent organisations. The issue arose because of the timing of the certification and designation process and the way in which the provider receives its certificate and letter of designation on commencement of operations. Although the CAA had indicated its intent to certify as early as September 2014, there were times during the process when BAATL would have welcomed more assurance or updates from the CAA, which could in turn have been relayed to risk-averse

shareholders to offer better transparency of the process and limiting their perception of uncertainty.

- 4.38 On the second issue, new providers entering the TANS market are unable to apply for certification and designation until they have been awarded a contract. As a result airports assume the risk of their preferred provider not being certified, which may limit their willingness to put TANS out to tender. BAATL questioned whether it might be possible to put alternative arrangements in place, so as to remove this potential barrier from the perspective of the airports.

#### Assessment and emerging findings

- 4.39 Our assessment of the issues described above indicate the following emerging findings:

- The certification and designation process at Birmingham benefited significantly from the regulatory experience of BAATL’s management team;
- Despite the good understanding of the certification and designation process that BAATL, and by extension BAL, had, other airport stakeholders and decision-makers (in this case airport shareholders) still had a perception of uncertainty and increased risk;
- The increased risk presented to airports in selecting an uncertified TANS provider compared to a provider certified in the UK and already operating at another location may form a barrier to entry into the market for new providers.

- Customer airports, their boards and shareholders may value more structured communications from the CAA, which would improve the transparency of the certification and designation process, reducing the perceived uncertainty and risk associated with this part of the transition between TANS providers.
- The CAA’s assessment of the provider’s compliance with the common requirements and its capability to operate is necessarily airport-specific and related to the size and complexity of operations at that location. As a result, a new TANS provider must have secured a contract (i.e. an airport location where it will be providing its services) before it is able to apply for certification and designation.  
Although in practice the process for an existing TANS provider to become designated at a new location is the same as that for a new provider to become certified and designated at the same location, airports may perceive that selecting an existing provider that is already certified in the UK may be less risky than selecting a new one – implicitly creating a barrier to market entry for new providers. For example, we are aware that some airports that have recently considered tendering their TANS have only invited providers that are already certified to bid.  
To overcome this hurdle and encourage wider market participation, it may be helpful for the CAA to introduce a pre-certification concept. Pre-certification could focus on organisational aspects of certification and designation that are not location-specific, for example on certain elements of a provider’s management systems. By becoming pre-certified a new TANS provider would be able to formally demonstrate to potential airport customers that it would be able to approach the certification and designation process in a competent manner, thus reducing the perceived risk that airports associate with this. A similar concept has been introduced in recent years by the Department for Transport (DfT) in the rail sector with the “franchising passport”. The passport is essentially a pre-qualification process that provides a ticket for participation in rail franchising competitions and removes the need for train operating companies (TOCs) to pre-qualify

separately for each competition. As a result, it reduces the cost of market participation for prospective TOCs, as well as the administrative burden for the DfT.

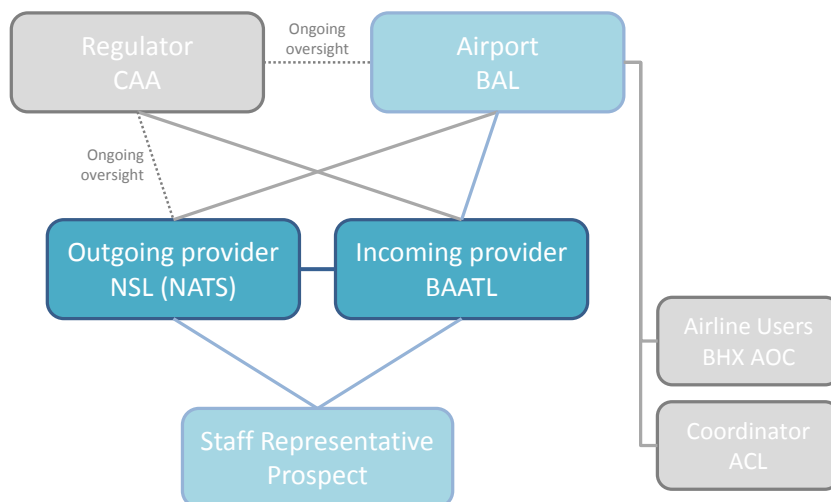
## 5 Birmingham: Review of transition process and issues faced

### Introduction

- 5.1 In this chapter we review the airport's and new TANS provider's transition plans, and compare outturn to plan. In CAP 670, the CAA specifies that a transition plan must be developed by the incoming provider which addresses all aspects of the transition that will need to be actioned with the outgoing provider, including training and familiarisation issues. The CAA also places an obligation on the outgoing provider to engage with the incoming provider to agree the transition plan.
- 5.2 The CAA has an outline transition plan Gantt template available from which incoming providers can develop their own detailed plans. The template and further guidance on developing and implementing such a plan would be shared at the pre-application meeting with the CAA, which incoming providers are invited to have at the start of the process. In fact, In CAP 670 the CAA recommends that the incoming provider should give the CAA as much notice as possible of the takeover of service provision.
- 5.3 In our review we will describe the detail related to specific issues on:
- Staff: processes of transfer, Air Traffic Control Officer (ATCO) secondments and training of new staff, linked to the Trust of a Promise Agreement and its application;
  - Assets and equipment: ownership and processes of transfer;
  - Information and data: identifying challenges faced with the transfer of information and issues around intellectual property; and
  - Timing and costs.
- 5.4 Our analysis focusses on the outgoing-incoming TANS provider relationship, as shown in Figure 5.1 below, and describes the process of transition, highlighting issues relating to the following key themes:
- Expectations of transitions processes:
    - Were the airport's expectations at start of process different to outcome?
    - Were the incoming ANSP's expectations at start of process different to outcome?
  - Staffing issues and requirements:
    - Whether sufficient information on Trust of a Promise (ToaP) was available?
    - Issues raised with training new controllers?
    - Issues raised with secondment of controllers?
  - Assets and equipment:
    - Issues raised with equipment requirements?

- Issues raised with safety cases for equipment?
- Systems and procedures:
  - Issues arising with MATS part 2?
  - Issues arising with other operating procedures?

**Figure 5.1: Focus of transition process analysis**



Source: Steer Davies Gleave

5.5 In our review we highlight issues leading to an impact on timing and/or costs being different to the airport/new service provider's plan and identify where there were a perception or misunderstanding led to an issue arising. Activities and relationships between the incoming provider and with Prospect and other stakeholders are also included in the analysis.

## Staff

### CAA Guidance

5.6 In CAP 670, the CAA details certain requirements in relation to staff for the incoming provider as follows:

- The new provider must provide a list of controllers, details of their licences, together with any necessary requests for exemptions to full licensing requirements and supporting justification for them.
- The new provider must agree a programme with the CAA for:
  - On-site training for all licensed and other operational staff. The training will need to include a period of operational familiarisation in cooperation with the outgoing provider; and
  - Presentation of all operational staff for examination or assessment to the CAA. These examinations include oral examination and written examination as required and cover all aspects of local knowledge and use of equipment. At the appropriate time practical examinations will also need to be conducted.

5.7 Beyond the requirement described above for a period of operational familiarisation, the obligations of the outgoing provider that are included in CAP 670 are that the outgoing provider must allow *mutually agreed access* to the incoming provider prior to handover. This is understood to relate to all aspects of the transition, including staff – although access to staff is not identified explicitly.

- 5.8 The staffing risk for TANS providers is highlighted by the CAA in CAP 1004. It describes that ATCO licensing and validation requirements do not easily lend themselves to the frequent movement of ATCOs between different ATC units or centres or positions within a unit or centre. Given that unit specific training to gain a rating and/or rating endorsement can take more than six months to complete, it is clear that the loss of an ATCO, for any reason, needs a robust replacement plan and can pose a continuity issue for the staffing of ATC operations at a specific airport location.
- 5.9 The key staffing concern in the case of a change in TANS provider at an airport is that the NATS Trust of a Promise (ToaP) agreement introduces uncertainty around the number of locally qualified ATCOs that will transfer to the new provider and the additional cost of training replacement staff.
- 5.10 As summarised in CAP 1004 and CAP 1293, ToaP provides NATS employees employed at the time of the organisation's privatisation with additional pension rights. ToaP places an obligation on NATS to maintain the pension arrangement of this group of employees, including taking steps in the event of a sale or transfer of part of the NATS business, for example in instances where the Transfer of Undertaking (Protection of Employment) (TUPE) regulation apply. In the event that NATS is not able to assure employees of the continuation of these pension benefits when such a transfer occurs, the affected employees have the right to refuse to transfer to the new employer. In this case, NATS is required to continue to employ these employees at a different location unless it results in the insolvency of NATS
- 5.11 ToaP is a legally binding agreement between the Secretary of State, NATS Ltd and the Law Debenture Trustees.
- 5.12 The CAA considers that the ToaP presents an economic barrier that would prevent an ANSP from offering to provide or withdrawing from the provision of TANS. However, the experience from Birmingham and Gatwick led the CAA to conclude in CAP 1293 that, to the extent that there remain some barriers from ToaP, these are lower than previously thought and it seems can be overcome during the tender process.

### **Description of situation**

#### *Transfer of staff*

- 5.13 It is helpful to identify that four groups of staff emerged during the transition at Birmingham. These were:
- Staff covered by ToaP that remained with NATS;
  - Staff covered by ToaP that transferred to BAATL;
  - Staff not covered by ToaP that transferred under TUPE to BAATL; and
  - New recruits at BAATL.
- 5.14 This grouping relates primarily to the perspectives of BAATL and Prospect. From the perspective of NSL, this is reduced to staff covered by ToaP that remained with NATS and all remaining staff that transferred to BAATL.
- 5.15 At the time of transition, staff at Birmingham that were covered by ToaP accounted for 60% of NSL employees. BAATL did not match the terms and conditions provided by NSL to staff through its DB scheme, as such, these employees had the right to refuse to transfer to BAATL. The remaining 40% of staff were covered by TUPE regulation and, from an administrative perspective, would transfer to BAATL straightforwardly under the relevant provisions.

5.16 In estimating the cost of self-provision, BAATL modelled several scenarios for the number of staff covered by ToaP that would transfer to the new provider. The scenarios combined the proportion of ToaP staff transferring, the staff transferring under TUPE and the resulting recruitment and training requirements. BAATL's business plan was based on securing half of the ToaP staff. Under this scenario, the BAATL employee mix would be as follows:

- 30% staff covered by ToaP that transferred to BAATL;
- 40% staff not covered by ToaP that transferred under TUPE to BAATL; and
- 30% new recruits at BAATL.

5.17 Existing staff that would remain with NATS would account for 30% of NSL's employees.

5.18 BAATL actually retained about 60% of staff covered by ToaP. The number of staff expected to transfer fluctuated during the transition, with final numbers only firmed up in January 2015, only three months before the start of operations in April 2015. The time taken to establish what BAATL's staff mix would look like presented significant challenges for BAATL management in planning training and recruitment.

5.19 A number of influencing factors have been cited for adding complexity to the staff transfer process. These included:

- The lack of transparency around the implementation of ToaP;
- The fact that this was the first transition for which the agreement had to be enacted;
- Access to staff;
- Secondment arrangements; and
- Recruitment and training.

#### *Transparency around Trust of a Promise*

5.20 At the time of opting for self-provision of TANS, BAATL did not have a clear understanding of the implications of ToaP. Its assumptions were guided by the description of ToaP in CAP 1004 where ToaP is identified as an economic barrier, leaving BAATL unclear about where the onus of the agreement lay. At the time of taking the decision to self-provide, BAATL did not have access to the legal text of ToaP. NATS has said that this was made available in the data room for bidders, however since BAATL did not take part in the tender process, it had not reviewed the contents of the data room.

5.21 BAATL's understanding of ToaP was clarified once it had reviewed the legal text of the agreement and received relevant legal advice. It has acknowledged that the emphasis on ATCOs' right to not transfer to the new provider in CAP 1004 had been missed.

5.22 BAATL did not offer a Defined Benefits (DB) scheme to ToaP staff, as this was not commercially viable and BAL had closed its own DB scheme to new entrants in 2007. ToaP places an obligation on the DfT and NATS to encourage an incoming provider to match the DB terms and conditions for these staff. In its engagement with the DfT and NATS on the agreement, BAATL was indeed encouraged to maintain the DB scheme for ToaP staff. However, BAL explained to both the DfT and NATS that it had closed its own DB scheme to new entrants (as NATS had done) and therefore would not be offering a DB scheme to NATS ToaP staff.

5.23 BAATL offered all ATCOs a Defined Contributions (DC) scheme which matched NSL's DC terms and conditions. This scheme is more generous than the DC scheme for other airport employees. BAATL's offer was based on separate, independent negotiations with Prospect, and was not influenced by the ToaP discussions with the DfT and NATS. The terms and

conditions were guaranteed for five years, rather than the TUPE statutory minimum requirement of six months.

#### *Implementing Trust of a Promise*

- 5.24 The fact the change of TANS providers at Birmingham was the first time that the ToaP agreement had had to be enacted meant that NATS had not had any experience of how it would work in practice. NATS confirmed that it did not have human resource (HR) processes in place for dealing with ToaP staff that were staying with NATS. NATS then had to develop these processes, which took some time to fully resolve, making the overall process slow, delaying ATCOs' decisions and impacting on BAATL's recruitment and training for several months.
- 5.25 NATS did not set up dedicated procedures for dealing with ToaP. Instead, it used existing HR planning and staff relocation processes. After the transition at Birmingham was complete, it undertook a lessons learnt activity to create a set of precedents within its existing processes.
- 5.26 Prospect highlighted the following aspects that needed to be clarified with NATS during this first application of ToaP:
- The number of alternatives that NATS would offer per employee; and
  - Job security for ATCOs should they fail to qualify at their new units.
- 5.27 In the case of Birmingham, one formal offer was made to ToaP staff remaining at NATS and units where ToaP staff were subsequently posted did not exceed the agreed operational requirements as a result of these staff being posted. In Prospect's view, NATS managed to reallocate staff quite easily within in the business, and it does not consider that this led to a commercial disbenefit. All staff were placed with units where no additional training was required, other than local airport training, which was positive, and the overall process was seen as going well.
- 5.28 The time taken in clarifying how ToaP would be implemented also impacted staff not directly affected by the agreement (either because they had chosen to transfer to BAATL or because they were not covered by ToaP). BAATL recognised that the transition process was very sensitive for staff, even if not covered by ToaP, since these employees, who might have spent several years working for NATS and would have had a certain degree of loyalty to the organisation, were being asked to move to a completely new provider. Further to this, BAATL was recruiting new ATCOs and wanted to ensure that they were able to integrate well in the new organisation, which so far has been successful. Prospect noted that the focus on ToaP meant that staff not covered by it received limited attention from NATS and BAATL to begin with and that it felt isolated, with limited information and guidance available. NATS recognised early in the process that there was a risk of non-ToaP staff feeling isolated so a proactive approach was taken by NATS local management.
- 5.29 From its side, the CAA did not detect a significant amount of difficulty around staff issues and ToaP during the transition at Birmingham, since these issues do not directly feature in the compliance requirements which it is assessing and overseeing.

#### *Access to staff*

- 5.30 BAATL stated that NSL, at a corporate level, was not keen to allow BAATL to engage extensively with any of its staff while the ToaP issues were being addressed. As a result, it was not straightforward for BAATL to formally share its plans for the future of TANS provision at Birmingham with staff. Instead BAATL engaged with Prospect, which was then able to relay



some relevant information to its members in an effort to limit rumours and misinformation. Despite difficulties at the corporate level, however, the relationship between BAATL and NSL at an operational level was described by BAATL as excellent.

- 5.31 Prospect also noted that BAATL's access to staff was heavily restricted by NATS at the start of the process, although this did change later on.
- 5.32 NATS explained that it did not take any action to limit BAATL's engagement with staff on employment matters. NATS was keen to facilitate access to staff for the incoming provider, but requested that staff engagement on operational matters was limited to the last two months prior to transition, to minimise the risk of operational disruption. Following notification by BAL to NATS, at the end of May 2013, that its contract would not be renewed, NATS began the lengthy process of consultation with all parties, including BAATL, the DfT, the CAA, Trade Unions and Pension Trustees – prior to being able to consult with NSL staff. At the conclusion of this staff consultation period, NATS then facilitated access for BAATL to meet with NSL staff on a one-to-one basis. This access was provided in November 2013.

#### *Secondment arrangements*

- 5.33 Before the change of TANS provider at Birmingham, the notion of secondment arrangements to facilitate the transition of provider had not been established. BAATL proposed a two-way secondment agreement with NSL which would allow:
- New BAATL staff to be seconded into NSL's operations, enabling them to train alongside existing ATCOs before service provision switched over to BAATL; and
  - NSL staff to continue working at Birmingham after BAATL assumed control of operations, enabling BAATL to meet its operational requirements.
- 5.34 NATS stated that the charges under the secondment agreements at Birmingham were cost neutral, balancing out for both organisations. Prospect however considered that the secondments were subject to commercial arrangements over which NATS held most power.
- 5.35 The secondment arrangements have worked well in a number of respects. They have:
- Facilitated training both before and after BAATL took over services. New recruits were able to train and familiarise themselves with operations under NSL. BAATL was able to retain experienced NSL staff to continue to support training after it started operating;
  - Enabled operational continuity to be maintained, limiting the extent to which the change in TANS provider may impact service delivery; and
  - Controlled some of the uncertainty emerging from ToaP, allowing operational requirements to be met irrespective of staff decisions on which organisation they would continue their employment with. From the perspective of NATS, the secondments also delayed the requirement to relocate staff and reduced its staff costs since it is reimbursed (subject to commercial agreements) for its seconded controllers.
- 5.36 By decoupling some training and staff decisions from continuing operations, the secondment arrangements have also afforded increased flexibility to the overall transition process. In the case of Birmingham, the number of staff that were planning to remain or relocate under ToaP changed up until the last three months. So whereas it had been planned for nine ATCOs to be seconded to BAATL, only two were actually required after the other seven staff transferred to BAATL.

- 5.37 BAATL ended up with more staff than its operational requirement, but was comfortable with that since it allows for improved operational resilience. BAATL noted that it could have set cut off dates for staff transfer, but in reality it is in its favour to retain experienced ATCOs, so it was happy to accept ATCOs' late decisions to transfer to it.
- 5.38 NATS added that although it could have adopted a different approach to the late decisions made by individual ATCOs, it would not have been conducive to good staff relations.
- 5.39 Prospect raised the question of whether the outgoing provider should be obliged to ensure operational continuity and the retention of a minimum skilled and experienced workforce at each unit, potentially through secondments, limiting the possibility for the outgoing provider to simply pull its staff at the end of a contract.

#### *Recruitment and training of ATCOs*

- 5.40 The first BAATL ATCOs were hired in the summer of 2013 and the first of these completed their training at the end of 2015. As noted previously, planning recruitment and training presented one of the most significant challenges for the BAATL management team, as a result of the uncertainty around staff transfer, which took several months to be resolved. Given that training a controller alone is an 18-month process and that a large number of controllers cannot be trained at the same time, there were restrictions on the amount of training that could be provided.
- 5.41 Before BAATL took over operations in April 2015, it had to rely on NATS as the active ANSP to provide the training through the secondment arrangements. Once BAATL started operating, it could then train its own staff itself. The late decision of some NATS staff to transfer to BAATL meant that some aspects of the training process were not as prolonged as BAATL had planned, and it was able to remove the two NATS secondees by September 2015.
- 5.42 However, although a training burden in an TANS provider is not unusual, the burden at BAATL remains above what would be considered normal in "steady state" operations, which is why BAATL considers that it is still in transition. For example, BAATL still has some ATCOs who are waiting for an opportunity to train, and some watches have had two trainees where one would be more usual. The training burden also places additional pressures on trainers and the rest of the staff.

#### **Assessment and emerging findings**

- 5.43 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to staff:
- Staff transfer has been presented by stakeholders as the most significant issue addressed during the transition at Birmingham. The outcome of the process was described by all stakeholders as good, both for staff at BAATL and for staff at NATS;
  - The level of access to staff granted to the incoming provider is not clear, with conflicting statements from stakeholders. The obligations relating to staff that are provided by the CAA in CAP 670 are not specified in detail, placing limited onus on the outgoing provider. There exists the requirement for the outgoing provider to offer mutually agreed access, which applies globally to all aspects of the transition, but not explicitly to staff. The statement does not provide an indication of the level of staff access that the CAA would expect the outgoing provider to offer;
  - Given the prominence of staff issues, the CAP 670 guidance was described by some stakeholders as not adequate and that more would be welcome;

- The possibility for enforcing such guidance on critical issues was also raised by stakeholders. At the moment, stakeholders perceive that the main motivation for the outgoing provider to engage constructively with the incoming one is the risk of reputational damage;
- CAP 670 does not refer to ToaP in its guidance on change of TANS provider (although this is only applicable to cases where NSL is the incumbent provider, it is a prominent issue impacting the industry);
- Guidance on ToaP is available from the CAA in CAP 1004 and CAP 1293. The description of ToaP provided in these documents appears to not be sufficiently clear, since some confusion was caused when used by stakeholders. Further to this, we note that CAP 1004 does not identify the obligation that ToaP places on DfT and NATS to encourage an incoming provider to match the Defined Benefits terms and conditions of the NATS scheme. BAATL was surprised to receive little or no compelling encouragement from the DfT or NATS to offer a DB scheme, other than the statement that 'it should'. NATS's surprise at BAATL not offering a DB scheme on commercial grounds was unexpected, particularly since NATS too no longer offers a DB scheme;
- A limited understanding of the ToaP agreement and the associated risks by airport customers may make them reluctant to put their TANS provision out to tender;
- Although NATS did not have internal processes in place to deal with ToaP at the start of the transition, the overall implementation of the agreement went well. It is important to recognise that this was contingent on a balance of factors, including:
  - The number of ATCOs needing to be relocated;
  - The flexibility to relocate ATCOs from Birmingham to other accessible units, depending on business needs, staff capability and individuals' preferences. Practical alternative employment at different locations (e.g. Belfast) may not be as straightforward to offer and/or accept; and
  - The long transition period at Birmingham, which allowed NATS time to develop its approach for relocating staff;
- Some of the details for the implementation of ToaP are not specified in the agreement (e.g. the number of alternative options that NATS ought to provide to ATCOs). Prospect would welcome guidance on these;
- The ToaP agreement requires NATS to provide alternative employment to staff not transferring to another provider only if this is commercially viable. This point did not emerge during the Gatwick transition, but in principle it would be possible for NATS to make ToaP staff redundant (under ToaP clause 3.7). NATS has stated that the ToaP agreement requires NATS to continue to employ staff who choose not to transfer to the new provider. If this results in NATS having a surplus of staff, then it cannot make redundant those staff based solely on their ToaP right to remain with NATS. NATS would have to carry out a fair and transparent selection of staff for voluntary and, ultimately, compulsory redundancy. However, NATS emphasises that a compulsory redundancy exercise would have significant industrial relations' implications for its regulated, as well as its commercial business. That process would not necessarily result in redundancy for the specific staff that elected not to transfer. The only circumstances in which NATS can avoid these obligations is if the payment of redundancy sums associated with ToaP rights would result in the certified insolvency of NATS (relating to ToaP clause 3.7). Further, NATS has no discretion to deviate from, negotiate or amend the terms of the ToaP, as this was fixed at the time of NATS privatisation. It is important that all stakeholders seek legal advice so that they are clear on these aspects of the agreement also, since it would be

helpful for involved parties to be clear about the agreement’s requirements and potential implications as part of their decision-making;

- The complexities presented by ToaP in transferring staff from NATS to other providers will reduce over time through the attrition of the ATCO pool the agreement covers;
- Two-way secondment arrangements have worked well in facilitating training, enabling operational continuity and limiting some of the staff transfer risks, the commercial arrangements are the subject of negotiation;
- Developing recruitment and training plans proved challenging at BAATL, given the uncertainty around staff transfer and the long training lead-times. An issue exacerbated by limits on the ability to train multiple ATCOs at the same time; and
- The transfer and training of staff is the key determining factor of the length BAATL’s transition period.

- The evidence above suggests that the CAA’s guidance does not provide an accurate representation of the amount of effort involved in addressing staff issues as part of a TANS provider transition.
- The process of staff transfer is heavily contingent on cooperation between the outgoing and incoming provider. An expected level of cooperation and engagement is not indicated by the CAA, leaving it primarily to the outgoing provider to dictate.
- The transparency around the Trust of a Promise agreement, its implications and its application could be improved.  
The CAA could take steps to ensure that bidders are provided with the legal text when responding to airport tenders.  
The CAA may wish to consider developing a “layman’s guide” to the agreement which could be published. The CAA would have to be clear that such a guide is not a legal document and that stakeholders should seek their own legal advice on the agreement.  
The CAA may wish to explore whether it would be able to provide an estimate of the attrition rate for staff covered by ToaP at each airport, which may be a useful indicator to industry.
- Based on the evidence from Birmingham, secondment arrangements could be incorporated into the CAA’s guidance to stakeholders for the transition of TANS provision, including guidance on the basis of the commercial arrangements.

## Assets and equipment

### CAA Guidance

- 5.44 At a higher level, the CAA highlights in CAP 1004 that it is important, from an airport operator perspective, to ensure that arrangements for the ownership of equipment do not entrench the incumbent TANS provider, and that provisions for exit management that allow transparency and predictability around the arrangements for asset ownership and transfer are included in contracts with TANS providers.
- 5.45 Besides the assets themselves, in CAP 670 the CAA specifies that the outgoing provider has to make relevant documentation available to the incoming provider which may affect the safety of the service provided after the handover. This does not necessarily mean documentation which may be considered “intellectual property” of the incumbent. It would however be relevant to maintenance documentation and instruction manuals for equipment to be transferred and used by the incoming provider.
- 5.46 The new provider must give the CAA details of all equipment and facilities to be used to support the air traffic control service.

### Description of situation

- 5.47 As also noted in Chapter 4, the equipment at Birmingham airport was owned by BAL, including maintenance and support manuals. This simplified this aspect of the transition, removing the need for negotiations between the outgoing provider, the incoming provider and the airport for transfer of these assets.
- 5.48 There were no issues with the transfer of the safety cases between NSL and BAATL, in line with the requirements in CAP 670. Again, as noted in Chapter 4, BAATL found that some safety cases had to be re-drafted in order to meet expected quality, which required some work.
- 5.49 BAATL provided all safety cases to the CAA, which was aware of how many pieces of equipment would be involved, since these were already operating at the airport under NSL. However, although the CAA maintains the same degree of safety assurance across all TANS units, it does not maintain the same degree of oversight, given the centrally managed arrangements with NSL/NATS (see Chapter 4). This was the first time that equipment had transitioned between a NATS unit and non-NATS unit, so the process was new for the CAA as a result.

### Assessment and emerging findings

- 5.50 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to assets and equipment:
- CAP 1004 highlights the significance of clear TANS asset ownership and transfer arrangements for airports in facilitating the change of TANS providers. This was demonstrated very effectively at Birmingham, where ownership of relevant TANS assets by BAL meant that the transfer process for equipment between NSL and BAATL was straightforward ; and
  - The transfer of documentation and safety cases from NSL to BAATL for the equipment was simple and aligned to the requirements in CAP 670.

## Information and data

### CAA Guidance

- 5.51 CAP1004 identifies that NSL, and other TANS providers, consider the MATS Part 2 documentation falls under their intellectual property (IP) rights, due to the experience and skills deployed in developing it for a particular unit. Similarly, self-supply airports, that developed the documentation themselves, generally consider the property rights for MATS Part 2 belong to the airport.
- 5.52 In CAP 670 the CAA indicates that airports may wish to assure themselves that arrangements are in place to cover the transfer of TANS to an alternative provider and that ownership of MATS Part 2 is addressed. Although the outgoing provider has to make relevant documentation available to the incoming provider which may affect the safety of the service provided after the handover, this does not apply to documentation which may be considered IP of the incumbent, leaving open the possibility for the incumbent to charge for this IP.

### Description of situation

#### *MATS Part 2*

- 5.53 At Birmingham, as with other airports, NSL considered that there was value attached to its MATS Part 2, since there was some method in how the service was delivered and the assets

were used that was unique to its proposition. NSL offered to sell MATS Part 2 to BAATL for [redacted]. This was not acceptable to BAATL, which turned down the offer. BAATL added that a second offer was made by NSL for providing a stripped-down version of MATS Part 2 at a reduced price of [redacted]. This was also turned down by BAATL.

- 5.54 Having decided to not buy MATS Part 2 from NSL, there were two options available to BAATL:
1. Operations at Birmingham airport could rely on the CAA's MATS Part 1 procedures, which would be a much more basic (manual) operational arrangement; and
  2. It could draft its own MATS Part 2 document.
- 5.55 The risk associated with the first option was very large, as it would involve changing operations from NSL's MATS Part 2 to the CAA's MATS Part 1 overnight. This would introduce additional change into the process, at a time when the transition of TANS provision was already bringing about significant changes on many levels. Moving to MATS Part 1 operations would also have involved training all ATCOs at Birmingham and at corresponding TANS and en-route units with which Birmingham air traffic interacts. This option was not considered practical.
- 5.56 BAATL chose to draft its own MATS Part 2 document. BAATL described MATS Part 2 as being unique to each operational environment, and in the main comprising the following three areas:
- Aerodrome information: the physical characteristics of the airport, all of which are published in the Aerodrome Information Publication (AIP), so are in the public domain;
  - Aerodrome procedures: this information is in the airport domain, as the airport is involved in the development of the procedures alongside the TANS provider; and
  - Air traffic control (ATC) procedures: covering interaction with other airports (Coventry and East Midlands), and the two NERL centres for en-route control.
- 5.57 BAATL found that it was relatively straightforward to draft its own MATS Part 2 procedures by drawing on the publicly available aerodrome information, the airport procedures that BAL already had in place and the ATC procedures agreed with interacting TANS units and centres. In particular, BAATL commented that the interacting airports and NERL were very happy to share their counterpart procedures which were applicable to Birmingham airport, since they were keen to continue with existing interface arrangements, avoiding the need to train staff on new MATS Part 2 interface procedures, or indeed MATS Part 1 procedures had BAATL needed to revert to these.
- 5.58 As described in previous sections, NSL was not inclined to make staff available to BAATL for training in the run up to April 2015 for commercial and operational reasons. It would have been difficult for BAATL to extensively train NSL staff that would be transferring over, had this been required as a result of major changes to MATS Part 2 or the adoption of MATS Part 1. Based on this, BAATL commented that NSL's reluctance to share MATS Part 2 and also limit the availability of staff for training are completely incompatible from a system perspective.
- 5.59 BAATL added that the MATS Part 2 document benefitted from BAATL taking the different components, combining and updating them, as on review some of the existing elements that had been shared were found to be out of date.
- 5.60 Overall, BAATL did not consider that the IP argument in relation to MATS Part 2 was convincing, since all the information was in the public and airport domains, as well as shared

with other TANS units and centres (including non-NATS entities). However, legal advice on this was not specifically sought.

#### *Other documentation*

- 5.61 Other documents, such as the unit training plan and unit competence manual, were also written by BAATL. A commercial discussion was had with NSL for these, but BAATL elected to draft them as the documents were pretty generic and the team had knowledge of their typical scope.
- 5.62 Prospect commented that although in the case of Birmingham the drafting of documentation by the incoming provider, rather than these transferring from the outgoing provider, worked well, the fact that this includes key documents that would limit operations if not present does not appear to be appropriate practice for the industry. Too great an emphasis was placed on expertise 'bought in' by BAATL, which may not be available during other transitions.

#### *Other data*

- 5.63 NSL provided BAATL with two years of historical safety data relating to the performance of the organisation and individuals, so that BAATL could have a track record to use when it took over operations. At the point of transition, NSL provided BAATL with:
- Detailed safety data over a two year period, taken from the STAR database, covering MOR and related investigations;
  - Two years of UCE records of all staff employed at the time of transfer to BAATL; and
  - A high level exposition ("Operational Risk Handover Document", 26 March 2015), highlighting the safety performance of the Birmingham TANS unit, extracted and derived from the Airport Safety Plan Risks and Unit Dashboard.
- 5.64 BAATL stated that it requested safety data, UCE records and data relevant to the TUPE process. It received all the information requested and did not experience difficulty in obtaining this material. Specifically, the safety data information related to the period from 1 January 2014 to transition on 1 April 2015, and the UCE records covered a 2 year period. The quality of all information received was adequate for its purposes.
- 5.65 Prospect noted that NSL handed over only a limited amount of safety data to BAATL. For example, BAATL was provided records on significant events over the agreed time period, but it was not provided records on the associated resolving actions. Further to this, data on staff, including the professional records of ATCOs and mandated data under TUPE legislation (names, addresses, contacts etc.) was not forthcoming from NSL and required a strong appeal to the CAA to obtain.

#### **Assessment and emerging findings**

- 5.66 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to information and data:
- CAA guidance alerts airports and incoming providers to the fact that certain operational information, most prominently MATS Part 2, is considered by incumbent providers to be their intellectual property. As such, transfer of this information may be the subject of commercial arrangements;
  - Although NSL considered its MATS Part 2 to be its intellectual property, BAATL found that the nature of the information MATS Part 2 comprises of and the distributed nature of its

interfaces with other entities meant that the commercial value assigned to it by NSL was too high;

- BAATL was able to draw on a number of sources to compile its own documentation, including NERL;
  - BAATL was able to limit its reliance on the outgoing provider transferring information as a result of its experienced and knowledgeable management team. This, however, did rely on a generous transition timeline which allowed the team sufficient time to draft the necessary documentation;
  - Stakeholders commented that from a system perspective, there exists a conflict between operational procedures being transferred by the outgoing provider for commercial gain and the requirement to make staff available for training on alternative procedures. In principle, the increased risk of limiting operations as a result is not considered appropriate industry practice, although there is no evidence that this was the case for the Birmingham transition; and
  - There potentially exists a lack of transparency around the safety information and performance data that was transferred by NSL to BAATL. The ANSPs' statements are aligned, however, it is apparent that Prospect was not clear about the information transfer process and its outcomes, which resulted in concerns being raised.
- The CAA may wish to review whether the implied conflict between commercial considerations for intellectual property and staff availability for training, and the risk of limited operations is significant, warranting more detailed guidance or enforceable solutions.
  - The high-level description of the information that the outgoing provider should voluntarily transfer to the incoming one that is provided in CAP 670 could be extended to identify specific historical safety and staff data for a specified period. Airports may also consider establishing arrangements to collect such data on an ongoing basis from their TANS providers – though this could involve additional costs.
  - Communication between management and staff on the continuity of safety data and performance records before and after the transfer of operations could potentially be improved.

## Timing and costs

### CAA Guidance

- 5.67 As noted in the introduction to this chapter, CAP 670 specifies that the incoming provider has to develop a transition plan which addresses all aspects of the transition that will need to be actioned with the outgoing provider, including training and familiarisation issues. The CAA also places an obligation on the outgoing provider to engage with the incoming provider to agree the transition plan.
- 5.68 The CAA has an outline transition plan Gantt template available from which incoming providers can develop their own detailed plans. The template and further guidance on developing and implementing such a plan would be shared at the pre-application meeting with the CAA, which incoming providers are invited to have as early as possible.
- 5.69 The minimum period recommended by the CAA on its website for gaining certification and designation is at least three to six months, and longer for more complex operations.
- 5.70 As also noted previously, although the outgoing provider has to make relevant documentation available to the incoming provider which may affect the safety of the service provided after



the handover, this does not apply to documentation which may be considered intellectual property of the incumbent, leaving open the possibility for the incumbent to charge for this IP.

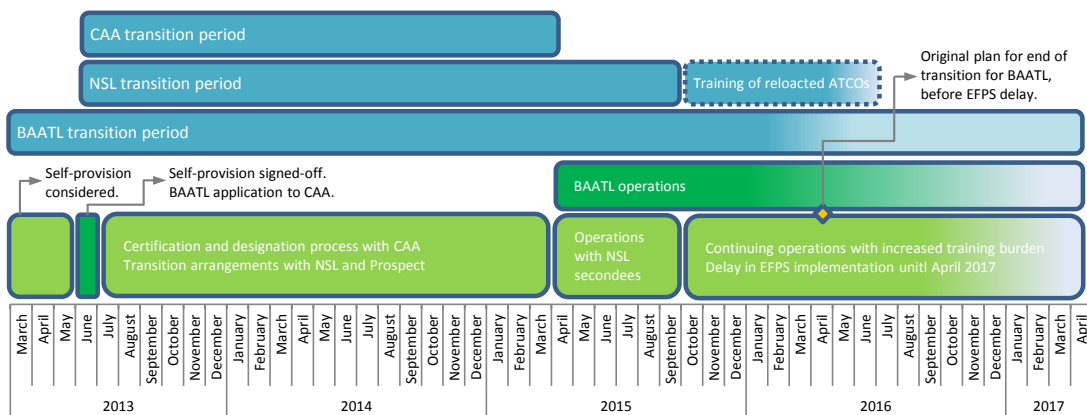
### Description of situation

#### Timing

5.71 The transition period, as defined by BAATL, extended from when BAL started considering the possibility of self-provision, through the certification and designation process and into operations, until the training burden at the unit was reduced to normal, steady-state levels. Based on this definition, the transition period was planned to be three years.

5.72 Figure 5.2 below illustrates the transition timelines:

**Figure 5.2: Birmingham TANS provision transition timelines**



Source: Stakeholder interviews, Steer Davies Gleave analysis

5.73 However, BAATL considers that the transition is still ongoing as it still has ATCOs who joined during the change of provider who are not yet fully validated. BAATL estimates that this would be complete in December 2016, but for two other factors:

- The delayed implementation of EFPS, a major project that has interrupted training and would have happened anyway, but was initially delayed following a recommendation by NSL when it moved to the new ATC tower and then further delayed following another recommendation from NSL, when it was not awarded a new contract, to reduce pressure on the training burden during TANS transition t;
- The training and development required to meet the forecast increase in traffic, which has blurred into the transition training.

5.74 The delay in the implementation of EFPS has meant that BAATL expects the transition to be complete in the first quarter of 2017, making it a four-year process overall.

5.75 BAATL stated that it considered one year for the certification and designation of large operation like its own is probably reasonable. As also noted in Chapter 4, BAATL found that its two-year transition to operations meant that other more immediate concerns were prioritised by the CAA, given the constraints and resourcing pressures the CAA faced during this period. In any case, BAATL would not have been certified and designated until the start of its operations which was set for April 2015, but in theory this could have been sooner had it been contingent on the certification and designation alone.

- 5.76 The key challenge for the transition timeline was staffing and training. The uncertainty around the implementation of ToaP agreement for the first time, and the limited internal NATS process in existence at the time to deal with it, meant that these issues took time to resolve. NATS was not seen by BAATL as being deliberately obstructive or difficult on this, but that time was needed to develop processes that would affect multiple stakeholders.
- 5.77 The CAA thought that BAATL's transition plan was achievable due to unit training period allowed. However, this was contingent on the number of ATCOs that would be transferring. Had this been very low, then BAATL's transition timeline would have been considered ambitious. The CAA's confidence in BAATL's transition plan was also supported by the fact it knew the team that would be delivering it.

#### *Costs*

- 5.78 BAATL estimates that its transition costs have been £300,000 more than planned. The total cost of transition has not been shared with us by BAATL, so it is not clear how large this overspend is in relative terms.
- 5.79 As described above, BAATL offered all ATCOs a Defined Contribution (DC) scheme which matched NSL's DC terms and conditions. This scheme is more generous than the DC scheme for other airport employees and the terms and conditions were guaranteed for five years, rather than the TUPE statutory minimum requirement of six months. It is not clear whether this had been budgeted in BAATL's business plan from the outset. In addition to this, BAATL indicated that it paid loyalty bonuses to ATCOs that transferred over from NSL at the start of operations.
- 5.80 BAATL did not buy any intellectual property from NSL. However, this was based on the fact that it had effectively bought in the experience to develop the relevant IP itself and dedicated the time to do so. In all cases then, the incoming provider is faced with costs for either obtaining or developing this documentation. If new procedures are also developed as part of developing the documentation, the incoming provider may then also incur additional training costs compared to buying existing documents and continuing to use the existing procedures in those.

#### **Assessment and emerging findings**

- 5.81 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to timings and costs:
- The transfer and training of staff is the key determining factor of the length BAATL's transition period. The time allowed by BAATL for transition was sufficient for it to deliver its plans successfully;
  - The CAA's relationship with the BAATL team meant that the CAA had confidence in BAATL's ability to meet its timeline – a subjective element that will not always be the case;
  - BAATL estimated that its transition costs were £300,000 higher than planned. It would be useful to be able to contextualise the transition overspend by BAATL; and
  - It would also be useful to follow up on whether the DC scheme offered to staff had been in BAATL's original plans, and if not what BAATL's view of the impact that offering this scheme was on value for money compared to the NSL service.

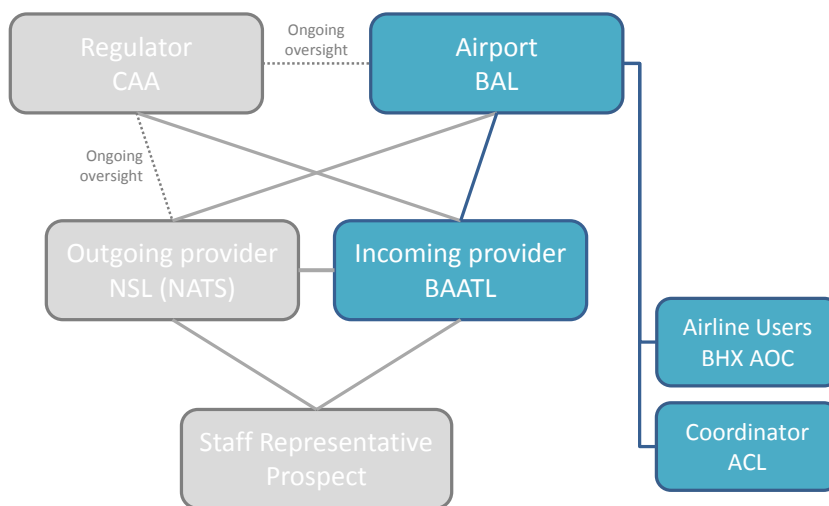
- It may be helpful for stakeholders to recognise that different players have different expectations for how long their involvement with a transition in TANS providers would last.
- The ability to deliver plans that form part of the transition may be impacted by the prevailing need to maintain ongoing operational continuity and accommodate growth. Incoming providers should foresee development and training for traffic growth and build in contingency for this into their transition plans.
- The expectations of airports and incoming providers about the timing and associated cost of transition are informed to some extent by uncertainty about how constructively the outgoing provider will engage with the process. As noted previously, stakeholders perceive that the main motivation for the outgoing provider to engage constructively with the incoming one is the risk of reputational damage. The possibility for enforcing CAA guidance on critical issues for the transition process was raised by some stakeholders.
- Airports may wish to consider how to ensure outgoing providers cooperate during a transition process (e.g. do not cancel major projects when going into transition that will impact operations after the switchover) by including detailed exit management provisions in their contracts.
- Incoming providers should consider the balance between buying IP or investing in developing it and training staff.

# 6 Quality of service and other impacts

## Introduction

6.1 In this chapter we identify issues related to quality of service and whether the quality of service and declared capacity were affected by the transition to a new TANS provider. To do this we draw on data collected from the airport and ACL, as well as information provided during stakeholder discussions with airlines. Figure 6.1 below shows the relationships that this section focusses on.

**Figure 6.1: Focus of quality of service and other impacts analysis**



Source: Steer Davies Gleave

- 6.2 Where issues have been identified, we describe whether these were temporary, how long the impact lasted for, and whether they might be avoided in other circumstances.
- 6.3 We provide a summary of the issues identified on declared capacity / quality of service, and the relationship between the incoming provider and airport. No issues were raised by any stakeholder around areas of safety and business interruption.

## Declared Capacity/Quality of service

### Description of situation

6.4 Birmingham is designated as a Schedules Facilitated (Level 2) airport in accordance with the IATA Worldwide Scheduling Guidelines. A Level 2 airport is one where there is potential for congestion at some periods of the day, week or season, which is likely to be resolved by voluntary co-operation between airlines.

6.5 Slots are not allocated and historic precedence does not exist at a Schedules Facilitated (Level 2) airport, as specified in the IATA Worldwide Scheduling Guidelines. Airport Coordination Ltd. (ACL) is responsible for collecting and combining the proposed schedules of all airlines planning to operate into Birmingham and seeking voluntary solutions to any likely periods of congestion.

6.6 Birmingham currently has capacity available to cope with additional demand, which provides it with some flexibility to cope with changes to procedures within the declared capacity.

#### **Stakeholder comments**

6.7 The Airport Operators Committee (AOC) asked members about their experience of the TANS transition process at Birmingham. Generally, the member airlines did not notice anything at all during the transition, with no operational impacts reported. From the airlines' perspective everything went smoothly.

6.8 We discussed declared capacity with Airport Coordination Limited (ACL). As discussed above, Birmingham is a Level 2, schedule facilitated airport, where no performance monitoring takes place. During the transition period there were no changes to the declared runway capacity at Birmingham.

#### **Assessment and emerging findings**

- There were no reported issues with the quality and continuity of TANS services provided to airline users during the transition process according to interviews held with the AOC, ACL and other stakeholders.

### **Incoming provider - Airport relationship**

#### **Description of situation**

6.9 Following a decision not to take up offers from third party TANS providers, BAL decided to provide TANS services through a wholly owned subsidiary BAATL.

#### **Stakeholder comments**

6.10 The stakeholders who expressed a view stated that common ownership of the Airport and BAATL made decisions during the transition process easier.

#### **Assessment and emerging findings**

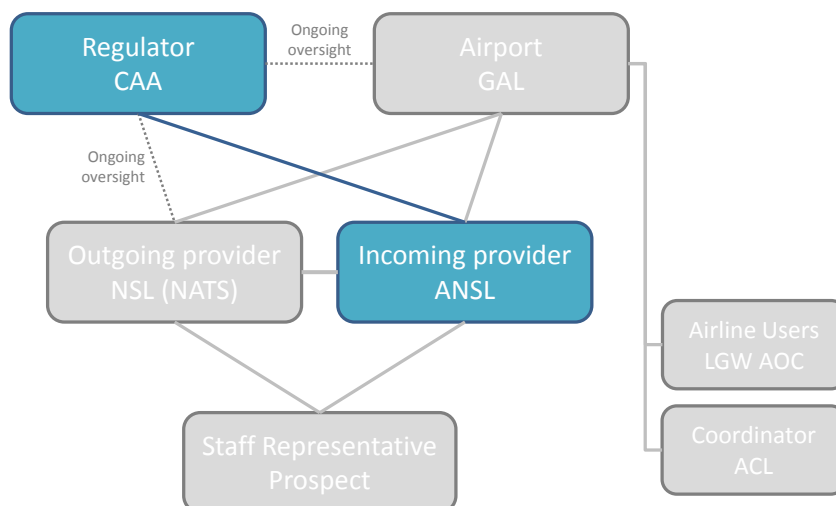
- Due to TANS being provided by BAATL a wholly owned subsidiary of BAL, no issues arose in the relationship between the incoming provider and the airport.

# 7 Gatwick: Certification and designation requirements

## Introduction

- 7.1 In this chapter we provide an overview of the process for each new provider gaining or confirming certification and designation from the CAA under the UK and EU SES legislation, and describe the Gatwick Airport transition experience. Our review focusses on the approach to certification and designation that was adopted for ANSL and four areas where issues have been raised by stakeholders:
- Management system documentation;
  - Equipment;
  - Financial aspects; and
  - Other.
- 7.2 For each of these areas, we:
- Identify the certification and designation requirements as part of UK legislation and EU SES regulations;
  - Review CAA guidance on transition for changing TANS provider and assess it for clarity, taking into account stakeholder comments and identifying if improvements can be made;
  - Identify any comments, concerns or issues raised by stakeholders and identified during our review of the documentation; and
  - Provide our assessment and findings.
- 7.3 Our analysis focusses on the CAA-incoming TANS provider relationship, as shown in Figure 7.1 below, and highlights issues relating to the following key themes:
- CAA Guidance:
    - Does certification and designation (C&D) guidance material give an accurate suggestion of effort required for C&D?
  - Assets and equipment:
    - Issues raised with equipment requirements?
    - Issues raised with safety cases for equipment?
  - Systems and procedures:
    - Issues arising with MATS part 2?
    - Issues arising with other operating procedures?

**Figure 7.1: Focus of certification and designation analysis**



Source: Steer Davies Gleave

7.4 Activities and relationships with the outgoing TANS provider are reviewed in Chapter 8.

### **Approach to Certification and Designation**

7.5 ANSL is a UK registered entity which is a subsidiary of the German-registered Tower Company, under the DFS parent-group. The Tower Co. and DFS are certified ANSPs under EU SES legislation, with their certification issued and supervised by the German NSA.

7.6 The German-issued ANSP certificate is valid in the UK under the EU SES common requirements for the provision of air navigation services. In theory, the CAA would have legally been able to accept the Tower Co.’s certificate, had this been put forward. However, with Gatwick airport under the CAA’s remit, the CAA would then become the competent authority supervising compliance for that certification with respect to activities in the UK (i.e. Gatwick in this case).

7.7 A competent authority agreement for supervisory arrangements between the CAA and the German NSA would have had to be put in place to facilitate provision of TANS by the Tower Co. in the UK. Equivalent agreements with EU competent authorities are already in place in other areas, so some outline frameworks for setting these up exist, but the detail of the specific one would have had to be developed, and this may have taken some time.

7.8 The CAA and DFS discussed what the best way would be for TANS provision at Gatwick to become certified and designated in the timescales requested by Gatwick airport. It was agreed that the most pragmatic way forward was to do it through a new UK entity which would go through the CAA’s certification and designation process and remain wholly under the CAA’s supervision. As such, ANSL was set up as a UK subsidiary within the DFS group. In doing so, DFS mitigated the following risks:

- Non-compliance in the UK impacting DFS’s German operations (and vice versa) – by obtaining separate certification for its UK activities through ANSL, DFS isolated the risk that any non-compliance assessed by the CAA in the UK (or the German NSA in Germany) would impact activity in Germany (or the UK). For example, if any restrictions were to be placed on the ANSP or its certificate was to be revoked; and
- Demonstrating that all of the CAA’s requirements were clearly met – in practice there is some difference in the way that the common requirements of the SES legislation are

applied across the EU Member States, so it is not immediately clear that in transferring the certification from Germany DFS would be able to satisfy all of the CAA's requirements in the UK. By going through the certification and designation with the CAA in the UK, ANSL was able to ensure that it is fully compliant with UK requirements.

- 7.9 A further consideration in going through the certification and designation process with the CAA in the UK was also the tight timeline for transition. Even if DFS (or the Tower Co.) had used its certification in the UK, the process of designation at Gatwick would have had to be undertaken by the CAA. Given the designation process is equivalent to the combined certification and designation process for all involved (CAA, Tower Co., GAL), in practice, the same steps would have had to be completed whether certification was transferred from Germany or obtained in the UK. With this in mind, setting up the new supervisory arrangements between the competent authorities would have formed an additional task in the programme, which may have impacted the transition timeline.
- 7.10 With certification and designation on the critical path for ANSL, it agreed that it would be best to approach this in the most straightforward way, which also acted to isolate business risks across the territories, making it preferable commercially for ANSL's future projects.
- 7.11 ANSL stated that it welcomed the opportunity to constructively discuss the certification and designation with the CAA both before and throughout the process.

## **Management system documentation**

### **Description of requirements and CAA guidance**

- 7.12 Organisations that make an application to the CAA for certification as an Air Navigation Service Provider (ANSP) are required to indicate how they intend to comply with the following:
- At EU SES level: Commission Implementing Regulation (EU) No 1035/2011 laying down common requirements for the provision of air navigation services; and
  - At UK national level: CAP 670 - ATS Safety Requirements, setting out the safety regulatory framework and requirements associated with the provision of an air traffic service.
- 7.13 The CAA provides:
- Guidance notes that expand on the Common Requirements shown in Commission Regulation 1035/2011 and explain the meaning of the requirements in plain language. The notes also provide examples of possible evidence that may be used to demonstrate compliance.
  - Blank compliance matrix templates, which identify the individual requirements shown in Commission Regulation 1035/2011 and allow applicants to indicate where relevant evidence of compliance for each requirement is provided in their management system documentation.
  - Guidance in CAP670 which offers explanatory notes on acceptable methods of compliance with the requirements specified in the same paper.
- 7.14 Key elements of the management system documentation are:
- Safety Management System (SMS);
  - Quality Management System (QMS);
  - Security Management System (SecMS);
  - Manual of Air Traffic Services (MATS); and
  - Training plans.



## Stakeholder comments

### ANSL

- 7.15 As noted in Chapter 2, the management team at ANSL included staff from DFS, that was subsequently also supplemented by UK members of the team, who were experienced in the UK certification process. Overall, ANSL had to meet the principles of its parent group (DFS), which are aligned to the German regulatory requirements, as well as the requirements of the CAA in the UK.
- 7.16 ANSL's first submission to the CAA was derived from the management system documentation available from the operations of its parent group in Germany. This formed a starting point for engagement with the CAA on the certification and designation process, but was recognised to not be sufficiently aligned to the CAA's requirements. The documentation was then iterated, drawing on the experience of the UK team.
- 7.17 ANSL commented that the compliance matrices and accompanying guidance notes that make reference to management system documentation and operational and training processes were helpful. Fundamentally though, the certification and designation process was seen to have gone well by ANSL as a result of the very good and open working relationship with the CAA team.

### CAA

- 7.18 The certification and designation process for a large transition of TANS provider, as at Gatwick, presents a significant resourcing requirement to the CAA. At the time of ANSL's certification and designation process, the CAA encountered a number of competing demands on its time at points through the process from transitions at:
- Birmingham;
  - Shoreham;
  - Glasgow-Prestwick; and
  - Manston.
- 7.19 For Gatwick, there were a large number of meetings, particularly early on in the process, which required a lot of contact time from the CAA. However, the communication was welcome and the proximity between the CAA at Aviation House and Gatwick airport proved helpful in the close engagement with ANSL.
- 7.20 Despite this, the first submissions by ANSL to the CAA were below the expected quality in terms of structure, content and language, which caused concern to the CAA, particularly since the CAA had a requirement that the transition would be "ops normal" – meaning that none of the major processes would be changing on the transfer of operations between NSL and ANSL. The CAA indicated that the quality of the documentation improved as it was iterated, and was also helped by the practical approach adopted by ANSL in buying MATS Part 2.
- 7.21 The CAA also addressed issues related to training policy that it may not have normally expected to, including ATCO UK conversion training, for ATCOs recruited from overseas.
- 7.22 The intention to certify was communicated to ANSL in October 2015, based on managerial aspects of the process, with key designation parts of the process yet to be delivered including:
- Unit training and competence; and
  - ATCO operational requirement coverage.

7.23 Both of these relate to aspects of the staffing and secondment arrangements discussed further in Chapter 8.

### Assessment and emerging findings

7.24 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to the management system documentation:

- The CAA's guidance on the requirements for the management system documentation was detailed and was considered helpful;
  - Some issues were raised about the quality of initial submissions of the management system documentation by ANSL in relation to certification and designation requirements and compliance. These were resolved through the iteration process, drawing on UK expertise;
  - Both ANSL and the CAA welcomed the opportunity for close and constructive engagement through the process; and
  - The review of a large application like ANSL's was very resource intensive for the CAA and required careful planning, alongside reviews of other applications and normal oversight activities.
- There may be a resourcing concern for the CAA if close engagement and a significant level of contact is required from the CAA to help ANSPs with attaining certification and designation.
  - Unless transition is not time pressured, it is likely that TANS providers registered outside the UK, will choose to register a UK subsidiary given CAA guidance on the additional requirements to develop a competent authority agreement.

## Assets and Equipment

### Description of requirements and CAA guidance

7.25 The requirements for ATS equipment come from the same legislation as described above. Safety cases are compiled by gathering together of evidence and arguments most of which will have been developed during the hazard identification, risk assessment and mitigation parts of the common requirements.

7.26 To prove compliance the CAA is looking for evidence of:

- Trained and competent staff;
- Equipment meeting International Civil Aviation Organisation (ICAO) specification standards;
- Equipment operating processes that are in line with internal management system documentation; and
- Equipment maintenance processes that are in line with internal management system documentation.

7.27 The safety cases, equipment operating processes and equipment maintenance processes are assessed through engineering audits by a Regional Office.

7.28 CAA guidance is provided in CAP 760 "*Guidance on the Conduct of Hazard Identification, Risk Assessment and the Production of Safety Cases: For Aerodrome Operators and Air Traffic Service Providers*".

### Stakeholder comments

7.29 There is a difference in regulatory approach for equipment between NATS and other organisations/units, as previously described by the CAA. Under the regulatory approach applicable to NATS, individual equipment safety cases are managed under the NATS overarching Safety Management System (SMS) of which the CAA maintains oversight. For other organisations, the CAA has direct oversight of the equipment and reviews safety cases individually.

*ANSL*

7.30 The equipment at Gatwick, which is quite old, was, in the main, owned by three banks and subject to operating leases, GAL purchased the equipment from the banks as part of NSL's exit, based on contractual arrangements. ANSL then had to develop the operating, maintenance and safety process for this equipment as part of its certification and designation.

7.31 ANSL noted that it expected more of the engineering processes to be available from NSL (via GAL) and that developing these was unexpected and provided a challenge to its resources within transition timeline. As a result, ANSL and GAL had to commission a third party consultancy to help with this between October 2015 and January 2016. Developing these processes in the final phases of the certification and designation process led to increased nervousness amongst ANSL, GAL and the CAA.

7.32 As with the management system documentation, ANSL commented that the CAA's guidance material was helpful, and that the very good and open working relationship with the CAA team was very welcome, for example in overseeing the development of the engineering manuals.

*CAA*

7.33 Two engineering inspectors from the CAA were involved in order to cover the large volume of audits resulting from the equipment transitioning between a NATS unit and ANSL unit.

7.34 As noted above, the intention to certify was communicated to ANSL in October 2015, based on managerial aspects of the process, with key designation parts of the process yet to be delivered also including demonstrating that:

- the equipment would be fit for purpose; and
- the relevant processes were integrated with ANSL's management system documentation.

7.35 Both of these relate to aspects of the transfer of equipment and processes from the outgoing to the incoming provider that are discussed further in Chapter 8.

### Assessment and emerging findings

7.36 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to equipment:

- TANS equipment at the airport was transferred between NSL and GAL based on contractual arrangements;
- Despite the clear process for the transfer of equipment between NSL and the airport, the full safety cases for this equipment were not transferred between the outgoing provider and the airport/incoming provider for two main reasons:
  - i. NSL considered the Safety Case Part 4 as its intellectual property; and

- ii. Safety Case Part 4 has limited value to a third party because it relates to the NATS SMS and is not valid for a different ANSP's SMS.

NSL provided asset information, historical fault events and the Safety Case Parts 1, 2 and 3, which contain safety requirements and design assurance, enabling ANSL to develop its system safety cases;

- ANSL did not expect to have to develop equipment processes and safety cases as extensively as it had to, with additional external support required in order to deliver these to the CAA during the late stages of the designation process;
  - There were no comments on the CAA guidance for developing safety cases;
  - CAA guidance on the safety management system and the common requirements was considered helpful, and ANSL welcomed the opportunity for close and constructive engagement with the CAA through the process; and
  - The transfer of equipment from a NATS unit to a non-NATS unit meant that it came under the direct supervision of the CAA for the first time. This process was resource intensive for the CAA.
- Although the transfer of equipment between the outgoing provider and the airport was straightforward, the amount of supporting information transferred was less than that expected by the incoming provider. As a result, the extent to which equipment processes had to be developed by the incoming provider had not been anticipated and external support was required.

## Financial aspects

### Description of requirements and CAA guidance

- 7.37 All Air Navigation Service Providers (ANSPs) applying for Certification and not eligible for derogation must submit to the CAA their five-year Business Plan, Annual Plan, and audited accounts.
- 7.38 The Business Plan should cover a minimum period of five years and set out:
- the overall aims and goals of the ANSP and its strategy towards achieving them in consistency with any overall longer term plan of the provider, and with relevant Union-wide requirements for the development of infrastructure or other technology; and
  - appropriate performance targets in terms of safety, capacity, environment and cost-efficiency, as may be applicable.
- 7.39 The Annual Plan should specify further the features of the Business Plan and describe any changes to it. The annual plan should cover the following provisions on the level and quality of service such as the expected level of capacity, safety, environmental and cost-efficiency, as may be applicable:
- Information on the implementation of new infrastructure or other developments and a statement how they will contribute to improving the performance of the ANSP, including level and quality of services;
  - Performance indicators consistent with the national element of the Functional Airspace Block (FAB) performance plan referred to in Article 1 of Regulation (EC) No 594/2004 against which the level and quality of service may be reasonably assessed;
  - Information on the measures foreseen to mitigate the safety risks identified in the safety plan of the ANSP, including safety indicators to monitor safety risk and, where appropriate, the estimated cost of mitigation measures; and

- The ANSP's expected short-term financial position as well as any changes to or impacts on the business plan.

7.40 In accordance with article 12(2) of Regulation (EC) No 550/2004, an ANSP shall demonstrate that it is undergoing an independent audit of its financial accounts on a regular basis.

7.41 The CAA provides:

- Guidance on its website; and
- Business Plan and Annual Plan templates to aid providers, especially those who may be producing such a document for the first time.

### **Stakeholder comments**

#### *ANSL*

7.42 ANSL did not make any comments with respect to the financial aspects of the certification and designation process.

7.43 ANSL did highlight that its parent company guarantee that was provided by the DFS group was seen as important, both by GAL and the CAA, in supporting its business plan. It also indicated that the cost of secondments was nearly [redacted] the level it had budgeted for, which is discussed in more detail in Chapter 8.

#### *CAA*

7.44 The CAA commented that ANSL's business plan was of a very high standard. The business plan and its assessment was supported by dialogue between ANSL and the CAA throughout the process. In its assessment of the business plan, the CAA reviewed the organisation through examining:

- the roles and responsibilities of key staff;
- the organisational structure;
- its finances;
  - revenues from GAL;
  - costs, where staff secondments were a big unknown; and
  - cash position;
- its insurance arrangements; and
- its auditors.

7.45 In moving from the bid business plan to the business plan used for certification and designation, the CAA and ANSL worked closely together, with ANSL guiding the CAA through its plan. The CAA was able to follow the plan as increased certainty was introduced across a number of areas, with the contracts being put in place pinning down costs, turning them from estimates to actuals. Costs were assessed against the capital and revenues available to ANSL. Particular emphasis was placed on how the staff secondments would impact ANSL's cash position, with the CAA generally comfortable that ANSL would be able to cover its liabilities for the initial two to three years of operation.

### **Assessment and emerging findings**

7.46 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to financial aspects:

- The high-level requirements for the financial information that had to be provided was clear;
  - The CAA's guidance and compliance matrices indicating where the financial documentation needed to be provided as evidence for compliance with the common requirements was helpful; and
  - As with other certification and designation aspects, the business plan assessment benefited from close and constructive engagement between ANSL and the CAA throughout the process.
- There is opportunity for the CAA to either provide additional guidance to ANSPs for structuring their business plans and annual plans, or to provide links to equivalent SES guidance. This could be particularly helpful during the early stages of the plan development, requiring less direct contact time from the CAA.

## Other issues raised in relation to certification and designation

### *Timeline*

- 7.47 The key driver of the transition timeline at Gatwick was the seasonality of traffic at the airport, with the transfer of operations planned for a slightly less busy period of the year (March 2016). Given the nearly six-month delay to the start of the transition process (July 2014 to the end of December 2014) during the legal challenge brought by NATS and GAL's reluctance to further extend its contract with NSL, the resulting project delivery timeline was squeezed to just fourteen months (January 2015 to the end of February 2016).
- 7.48 The short transition timeline raised some concerns at the CAA, particularly around GAL's contingency plans, and required some faith from the CAA that ANSL, supported by DFS, would be able to deliver its transition plan. This was helped by the practical approach adopted by ANSL, and its close engagement with the CAA. However, as highlighted by ANSL, a number of compromises were necessary in order to achieve the 1 March 2016 deadline, some of which had cost implications (e.g. buying MATS part 2).

### *UK expertise*

- 7.49 In the case of the transition at Gatwick, although the incoming provider was one of Europe's largest ANSPs, DFS's German framework for certification and designation under the common SES requirements did not directly translate to the UK context very well, which caused some nervousness amongst GAL and the CAA. It was pivotal then for ANSL to have:
- A local presence – at the start of the process, GAL was working with ANSL as part of DFS and the Tower Co. in Germany. Key staff moved from Germany to the UK six months into the process; and
  - Local expertise – ANSL recruited ex-NATS staff to its management team. ANSL's chairman, head of operations and head of safety were all previously employees at NATS.

### *Communication lines*

- 7.50 As noted earlier in this chapter, ANSL's initial submission to the CAA as part of the certification and designation process was of lower quality than expected. This was then iterated with support from the CAA and ANSL's local expertise to meet the CAA's requirements. However, the CAA's comments on the first draft of ANSL's documentation were passed on to GAL, which caused some concerns, especially in the context of the six-month litigation, which had made GAL nervous.

7.51 ANSL commented that it would potentially be helpful for communications protocols to be established between the regulator, the incoming provider going through the certification and designation process, and its customer airport. This would not be seeking to reduce the transparency around the process, but instead would limit the possibility of lines of communication becoming crossed, maintaining clear accountability amongst stakeholders.

**Assessment and emerging findings**

7.52 Our assessment of the issues described above indicate the following emerging findings:

- The date set for the transfer of operations to the incoming TANS provider is driven by a number of external factors, notably traffic seasonality in the case of Gatwick, which may need to be balanced against the practicality and/or affordability of the potential compromises required to deliver the transition to a tight timeline;
- The certification and designation process at Gatwick benefited significantly from the UK regulatory experience of ANSL's management team, which included ex-NATS staff.
- Stakeholders may value more formally defined communication lines with the CAA, which would limit the potential for miscommunication or misunderstandings between the parties involved.

## 8 Gatwick: Review of transition process and issues faced

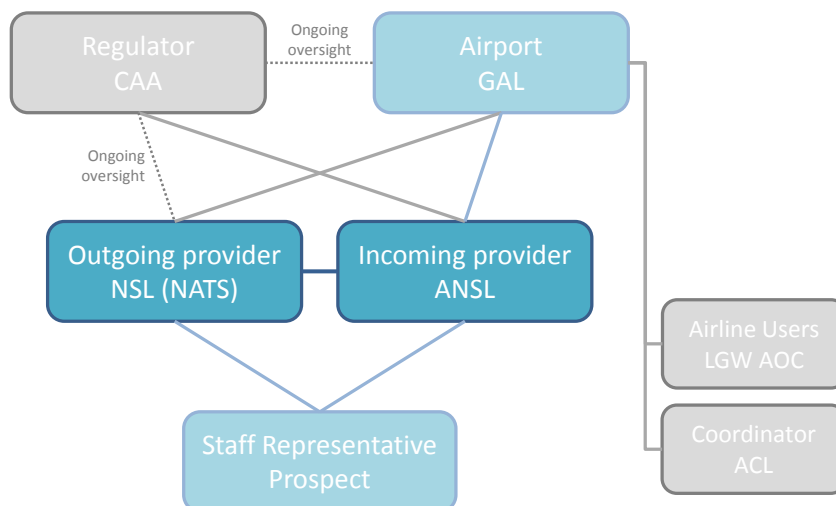
### Introduction

- 8.1 In this chapter we review the airport's and new TANS provider's transition plans, and compare outturn to plan. In CAP 670, the CAA specifies that a transition plan must be developed by the incoming provider which addresses all aspects of the transition that will need to be actioned with the outgoing provider, including training and familiarisation issues. The CAA also places an obligation on the outgoing provider to engage with the incoming provider to agree the transition plan.
- 8.2 The CAA has an outline transition plan Gantt template available from which incoming providers can develop their own detailed plans. The template and further guidance on developing and implementing such a plan would be shared at the pre-application meeting with the CAA, which incoming providers are invited to have at the start of the process. In fact, In CAP 670 the CAA recommends that the incoming provider should give the CAA as much notice as possible of the takeover of service provision.
- 8.3 In our review we will describe the detail related to specific issues on:
- Staff: processes of transfer, Air Traffic Control Officer (ATCO) secondments and training of new staff, linked to the Trust of a Promise Agreement and its application;
  - Assets and equipment: ownership and processes of transfer;
  - Information and data: identifying challenges faced with the transfer of information and issues around intellectual property; and
  - Timing and costs.
- 8.4 Our analysis focusses on the outgoing-incoming TANS provider relationship, as shown in Figure 8.1 below, and describes the process of transition, highlighting issues relating to the following key themes:
- Expectations of transitions processes:
    - Were the airport's expectations at start of process different to outcome?
    - Were the incoming ANSP's expectations at start of process different to outcome?
  - Staffing issues and requirements:
    - Whether sufficient information on Trust of a Promise (ToaP) was available?
    - Issues raised with training new controllers?
    - Issues raised with secondment of controllers?
  - Assets and equipment:
    - Issues raised with equipment requirements?



- Issues raised with safety cases for equipment?
- Systems and procedures:
  - Issues arising with MATS part 2?
  - Issues arising with other operating procedures?

**Figure 8.1: Focus of transition process analysis**



Source: Steer Davies Gleave

8.5 In our review we highlight issues leading to an impact on timing and/or costs being different to the airport/new service provider's plan and identify where there were a perception or misunderstanding led to an issue arising. Activities and relationships between the incoming provider and with Prospect and other stakeholders are also included in the analysis.

## Staff

### CAA Guidance

8.6 In CAP 670, the CAA details certain requirements in relation to staff for the incoming provider as follows:

- The new provider must provide a list of controllers, details of their licences, together with any necessary requests for exemptions to full licensing requirements and supporting justification for them.
- The new provider must agree a programme with the CAA for:
  - On-site training for all licensed and other operational staff. The training will need to include a period of operational familiarisation in cooperation with the outgoing provider; and
  - Presentation of all operational staff for examination or assessment to the CAA. These examinations include oral examination and written examination as required and cover all aspects of local knowledge and use of equipment. At the appropriate time practical examinations will also need to be conducted.

8.7 Beyond the requirement described above for a period of operational familiarisation, the obligations of the outgoing provider that are included in CAP 670 are that the outgoing provider must allow *mutually agreed access* to the incoming provider prior to handover. This is understood to relate to all aspects of the transition, including staff – although access to staff is not identified explicitly.

- 8.8 The staffing risk for TANS providers is highlighted by the CAA in CAP 1004. It describes that ATCO licensing and validation requirements do not easily lend themselves to the frequent movement of ATCOs between different ATC units or centres or positions within a unit or centre. Given that unit specific training to gain a rating and/or rating endorsement can take more than six months to complete, it is clear that the loss of an ATCO, for any reason, needs a robust replacement plan and can pose a continuity issue for the staffing of ATC operations at a specific airport location.
- 8.9 The key staffing concern in the case of a change in TANS provider at an airport is that the NATS Trust of a Promise (ToaP) agreement introduces uncertainty around the number of locally qualified ATCOs that will transfer to the new provider and the additional cost of training replacement staff.
- 8.10 As summarised in CAP 1004 and CAP 1293, ToaP provides NATS employees employed at the time of the organisation's privatisation with additional pension rights. ToaP places an obligation on NATS to maintain the pension arrangement of this group of employees, including taking steps in the event of a sale or transfer of part of the NATS business, for example in instances where the Transfer of Undertaking (Protection of Employment) (TUPE) regulation apply. In the event that NATS is not able to assure employees of the continuation of these pension benefits when such a transfer occurs, the affected employees have the right to refuse to transfer to the new employer. In this case, NATS is required to continue to employ these employees at a different location unless it results in the insolvency of NATS.
- 8.11 ToaP is a legally binding agreement between the Secretary of State, NATS Ltd and the Law Debenture Trustees.
- 8.12 In CAP 1004 the CAA considered that the ToaP presented an economic barrier that would prevent an ANSP from offering to provide or withdrawing from the provision of TANS. However, the experience from Birmingham and Gatwick led the CAA to conclude in CAP 1293 that, to the extent that there remain some barriers from ToaP, these are lower than previously thought and it seems can be overcome during the tender process.
- 8.13 In CAP 1293 the CAA also provides an indication that charges additional to salary costs may be levied by NSL in providing seconded staff. The CAA recommends that NSL should state the charges that it will levy for secondments to reduce the uncertainty around ToaP. This information could be provided as part of a data room and would not need to be publicly available.

### **Description of situation**

#### *Transfer of staff*

- 8.14 Four groups of staff emerged during the transition at Gatwick. These were:
- Staff covered by ToaP that remained with NATS;
  - Staff covered by ToaP that transferred to ANSL;
  - Staff not covered by ToaP that transferred under TUPE to ANSL; and
  - New recruits at ANSL.
- 8.15 This grouping relates primarily to the perspectives of ANSL and Prospect. From the perspective of NSL, this is reduced to staff covered by ToaP that remained with NATS and all remaining staff that transferred to ANSL.

- 8.16 At the time of transition, staff at Gatwick that were covered by ToaP accounted for 60% (22 of 37) of NSL ATCOs. ANSL did not match the terms and conditions provided by NSL to staff through its DB scheme, as such, these employees had the right to refuse to transfer to ANSL. The remaining 40% of ATCOs were covered by TUPE regulation and, from an administrative perspective, would transfer to ANSL under the relevant provisions.
- 8.17 ANSL established a very good working relationship with Prospect from the start of the process. ANSL described Prospect as being constructive and aware of market conditions, which enabled the two parties to sign a three-year collective agreement within three months. Terms and conditions were then guaranteed for three years rather than the shorter TUPE statutory minimum requirement. The agreement was common for staff transferring from NSL and for new recruits and was similar to the Defined Contributions (DC) scheme offered by NATS (though not identical in terms of allowances). It was important to ANSL that it was able to send a positive message, and Prospect stated that a sense of trust was established early on with ANSL, which was viewed positively by staff.
- 8.18 In contrast, Prospect did not find that its engagement with NATS at senior management level was as constructive, particularly after the agreement with ANSL had been reached. NATS had previously not been supportive of Prospect's view of employment terms and conditions for ATCOs, but the agreement with ANSL provided a clear example that the market was able to support such terms and conditions. The relationship between Prospect and NATS also evolved as result of ANSL winning the Gatwick contract; with a growing non-NATS membership, Prospect was increasingly moving away from effectively being a "company union". However, Prospect stated that NATS was accommodating in allowing time off for staff representatives to engage with ANSL.
- 8.19 In its bid plan, ANSL tested a number of scenarios and assumed that it would need to recruit and train between 15 and 18 ATCOs. The plan, was based on securing about half of NSL ATCOs and starting training early on in the transition, so that at least 5 new ATCOs would be validated before the transfer of operations in March 2016. ANSL also bid with an overall lower staffing plan for Gatwick (33) compared to NSL (35, although 37 ATCOs present) for covering the ATCO operational requirement at the airport. ANSL actually retained about 57% of ATCOs at Gatwick, but, with no new ATCOs validated before the transfer of operations, has required a greater number of secondments than planned. Table 8.1 below shows the number of ATCOs under NSL, in ANSL's bid plan and outturn at ANSL.

**Table 8.1: ATCOs staff numbers**

ATCOs	NSL	ANSL bid plan	ANSL actual
<b>Total ATCOs</b>	<b>37</b>	<b>33</b>	<b>33</b>
Covered by ToaP at NSL	22	3	7
Not covered by ToaP	15	15	14
Recruit and train	-	15 to 18	12
Secondments	-	Year 1: 10 Year 2: 5	Year 1: 12 Year 2: tbc Extension: tbc

Source: Stakeholder interviews, Steer Davies Gleave

- 8.20 The number of staff expected to transfer to ANSL was not starting to become clear until after the summer of 2015, only five months before the start of operations in March 2016. ANSL also

understood that ToaP staff were eligible to change their mind up to 28 days before the transfer of operations to the new provider. Given the tight transition timeline and activities running in parallel, this presented significant challenges for ANSL management in planning training and recruitment alongside the secondment support that would be required.

- 8.21 GAL noted that staffing (along with engineering documentation) was one of the main issues faced during the transition.
- 8.22 The CAA indicated that it was not involved directly in the discussions around the transfer of staff, however it did monitor progress, particularly in relation to operational coverage and the implications for ANSL's unit training plan.
- 8.23 A number of influencing factors have been cited for adding complexity to the staff transfer process. These included:
- The lack of transparency around the implementation of ToaP;
  - The alternative positions offered to ToaP staff;
  - Access to staff;
  - Secondment arrangements; and
  - Recruitment and training.

#### *Transparency around Trust of a Promise*

- 8.24 At the time of bidding, ANSL did not have access to the legal text of the ToaP agreement, so its understanding of the agreement's implications was based only on publicly available information (e.g. the description of ToaP in CAP 1004 where ToaP is identified as an economic barrier). ANSL understood that staff covered by ToaP would be entitled to stay on with NATS, rather than transfer to the new provider at Gatwick, and that as a result ANSL would have to bear a greater recruitment and training burden. ANSL was also clear that secondments would be necessary until enough of its own ATCOs had been trained to cover the operational requirement. ANSL's understanding of ToaP developed as UK (ex-NATS) staff who were familiar with the agreement joined its management team later in the process (after the contract had been won).
- 8.25 ANSL had made a proposal to NATS for a joint approach to overcoming the issues raised by ToaP. The proposal involved NATS and ANSL jointly incentivising ToaP staff to transfer to ANSL, thus exiting the Defined Benefits (DB) scheme that they would have continued to be entitled to had they remained with NATS. ANSL also asked NATS not to offer these staff roles elsewhere in the NATS business. On the incentive, ANSL proposed to offer a golden handshake to ToaP staff transferring, which would also be supplemented by a NATS incentive, effectively part-compensating staff covered by ToaP for exiting the Defined Benefits (DB) scheme and moving to the DC scheme at ANSL. ANSL explained that NATS was not interested in this proposal or in developing a joint commercial approach. NATS stated that it communicated in writing to ANSL that neither proposal would be compatible with NATS's legal commitments to its staff.
- 8.26 Separately, Prospect stated that it had invoked a ToaP conversation with NATS, Prospect and the agreement's trustees to discuss the possibility of opening the DB pension scheme that ToaP covers to other companies. A large number of administrative challenges would have had to be overcome, but it was seen as plausible to Prospect based on experience from other civil service schemes that have been opened as the services have been privatised. However, the DfT did not see that it would be possible for the ToaP DB scheme to be opened to other companies in this way.

8.27 On its side, GAL, had an expectation that ToaP presented a risk around the transition of TANS provision, but the airport's understanding was limited. GAL did not seek to access the legal text of the agreement. Given the airport's fixed price contract with ANSL, GAL saw the risk presented by ToaP as mainly a financial one that would have to be borne by ANSL and not as relevant to the airport as a customer. However, through the transition, GAL was keen to track the relevant staff numbers and understand the mitigation plans, training plan stages and timelines that ANSL was putting in place.

#### *Implementing Trust of a Promise*

8.28 In implementing ToaP, NATS followed a similar process to that which it used through the transition at Birmingham, where ToaP was exercised for the first time. In order to determine the alternatives that it would make available to ToaP staff remaining with NATS, it:

- Assessed the business's requirement across units over the medium-term;
- Consulted with resourcing teams, as part of the business planning cycles; and
- Held one-to-one meetings with individual staff to discuss their preferences and circumstances.

8.29 Table 8.2 below show the number of staff at Gatwick with NSL, the number of these covered by ToaP, and the number that exercised ToaP to remain with NATS.

**Table 8.2: NSL staff at Gatwick**

Staff	Total NATS staff	Covered by ToaP	Exercised ToaP
Engineers	5	5	4
ATSAs	16	10	9
ATCOs	37	22	15*

\* Including 4 ATCOs due to retire – with one of these already retired

Source: NATS interview, Steer Davies Gleave

8.30 The alternatives taken up by ToaP staff included positions at:

- Manchester;
- Heathrow;
- Farnborough; and
- Swanwick.

8.31 The positions offered at these units are to fill existing or predicted vacancies that have come about through a combination of:

- RP2 cost-efficiency voluntary redundancies (including ATCOs);
- Traffic growth; and
- More than expected retirements and medical withdrawals.

8.32 NATS explained that it has a recruiting requirement of about 20 in its Airports business, some of which will be covered by ToaP staff, with the remainder covered by recruiting externally (e.g. at Swanwick and Stansted currently). As a result, it could place the staff seconded to ANSL into its new NATS position at any time.

8.33 Heathrow and Swanwick are Band 5 units, whereas Gatwick is a Band 4 unit. The ToaP staff moving to Heathrow and Swanwick, then, will be moving to grade equivalent positions, and so

will not be promoted. However, as a result of moving to higher band units will receive a higher salary (approximately £1k-£2k per annum more).

- 8.34 NATS explained that all NATS ATCOs who requested ToaP postings in NATS were made an offer of a posting in NATS based on their request and business need. Where those units would normally carry out an assessment of an experienced controller first to see if they were suitable, these assessments were run for ToaP controllers. These units are: Heathrow (tower only), Manchester (approach and tower) and Swanwick Terminal Control (approach only). All Gatwick (tower only) ToaP controllers will have to train and achieve a validation at their new units which takes between 6-12 months depending on the site. Where a controller's approach rating has not been used for a period of four years or more (if it is needed at the new unit), they have to complete a short course lasting four days called assessment of previous competence (APC).
- 8.35 NATS stated that it had not been clear from the start that long-term secondments of up to two years would be necessary at Gatwick. In what it described as a significant business move, NATS made its redeployment offers to ToaP staff on the basis that these controllers would also accept being seconded. Further, NATS observed that ANSL did not appear to fully understand the obligations placed on NATS under ToaP.
- 8.36 ANSL explained that it did not have visibility of the NATS processes for dealing with ToaP and staff transfers until after it took over operations in March 2016. It found that more ATCOs chose to remain with NATS than it had expected (at that stage of the process, although more than planned in its bid), which impacted on ANSL's recruitment and training plans, and its secondment requirements. Although ANSL had requested feedback from all staff at the end of August 2015 on whether they would be transferring, it did not hear back from some staff, so had to assume that these staff would be exercising ToaP instead.
- 8.37 In ANSL's view, the fact that NATS offered alternative positions at Heathrow and Swanwick for ToaP staff, both of which are "band upgrades" even if not formally promotions, played against ANSL's efforts to incentivise ATCOs to remain at Gatwick. ANSL stated that in its bid plan, no cost had been foreseen for secondments, though a relatively large amount of contingency budget had been planned for mitigating transition risks. In one sense, this further highlights the extent to which ANSL's expectations for the number of ATCOs that would transfer to it had to be re-evaluated.
- 8.38 As also highlighted in CAP 1293, ANSL feels that ToaP has been implemented in a way that skews the market – in its expectation, from the perspective of an incoming provider, there should be no difference between staff covered by ToaP and those who are not. The burden of ToaP should rest entirely with NATS and should not be passed through to the secondment rates charged to incoming providers. ANSL was totally reliant on NATS acting in a reasonable manner.
- 8.39 Prospect suggested that it was surprised by the alternative positions offered to ToaP staff at Heathrow and Swanwick for the following reasons:
- The emerging resourcing issues at Swanwick could have been known to NATS at the time of the Birmingham transition, yet Swanwick was not offered to Birmingham ToaP ATCOs (band 3), who already had valid approach tickets. Gatwick controllers, on the other hand, did not have valid approach tickets and would require re-training and validation before taking on their new role. (NATS subsequently said the Birmingham transition occurred before the emerging resourcing needs at Swanwick were known); and

- Prospect's understanding of NATS's operational plan was that it indicated that lower-band locations other to Heathrow and Swanwick could also have been available, as these were staffed below their full complement. Some ATCOs put forward preferences for Bristol and Cardiff which were declined by NATS, which said there were no vacancies at these units. Prospect also understood Glasgow and Edinburgh required staff, but these units were not offered by NATS.

8.40 However, Prospect also recognised that some aspects of the NATS operational and resourcing plan may have been "under-pitched", especially as a result of the RP2 redundancies, so the balance of the resourcing requirements could have been weighted towards Heathrow and Swanwick. Furthermore, Prospect also acknowledged that there could also have been a commercial compromise involved, as by redeploying staff from Gatwick to other nearby units, even at a higher band, NATS potentially avoided the relocation support costs that it would have incurred had staff been redeployed further afield and therefore the offers to locations not available during the Birmingham transition could be justified.

#### *Access to staff*

8.41 Prospect, ANSL and NATS all agreed on the launch date for the staff consultation, with ANSL providing a public briefing on its plan for TANS provision at Gatwick and its offer to staff at the start of June 2015. One-to-ones between individuals and NATS and/or ANSL took place over the summer. ANSL had requested that staff provide with feedback on their choices by the end of August 2015.

8.42 Although ANSL indicated that it received good access to staff in order to communicate its plans, Prospect noted that ANSL's day-to-day access to staff was limited. According to Prospect, NATS – which was seen to be very defensive of intellectual property and ANSL observing operations – required that ANSL management had to be escorted when visiting the tower, which made it difficult for ANSL to have reasonable access to staff. Prospect was not supportive of this, as it led to ANSL being perceived as an invisible entity by staff. However, relevant contact details for ANSL were available to all staff, should they have wanted to communicate directly and proactively with ANSL, as was access to ANSL's business premises on site.

8.43 Prospect also observed that its dynamic with NATS for the transition at Gatwick was different from that at Birmingham. Faced with an in-house provider with which NATS may have accepted that it could not compete effectively, it was quite welcoming of Prospect's engagement with the new provider. At Gatwick though, NATS was seen as restrictive and protective.

8.44 With the focus of the staff transition being the implementation of ToaP and related secondment arrangements, Prospect highlighted that staff not covered by ToaP that would transfer automatically under TUPE came to feel a bit left behind as a result of comparatively less contact with ANSL. Prospect stated that easier and more informal access to staff for ANSL would have possibly limited this issue.

8.45 Despite difficulties at the corporate level, however, the relationship between ANSL and NSL at an operational level was described by all parties as very good.

#### *Secondment arrangements*

8.46 The secondment arrangements at Gatwick have been highlighted as one of the key issues in the transition, and as the issue with the largest financial impact. The secondment

arrangements, as they relate to the training capacity of the unit, also drive the length of the transition following the transfer of operations to ANSL.

- 8.47 The secondment agreement at Gatwick is in place for two years (March 2016 to February 2018). It covers 15 ATCOs who exercised ToaP, including four controllers who are expected to retire within the secondment period (one of which has already retired). The secondment costs were negotiated commercially between ANSL and NATS. The agreement includes an optional extension of 12 ATCO-months (i.e. one ATCO for 12 months, or 3 ATCOs for 4 months and so on). Contingency arrangements beyond the extension have not been put in place. NATS indicated that under the agreement, it was optional for secondees to supervise (with many continuing to act as supervisors by working on the watch manager desk). ANSL indicated that under the agreement, secondees are not able to act as Watch Managers. Six ANSL trainees were placed with NSL from September 2015.
- 8.48 ANSL stated that NATS imposed an ultimatum on the signing of the secondment agreement at the end of 2015, effectively dictating the terms of the agreement at that point. ANSL would have preferred to have had more time to work through the agreement. It identified that there are a number of variables (e.g. training lead time, complexity of operations) that all act to determine the number of secondees and the duration of the secondments, however the transition's tight timelines meant that it had to make compromises.
- 8.49 NATS said it did not impose an ultimatum. From NATS's side, the drivers behind the secondment period offered involved a balance of:
- Operational requirements across the NATS business;
  - Its ToaP commitments;
  - Maintaining future positions open for ToaP staff; and
  - The personal circumstances of ToaP staff.
- 8.50 NATS added that the staff transition process and the redeployment of ToaP staff was quite protracted, which on the one hand increased the complexity of the task in meeting its ToaP commitments by having to plan so far in advance, and on the other hand provided ANSL with a significant amount of time to get organised and put its own staff in place. In total, from making ToaP offers and the staff consultation process (starting in Summer 2015), through to the transfer of operations, the two-year secondment period, plus the extension period, NATS estimates that nearly forty months may have elapsed:
- Staff consultation to transfer of operations: 9 months;
  - Two-year secondment period: 24 months;
  - Extension period: e.g. 6 months (2 controllers for 6 months) or 12 months (1 controller for 12 months); resulting in
  - Total NATS staff transition time: 39 months to 45 months.
- 8.51 A further five months elapsed from the start of the transition in January 2015.
- 8.52 We note however, that although at face value this seems like a substantial amount of time, NATS does not seem to account for the fact that this is in large part linked to the number of controllers exercising ToaP, the training capacity of the Gatwick unit and the training lead-time for ATCOs there – all factors which ANSL has limited scope to influence. It is also the case that for most of the ToaP controllers, their transition period will be shorter than the nearly forty months, as ANSL ATCOs come on stream.



- 8.53 Prospect understood that the two-year secondment agreement was set up on the basis of commercial arrangements, but it would have preferred that this was clearly based on operational requirements instead. It would encourage the CAA to define that secondment periods should be based on a combination of operational requirements and the unit training plan to meet these.
- 8.54 The secondment arrangements have worked well in a number of respects. They have:
- Facilitated training both before and after ANSL took over services. New recruits were able to train and familiarise themselves with operations under NSL. ANSL was able to retain experienced NSL staff to continue to support training after it started operating;
  - Enabled operational continuity to be maintained, limiting the extent to which the change in TANS provider may impact service delivery; and
  - Controlled some of the uncertainty emerging from ToaP, allowing operational requirements to be met irrespective of staff decisions on which organisation they would continue their employment with. From the perspective of NATS, the secondments also delayed the requirement to relocate staff and reduced its staff costs since it is reimbursed (subject to commercial agreements) for its seconded controllers.
- 8.55 However, at Gatwick, during the period of secondment, three (out of seven) controllers requested to take a break from instructor duties during summer 2016. Additionally, one controller who was about to retire requested to cease training duties to spend his last summer concentrating on his own competence. Both of these requests are typical of requests that NATS sees elsewhere in its business. The three controllers who requested a break have all completed their breaks and returned to training at Gatwick in Autumn 2016. Additionally, a controller at Gatwick who had the instructor qualification but was currently not activated offered to reactivate it to support ANSL training. NATS stated that ANSL decided not take up this offer of an additional instructor. There has been disagreement between ANSL and NATS on the extent to which the secondment agreement obliges NATS staff to provide training. NATS stated that it is not able to dictate to individuals that they have to take on additional tasks, such as training, since this is voluntary and, in principle, there could also be safety implications in doing so. It has though encouraged staff harder than elsewhere in the business to contribute to training in support of ANSL at Gatwick. It is in line with experience across the NATS business that a small number of instructors take a break from the intense activity of instructing and subsequently return to the task. However, we note that at Gatwick, the instructors taking a break formed a significant proportion (about half) of the unit's training capacity at a time when its training burden was very high.
- 8.56 ANSL pointed out that by NATS effectively (albeit possibly indirectly) controlling the capacity of the Gatwick unit to provide training, NATS is controlling the length for which secondments will be required. As of June 2016, ANSL expected to have to use the full two-year secondment period to the end of February 2018, as well as the optional extension.
- 8.57 As previously noted, ANSL feels that ToaP has been implemented in a way that skews the market and that any additional costs of employment that ToaP secondees attract should be borne by NATS. In practice, under the secondment agreement in place, the cost of the secondees is nearly [redacted] that for controllers employed directly by ANSL (nearly [redacted] million for the two-year period) – and nearly [redacted] the cost it had assumed based on controllers' gross salary, plus benefits uplifted by a small margin.

- 8.58 In NATS's view, ANSL ought to have been better aware, through its due diligence, of the possible secondment arrangements that NATS had put forward as part of its industry commitments set out in the 2013 market contestability assessment.
- 8.59 ANSL thinks that the secondments terms should be clear in the market, and it would have welcomed intervention from the CAA. It suggests that the CAA should encourage the "servitisation" of secondment arrangements (e.g. a fixed rate per ATCO trained) that involve a balance between commercial interests and service continuity. It also would argue that the secondment terms should include defined output measures (e.g. number of newly trained ATCOs), not just inputs (e.g. number of secondees), which would transfer some of the transition risk to NATS and incentivise its cooperation.
- 8.60 ANSL had to rely on NATS being reasonable since the guidance on the transition of TANS provision is not prescriptive. ANSL would welcome the CAA being able to apply pressure on the outgoing provider to encourage it to cooperate constructively. It would also welcome were the CAA to undertake an assessment of the terms and conditions of the secondment arrangements, including their profitability for NATS, so as to reinforce other providers' faith in the market and that NATS is not exploiting its position.
- 8.61 On its side, the CAA maintained an arm's length position on the secondments through the transition at Gatwick. It validated the secondment agreement to make sure that it was legally binding and would not compromise operational continuity. The CAA also assessed the agreement in terms of cost and the impact this had on ANSL's business plan to ensure that this remained financially sound.
- 8.62 NATS confirmed that the secondment rates were determined on the following commercial basis and followed the same principles as those applied in the transition at Birmingham:
- Secondment rates were provided for the different types (ATCO, Engineer, Assistant) and grades (ATCO1, ATCO2 etc.) of staff that ANSL proposed to utilise after the transfer of operations. NATS provided ANSL with a breakdown by role type and grade of the associated direct costs, overheads, and margin;
  - Employments costs were built up using the then current business plan direct costs for the relevant grades and represented averages across NSL for the grades in question. The use of grade averages is NATS's standard commercial approach to pricing and was deemed appropriate in this instance on the basis that it did not know which staff would elect to remain with NATS and second to ANSL at the point the rates had to be set (the secondment agreement was signed in December 2015 – we understand that in the main ToaP choices were made at the end of Summer and early Autumn 2015);
  - Pension costs were taken at the planned cash contribution rates in effect at the time;
  - Overheads were applied at the same level as they were included in the year one price of NSL's unsuccessful tender submission for the Gatwick contract;
  - Indexation of [redacted] per annum was allowed to cover pay inflation / salary progression over the period of the secondment agreement (ANSL indicated that this was negotiated down from [redacted] p.a.); and
  - A margin broadly consistent with commercial returns NATS achieves elsewhere for the type of activity the resources would be engaged in.
- 8.63 As a consequence of the above approach, NSL has taken on full risk with regard to staff cost inflation and pension contributions over the period of the secondment. In addition NSL has taken on the risk associated with the payment of allowances such as overtime, engineering on-

call, and ATCO on-the-job training that vary depending on the workload over the secondment period. This approach was consistent with the requirements of ANSL which wanted a fixed price for resources over the secondment period. ANSL stated that it covers overtime costs, and that the secondment agreement is not fixed in this respect. ANSL also explained that the details of the direct employment costs were not transparent.

- 8.64 NATS explained that an internal review of the effective rates has been undertaken based on staff seconded as of July 2016. This review indicated that the actual secondment rates for the 2016/17 financial year would need to be marginally higher (c.3%) if they were to be calculated based on the actual cost of employment during the period April to July 2016.

#### *Recruitment and training of ATCOs*

- 8.65 The first six ANSL ATCOs were hired in September 2015 and were expected to be validated in July 2016. In practice, it seems that these ATCOs will be validated later than planned (in August or September 2016 according to Prospect), which is more in line with the average training time of 12 months for controllers at Gatwick. As noted previously, planning recruitment and training presented one of the most significant challenges for the ANSL management team, as a result of the uncertainty around staff transfer and its assumption that more ToaP staff were likely to transfer than actually did. ANSL has a resourcing gap of at least twelve ATCOs.
- 8.66 Prospect highlighted that as new providers mature, they will be more likely to be able to attract ATCOs under normal recruitment. At the moment, new providers are still perceived as riskier than NATS in the employment market, but this may well change as the market becomes more diverse.
- 8.67 During the early stages of the transition, NATS asked ANSL whether it should continue with its ongoing (steady-state) training or whether ANSL would be sending its own ATCOs to start their training instead. ANSL indicated that it would be sending its own controllers, however, NATS highlighted that there was a nine-month gap between it posing the question to ANSL and the first recruits starting their training. ANSL said that NATS in part retracted its training offer by not agreeing to take on ANSL trainees over the busy summer period in 2015, which, in combination with the six-month delay brought on by the legal challenge, pushed back the start of ANSL training by a year from its original plan.
- 8.68 NATS indicated to ANSL that, in its experience, NATS saw ANSL's plan to recruit high quality, ambitious ATCOs from high demand environments with challenging requirements (e.g. Brussels, Dubai) and train more intensively (overlapping training, training through summer) would be difficult.
- 8.69 Prospect agreed that it would be difficult to train enough new ATCOs to cover ANSL's resourcing gap within the two-year secondment period. It commented that due to the complexity of the operations at Gatwick, the unit's training capacity has always been low and its failure rate relatively high (30% historically). NATS's expectation was that of six trainees (the max at a time under ANSL, previously 5 under NSL), four passes could be achieved within twelve months. With this in mind, Prospect and NATS agreed that ANSL's training plan would, based on past experience, probably deliver eight validated ATCOs over the two-year secondment period, which is at least four fewer than ANSL requires.
- 8.70 Before ANSL took over operations in April 2015, it had to rely on NATS as the active ANSP to provide the training through the (two-way) secondment arrangements, with ANSL trainees embedded with NSL. Once ANSL started operating, it could then – in principle – have started

training its own staff itself, however, given the high proportion of NATS secondees that have made up ANSL's staff through the initial period of operation, ANSL has still had to mainly (albeit indirectly) rely on NATS to provide training. Some instructors are also available amongst staff that transferred to ANSL.

- 8.71 NATS stated that it maintains no visibility of the training arrangements at Gatwick, even if it is provided by its staff, since these are under ANSL management. Further, NATS is keen to not undermine cohesion in the unit, so it maintains an arm's length relationship with its secondees on operational matters.
- 8.72 As described above, it has emerged that several seconded controllers at Gatwick have handed back their instructor ratings, meaning that they are no longer able to provide training to new ATCOs. ANSL also added that none of the seconded engineers provided training either. Instead a shadowing arrangement was put in place to familiarise ANSL staff with equipment. ANSL then maintains its own records for this familiarisation to facilitate validation, and a new process has been agreed with the CAA for signing this off.
- 8.73 Prospect found that although at an individual level the fact that some controllers are no longer instructing could have come about 'organically', NATS did not discourage this, but instead made it clear that providing training would be voluntary, which Prospect did not support. Standard processes for managing changes in the skills available within a unit were not applied to Gatwick. For the first time, Prospect felt compelled to issue a statement to encourage controllers in a unit to provide training, motivated by the operational challenges it foresees for March 2018, when it appears that not enough ATCOs will have been trained within the secondment period. NATS said that as soon as it became aware of trainers no longer being willing to train it was proactive in trying to discourage them from this choice. Its actions included senior managers talking to ATCOs about their decision, loaning other ATCOs to Gatwick who would agree to train and forming a joint approach with Prospect including sending a joint letter to secondees.
- 8.74 Prospect would encourage the introduction of CAA guidelines for secondment agreements on the:
- managerial control of secondees; and
  - technical skillsets that should be available throughout the transition, including training provision.
- 8.75 It also raised the question of whether and how the CAA or DfT might need to intervene, if not enough ANSL controllers have been validated at the end of the of the secondment period, to ensure that NATS does not withdraw its staff from Gatwick.
- 8.76 Given the relatively large number of secondments at Gatwick, it is also necessary to consider the approach for withdrawing secondees and redeploying them to their new roles across the NATS business. Prospect explained that it is not aware of an exit plan having put in place, so it is not clear to individuals when they will be moving (subject to the successful validation of ANSL controllers). NATS suggested that a de-manning approach is still being debated with ANSL, and described that such a plan would involve a balance of:
- Business requirements for NATS;
  - Skills requirement for ANSL;
  - Cost of individual ATCOs for ANSL; and
  - NATS's commitments under the ATCOs' terms and conditions.

- 8.77 For example, the terms and conditions would provide for the controller who has been promoted to a managerial position to move first. Prospect suggested that the de-manning plan ought to be aligned with the availability of training slots for controllers' new positions.

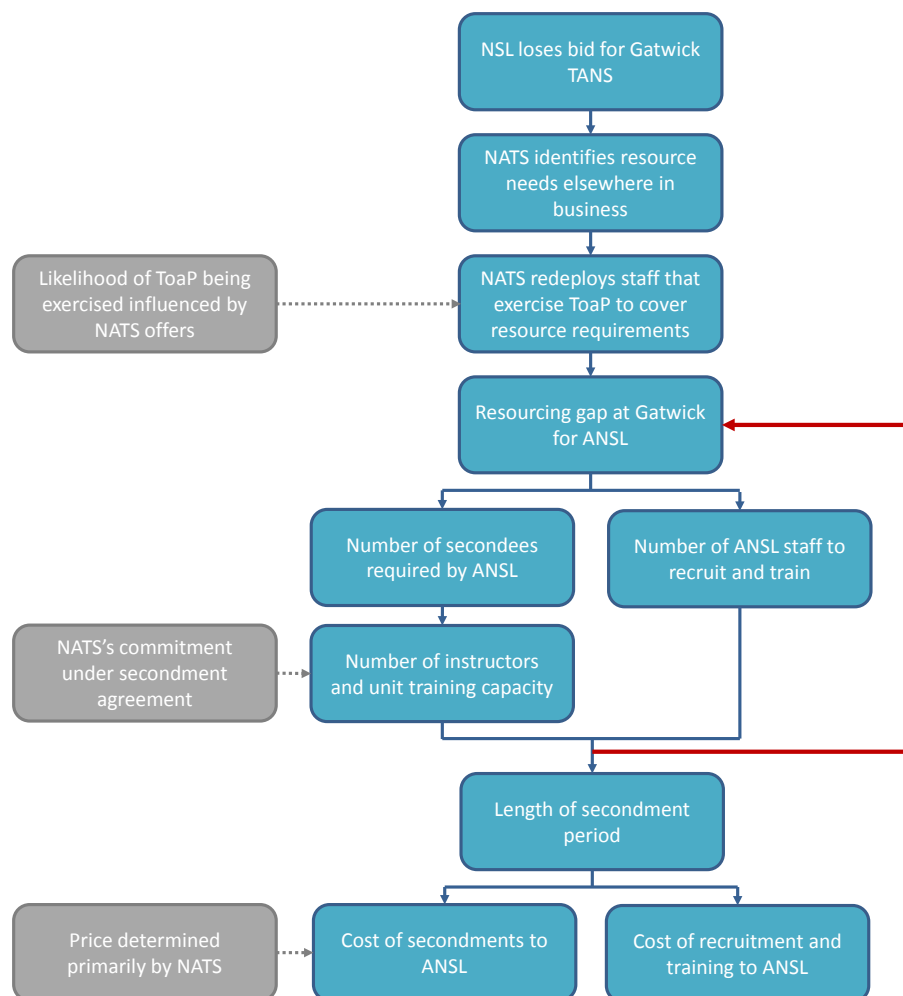
#### **Assessment and emerging findings**

- 8.78 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to staff:
- Staff transfer has been presented by stakeholders as one of the most significant issues addressed during the transition at Gatwick;
  - The level of access to staff granted to the incoming provider is not clear, with conflicting statements from stakeholders. The obligations relating to staff that are provided by the CAA in CAP 670 are not specified in detail, placing limited onus on the outgoing provider. There exists the requirement for the outgoing provider to offer mutually agreed access, which applies globally to all aspects of the transition, but not explicitly to staff. The statement does not provide an indication of the level of staff access that the CAA would expect the outgoing provider to offer. TUPE and [Data Protection](#) legislation, as well as local contractual arrangements, will provide the minimum requirements for the transition, but this could be expanded upon by the CAA for the case of TANS;
  - Given the prominence of staff issues, the CAP 670 guidance was described by some stakeholders as not adequate and that more would be welcome;
  - The possibility for enforcing such guidance on critical issues was also raised by stakeholders. At the moment, stakeholders perceive that the main motivation for the outgoing provider to engage constructively with the incoming one is the risk of reputational damage;
  - CAP 670 does not refer to ToaP in its guidance on change of TANS provider (although this is only applicable to cases where NSL is the incumbent provider, it is a prominent issue impacting the industry);
  - Guidance on ToaP is available from the CAA in CAP 1004 and CAP 1293. The description of ToaP provided in these documents appears to not be sufficiently clear, since NATS observed that the obligations that ToaP places on it were not well understood. Further to this, we note that CAP 1004 does not identify the obligation that ToaP places on DfT and NATS to encourage an incoming provider to match the Defined Benefits terms and conditions of the NATS scheme;
  - A limited understanding of the ToaP agreement and the associated risks by airport customers may make them reluctant to put their TANS provision out to tender;
  - NATS applied the internal processes it had developed through the Birmingham transition in implementing ToaP at Gatwick. The implementation at Gatwick was seen to go well, with all staff that exercised ToaP able to be re-deployed to new NATS positions. Prospect did however indicate that some redeployment preferences were turned down;
  - Some of the details for the implementation of ToaP are not specified in the agreement (e.g. the number of alternative options that NATS ought to provide to ATCOs). Prospect would welcome guidance on these;
  - The ToaP agreement requires NATS to provide alternative employment to staff not transferring to another provider only if this is commercially viable. This point did not emerge during the Gatwick transition, but in principle it would be possible for NATS to make ToaP staff redundant (under ToaP clause 3.7). NATS has stated that the ToaP agreement requires NATS to continue to employ staff who choose not to transfer to the new provider. If this results in NATS having a surplus of staff, then it cannot make

redundant those staff based solely on their ToaP right to remain with NATS. NATS would have to carry out a fair and transparent selection of staff for voluntary and, ultimately, compulsory redundancy. However, NATS emphasises that a compulsory redundancy exercise would have significant industrial relations' implications for its regulated, as well as its commercial business. That process would not necessarily result in redundancy for the specific staff that elected not to transfer. The only circumstances in which NATS can avoid these obligations is if the payment of redundancy sums associated with ToaP rights would result in the certified insolvency of NATS (relating to ToaP clause 3.7). Further, NATS has no discretion to deviate from, negotiate or amend the terms of the ToaP, as this was fixed at the time of NATS privatisation. It is for these reasons that NATS states that it was not appropriate to consider commercial incentives jointly with ANSL to encourage staff not to exercise their ToaP rights. However, it was an option for ANSL to increase its offering to encourage ToaP staff to transfer, even if ANSL was not possible to provide an equivalent DB scheme. It is important that all stakeholders seek legal advice so that they are clear on these aspects of the agreement also, since it would be helpful for involved parties to be clear about the agreement's requirements and potential implications as part of their decision-making;

- The complexities presented by ToaP in transferring staff from NATS to other providers will reduce over time through the attrition of the ATCO pool the agreement covers;
- Two-way secondment arrangements have worked well in facilitating training, enabling operational continuity and limiting some of the staff transfer risks;
- The commercial arrangements for the secondments are the subject of negotiation and cover direct employment costs (including pensions), overheads and a margin;
- The secondment agreement is input driven and does not specify output measures. There has been disagreement between stakeholders about the extent to which the agreement stipulates the commitment to provide training after several secondees handed back their instructor ratings;
- Developing recruitment and training plans proved challenging at ANSL, given the uncertainty around staff transfer and the long training lead-times. An issue exacerbated by the legal delay, the limits on the ability to train multiple ATCOs at the same time, and the reduced number of instructors available;
- The transfer and training of staff is the key determining factor of the length ANSL's transition period;
- There exists a conflict between NATS's stated business resourcing need that it expects ToaP staff to cover and its approach towards the voluntary training commitment of secondees at Gatwick, which is prolonging the secondment period; and
- There also exists a degree of circularity in the staff transfer, ToaP implementation, secondment and training process that the incoming provider has limited control over, as illustrated in Figure 8.2 below.

Figure 8.2: Staff transfer process and circularity



Source: Stakeholder interviews, Steer Davies Gleave analysis

- The evidence above suggests that the CAA’s guidance does not provide an accurate representation of the amount of effort involved in addressing staff issues as part of a TANS provider transition.
- The process of staff transfer is heavily contingent on cooperation between the outgoing and incoming provider. An expected level of cooperation and engagement is not indicated by the CAA, leaving it primarily to the outgoing provider to dictate.
- Incoming providers recognise that the Trust of a Promise agreement creates uncertainty around staffing for them, but their perception of the Trust of a Promise agreement is that it places on NATS the obligations and associated costs of maintaining the pensions and benefits of the employees covered by the scheme. In practice, however, these costs – subject to negotiation – are shared or potentially transferred from NATS to the incoming provider through the secondment arrangements.
- The transparency around the Trust of a Promise agreement, its implications and its application could be improved.  
The CAA could take steps to ensure that bidders are provided with the legal text when responding to airport tenders.

The CAA may wish to consider developing a “layman’s guide” to the agreement which could be published. The CAA would have to be clear that such a guide is not a legal document and that stakeholders should seek their own legal advice on the agreement. The CAA may wish to explore whether it would be able to provide an estimate of the attrition rate for staff covered by ToaP at each airport, which may be a useful indicator to industry.

- Based on the evidence from Gatwick, secondment arrangements could be incorporated into the CAA’s guidance to stakeholders for the transition of TANS provision, including guidance on the basis of the commercial arrangements and training commitments to avoid the implicit circularity described above. Three possible approaches for determining the cost of secondments have been identified, which the CAA should assess to provide guidance on its preferred option:
  1. Secondment costs aligned to the cost of employment in the market. The cost of secondments would then be the same as that for directly employed staff, informed by the terms of the collective agreement in place with Prospect. This approach would fit with ANSL’s view that ToaP costs are NATS’s obligation and should not be transferred to incoming providers. However, we note that this would not place NATS in a fair position as a participant in the market, as ToaP costs would make it uncompetitive relative to other providers, unless the difference in costs between ToaP and market rates were to be borne by a third party (e.g. DfT), effectively neutralising ToaP from the perspective of all TANS providers.
  2. Secondment costs defined based on an agreed and published formula that the CAA specifies. This approach would be similar to that described by NATS in determining the price for secondments, with the CAA assessing which cost lines should be included and the basis for calculating the costs for these (e.g. salary costs, overheads, pension contributions, acceptable margin).
  3. An obligation for both NATS and the incoming provider to share the ToaP burden, potentially through commercial incentivisation to limit the number of secondments required. Under this scenario, ToaP staff could be encouraged to transfer to the new provider and exit the DB scheme in return for a one-off payment based on their expected pension contributions and an appropriate discount rate. This is potentially complicated by NATS wanting to retain existing staff to cover other resourcing requirements across its business.
- The obligation for the outgoing provider to provide training, through secondment agreements, so as to avoid prolonging the secondments should be clarified. This is a key output requirement of the secondments. CAA guidance on this obligation would be helpful in breaking the implicit circularity highlighted above. The CAA already ensured that the secondment agreement at Gatwick covered training, but this would be strengthened by defining ways for measuring training outputs and the actions to be triggered under the contract if targets are not met (e.g. the contracting parties might have to renegotiate the extension period).

## Assets and equipment

### CAA Guidance

- 8.79 At a higher level, the CAA highlights in CAP 1004 that it is important, from an airport operator perspective, to ensure that arrangements for the ownership of equipment do not entrench the incumbent TANS provider, and that provisions for exit management that allow transparency



and predictability around the arrangements for asset ownership and transfer are included in contracts with TANS providers.

8.80 Besides the assets themselves, in CAP 670 the CAA specifies that the outgoing provider has to make relevant documentation available to the incoming provider which may affect the safety of the service provided after the handover. This covers maintenance documentation and instruction manuals for equipment, but does not necessarily apply to documentation which may be considered “intellectual property” of the incumbent.

8.81 The new provider must give the CAA details of all equipment and facilities to be used to support the air traffic control service as part of the certification and designation process.

#### **Description of situation**

8.82 As also noted in Chapter 7, 90% of the equipment at Gatwick was owned by three banks and subject to operating leases. Only a few low value assets were owned by NSL and were bought by GAL, as part of NSL’s exit, for its book value +10% (although much of the equipment was old and already fully depreciated), as provided for in their contract. GAL also bought other assets from NSL, including property, which were not covered by the contractual provisions and which were negotiated commercially. Leased assets were transferred from NATS to GAL, a process which required a significant amount of administrative work for NATS, GAL and the lessor banks.

8.83 GAL described the transfer of the assets and equipment from NSL as straightforward. However, the transfer of the supporting engineering documentation for the equipment was highlighted by GAL as one of the main issues faced during the transition (along with staffing).

8.84 GAL stated that NATS provided the original equipment manufacturer (OEM) manuals for the equipment, but that no further information on equipment processes or maintenance was given. This came as a surprise to GAL, particularly since a lot of the equipment at Gatwick was quite old and had been modified or adapted through time. Records of these modifications and information about the current way of use of this equipment were not shared with GAL.

8.85 NATS detailed that the equipment information shared with GAL included:

- Safety cases parts 1 to 3;
- Equipment OEM manuals and handbooks; and
- Forward maintenance schedules from August 2015.

8.86 NATS also shared redacted versions of its contracts with OEMs for the third-party support they provide. The contracts were redacted at the request of the OEMs, who did not want the terms of their group contracts with NATS to be shared with ANSL.

8.87 GAL then had to rely on ANSL in developing the necessary equipment documentation (safety cases, engineering and maintenance processes) as part of its effort to gain certification and designation. This was not something that ANSL had planned extensively for. GAL needed to apply some pressure on ANSL to satisfy itself that enough progress was being made, especially as these issues were being dealt with in the final phases of transition, which caused some nervousness. GAL and ANSL jointly resorted to bringing in third-party engineering support to develop the necessary documentation.

8.88 Both GAL and ANSL agreed that CAP 670 guidance leaves a lot of room for interpretation and that more or tighter guidance would have been helpful.

- 8.89 In advance of the transfer of operations to ANSL, NATS's senior engineers presented how the architecture of the various systems (e.g. Comms, Data, MET) was set up and how the systems worked at a series of workshop with ANSL engineers. In these sessions, ANSL was able to ask questions and NATS also offered some high-level validation to ANSL for its plans.
- 8.90 NATS provided final status and performance figures for the equipment when operations were transferred to ANSL. This was crucial for operational continuity, as the equipment would not have been able to be used if its status was not known.
- 8.91 Prospect would encourage the CAA to provide some clarity on what may be defined as IP, with specific reference to how this relates to legacy equipment.

### Assessment and emerging findings

- 8.92 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to assets and equipment:
- CAP 1004 highlights the significance of clear TANS asset ownership and transfer arrangements for airports in facilitating the change of TANS providers. This was demonstrated effectively at Gatwick, where transfer arrangements for the equipment were provided for in GAL's contract with NSL. However these arrangements did not cover property assets, which had to be negotiated separately; and
  - The transfer of documentation and safety cases from NSL to ANSL for the equipment was one of the key issues of the transition. GAL and ANSL's expectation was that a lot more information would be made available from NSL, particularly given the age of the equipment.
- GAL, ANSL and Prospect stated that they would welcome more guidance from the CAA that would provide clarity on what may be defined as incumbent providers' IP in relation to equipment and engineering documentation.

## Information and data

### CAA Guidance

- 8.93 CAP1004 identifies that NSL, and other TANS providers, consider the MATS Part 2 documentation falls under their intellectual property (IP) rights, due to the experience and skills deployed in developing it for a particular unit. Similarly, self-supply airports, that developed the documentation themselves, generally consider the property rights for MATS Part 2 belong to the airport.
- 8.94 In CAP 670 the CAA indicates that airports may wish to assure themselves that arrangements are in place to cover the transfer of TANS to an alternative provider and that ownership of MATS Part 2 is addressed. Although the outgoing provider has to make relevant documentation available to the incoming provider which may affect the safety of the service provided after the handover, this does not apply to documentation which may be considered IP of the incumbent, leaving open the possibility for the incumbent to charge for this IP.

### Description of situation

#### *MATS Part 2*

- 8.95 Unlike with the equipment documentation, ANSL was not surprised by the fact that NATS was not prepared to share MATS part 2. ANSL estimated that it would have taken two authors three months to develop the document. Given the tight transition timescales, ANSL

approached this pragmatically, purchasing the document from NATS. This provided some welcome clarity through the transition process and also contributed towards ensuring that the CAA's requirement for an "ops normal" transition was met. However, had ANSL had a bit more flexibility, it stated that it may have sought to negotiate the price that NATS charged for MATS part 2 [redacted] and other IP.

- 8.96 ANSL's contact with GAL is clear on issues of IP and specifically for MATS part 2 there is an agreement to transfer to another provider in the event of another transition.
- 8.97 NATS explained that it considers MATS part 2, as well as the rest of its integrated management system documentation (SMS, SecMS), and the process within this to be proprietary. It stated that the price for MATS part 2 was set in its contract with GAL.

*Other documentation*

- 8.98 Other documents, such as the unit training plan and unit competence manual, were developed independently by ANSL.

*Other data*

- 8.99 ANSL confirmed that it received safety records and performance statistics from NATS. However these were not as detailed as it required and did not include equipment history, and mitigations/corrective actions for any safety or performance reports. This was not something that ANSL had anticipated. It described a general briefing on safety issues provided by NATS in February 2016 as insufficient.
- 8.100 ANSL would welcome additional clarity about what data an outgoing provider is obliged to handover to an incoming one and notes that a better defined process could contribute to shortening transition times.
- 8.101 ANSL confirmed that at transfer of operations, there was a handover at operational level from NATS engineers on the current status of the systems, so they could be taken on in a known state (the systems would have been inoperable otherwise).
- 8.102 Prospect noted that NATS handed over only a limited amount of safety data to ANSL. For example, ANSL was provided records on significant events over the agreed two-year period, but it was not provided records on the associated resolving actions. More pertinently, safety events in January or February 2016 that were investigated by NATS through to the spring of 2016, after ANSL had taken over operations, did not have their resolving actions communicated back to ANSL. There is an information gap then which does not allow the new provider to address ongoing underlying operational issues.

**Assessment and emerging findings**

- 8.103 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to information and data:
- CAA guidance alerts airports and incoming providers to the fact that certain operational information, most prominently MATS Part 2, is considered by incumbent providers to be their intellectual property. As such, transfer of this information may be the subject of commercial arrangements;
  - ANSL expected that it would have to buy MATS Part 2 and other information from NSL, and adopted a pragmatic approach given the tight transition timeline – though would have welcomed the opportunity to negotiate further; and

- The level of detail of the safety and performance data that was transferred by NSL was lower than ANSL expected. Prospect agreed that the degree to which this information could be useful could be improved.

• The high-level description of the information that the outgoing provider should voluntarily transfer to the incoming one that is provided in CAP 670 could be extended to identify specific historical safety and staff data for a specified period. Airports may also consider establishing arrangements to collect such data on an ongoing basis from their TANS providers – though this could involve additional costs.

## Timing and costs

### CAA Guidance

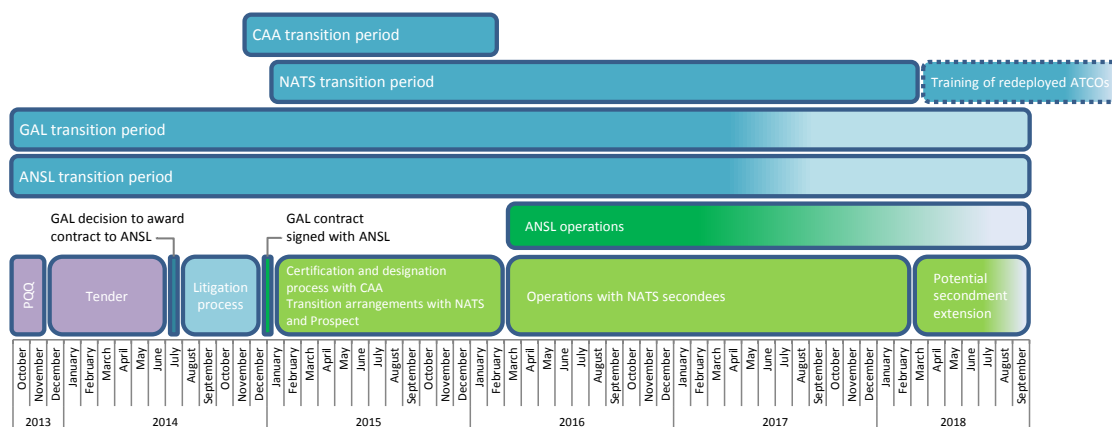
- 8.104 As noted in the introduction to this chapter, CAP 670 specifies that the incoming provider has to develop a transition plan which addresses all aspects of the transition that will need to be actioned with the outgoing provider, including training and familiarisation issues. The CAA also places an obligation on the outgoing provider to engage with the incoming provider to agree the transition plan.
- 8.105 The CAA has an outline transition plan Gantt template available from which incoming providers can develop their own detailed plans. The template and further guidance on developing and implementing such a plan would be shared at the pre-application meeting with the CAA, which incoming providers are invited to have as early as possible.
- 8.106 The minimum period recommended by the CAA on its website for gaining certification and designation is at least three to six months, and longer for more complex operations.
- 8.107 As also noted previously, although the outgoing provider has to make relevant documentation available to the incoming provider which may affect the safety of the service provided after the handover, this does not apply to documentation which may be considered intellectual property of the incumbent, leaving open the possibility for the incumbent to charge for this IP.

### Description of situation

#### *Timing*

- 8.108 The transition period, as defined by ANSL, extended from when DFS responded to the PQQ and tender starting in October 2013, through certification and designation and the transfer of operations, to the completion of all NATS secondments (foreseen for March 2018 at the earliest). Based on this definition, the transition period for ANSL was planned to be nearly four and a half years (54 months).
- 8.109 Figure 8.3 below illustrates the transition timelines:

Figure 8.3: Gatwick TANS provision transition timelines



Source: Stakeholder interviews, Steer Davies Gleave analysis

- 8.110 However, based on current progress with training of new ATCOs, ANSL expects to have to use the optional extension of the secondment agreement with NATS, which provides for up to twelve ATCO-months. It is not clear what form this extension might take, but assuming two controllers for six months would put the end of the secondments at the end of August 2018.
- 8.111 As noted in Chapter 7, the key driver of the transition timeline at Gatwick was the seasonality of traffic at the airport, with the transfer of operations planned for a slightly less busy period of the year (March 2016). Given the nearly six-month delay to the start of the transition process (July 2014 to the end of December 2014) during the legal challenge brought by NATS and GAL’s reluctance to further extend its contract with NSL, the resulting project delivery timeline was squeezed to just fourteen months (January 2015 to the end of February 2016).
- 8.112 The short transition timeline raised some concerns at the CAA, particularly around GAL’s contingency plans, and required some faith from the CAA that ANSL, supported by DFS, would be able to deliver its transition plan. This was helped by the practical approach adopted by ANSL, and its close engagement with the CAA. However, as highlighted by ANSL, a number of compromises were necessary in order to achieve the 1 March 2016 deadline, some of which had cost implications (e.g. buying MATS part 2).
- 8.113 The key challenges for the transition timeline were staffing and training, and engineering documentation. The uncertainty around the implementation of the ToaP agreement and subsequent negotiations over the large number of secondees required time to resolve. The extent to which ANSL would have to develop engineering documentation had also not been fully anticipated, meaning that additional time and resources (including external support) were required to deliver this.
- 8.114 The tri-party transition involving NSL, ANSL and GAL, which GAL facilitated was seen as having been instrumental in delivering the transition within the planned timeframe. By setting out the principles of engagement between the parties, agreeing escalation processes (which NATS indicated were not called on), and holding regular meetings where requirements and expectations could be communicated, GAL was able to ensure that good working relationships were established between all parties, on an operational level especially. GAL commented that its corporate relationship with NATS was not as constructive, as it tended to be more formal and contractual. GAL perceived that NATS was not consistent in its approach to the transition and was more helpful in some areas than others.

8.115 NATS stated that relationships overall were very professional and respectful, and that any frustrations that arose did not actually impact the transition and timeline. It added that at an operational and practical level it sought to be as accommodating to ANSL as possible (e.g. driving ANSL across the site, providing office space in the old tower), and it delivered on all of the last minute items that ANSL requested at the time operations transferred.

#### *Costs*

8.116 ANSL estimates that the total financial gap between its bid business plan and its operational business plan, having taken over the provision of TANS, will be approximately [redacted] in costs over the first two years, with approximately [redacted] of this attributed to secondments. This is above the [redacted] of contingency spend that ANSL had allowed for the secondments.

8.117 The key driver of these additional costs has been the secondments in three aspects:

- The number of seconded staff;
- The rates for the seconded staff; and
- The time required to train new staff.

8.118 ANSL had assumed that it would have to recruit and train between 15 and 18 ATCOs, with the first 5 to 8 of these validated before it took over operations in March 2016. ANSL would then have to recruit and train another 10 ATCOs, for which the same number of secondees would be required to cover the operational requirement until the new controllers were validated (10 in the first year, 5 in the second year). Instead, ANSL has had to recruit and train twelve controllers and has required the support of the same number of secondees until the new controllers have been validated. This was the result of not being able to train and validate any new controllers before the transfer of operations, due to delays in the transition, including the litigation process. The impact of these delays was in part mitigated by the fact that more ToaP ATCOs transferred from NATS than ANSL had anticipated (7 transferred compared to an expected maximum of 3).

8.119 In addition to needing more secondees than planned, the rates agreed with NATS for these secondees have been at least [redacted] times higher than ANSL was assuming, as it was not expecting to incur the full costs of the NATS secondees' DB contributions, as well as overheads and direct costs (since in ANSL's view the secondees should not be any different from the TUPE transferring staff from the incoming provider's perspective).

8.120 The unit costs for recruitment and training have been within expectations, however, the training time has been longer than planned, leading to the expectation that the secondment extension period will be required.

8.121 In summary, ANSL had planned to use its [redacted] contingency budget to cover the risk of ToaP staff not transferring to the new provider and the resulting secondments that would be required, however it has had to second more controllers than expected (x 1.2) at a higher rate than expected [redacted] and incur secondment and training costs over a longer period after the transfer of operations than expected ([redacted] x1.2 x[redacted] + extra training and secondment extension costs ≈ [redacted]).

8.122 ANSL indicated that purchasing MATS part 2 from NATS had been planned, although, as noted above, it would have welcomed the opportunity to negotiate this further had the timeline not been so tight. However, ANSL did not expect to have to develop the engineering documentation to the extent that it did. As a result, more costs than expected were incurred

in dedicating internal resources and also drawing on external support to ensure that all the documentation necessary for certification and designation was in place in time.

- 8.123 Although not directly related to the process of transition of TANS providers, the legal challenge that NATS mounted at the end of the tendering process against GAL's decision to award the contract to ANSL meant that the transition could not start until the challenge was resolved. This introduced a six-month delay to the timetable, but did not change the target date for the transfer of operations to ANSL, compressing the transition timeline. GAL stated that it also introduced substantial costs to the overall tendering and transition process in the form of legal fees and the eventual settlement.

#### **Assessment and emerging findings**

- 8.124 Our assessment of the CAA guidance and stakeholders' comments indicate the following emerging findings in relation to timings and costs:

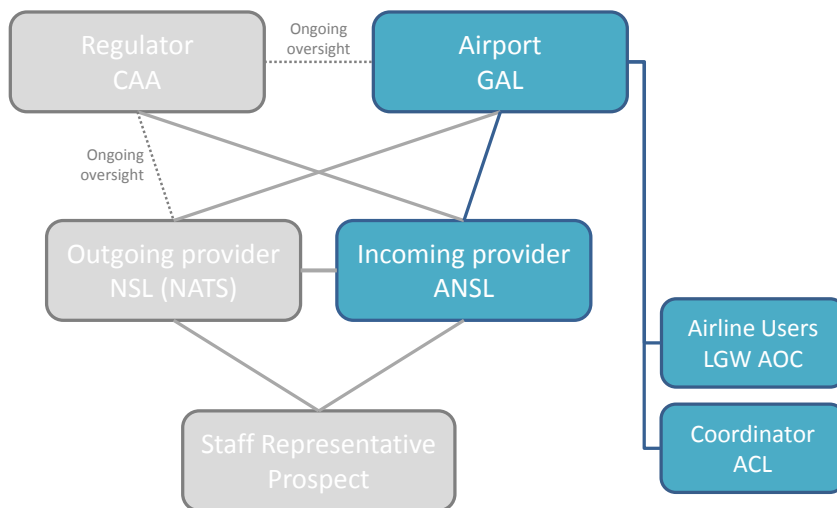
- The transfer and training of staff is the key determining factor of the length ANSL's transition period. A pragmatic approach had to be adopted by ANSL for the transition to ensure that this was completed on time;
  - CAA required some faith in ANSL's ability to meet its timeline;
  - ANSL estimated that its transition costs will be [redacted] higher than bid, driven mainly by additional secondment costs. It would be useful to be able to contextualise the transition overspend by ANSL relative to the value of the overall contract for provision of TANS at Gatwick; and
  - There exists a risk to tendering airports and bidders that legal challenges will impact their planned costs and transition timelines.
- It may be helpful for stakeholders to recognise that different players have different expectations for how long their involvement with a transition in TANS providers would last.
  - The ability to deliver plans that form part of the transition may be impacted by the prevailing need to maintain ongoing operational continuity and accommodate growth. Incoming providers should foresee development and training for traffic growth and build in contingency for this into their transition plans.
  - The expectations of airports and incoming providers about the timing and associated cost of transition are informed to some extent by uncertainty about how constructively the outgoing provider will engage with the process. As noted previously, stakeholders perceive that the main motivation for the outgoing provider to engage constructively with the incoming one is the risk of reputational damage. The possibility for enforcing CAA guidance on critical issues for the transition process was raised by some stakeholders.
  - Incoming providers should consider the balance between buying IP or investing in developing it and training staff – all in the context of the overall transition timeline.

# 9 Quality of service and other impacts

## Introduction

9.1 In this chapter we identify issues related to quality of service and whether the quality of service and declared capacity were affected by the transition to a new TANS provider. To do this we draw on data collected from the airport and ACL, as well as information provided during stakeholder discussions with airlines. Figure 6.1 below shows the relationships that this section focusses on.

Figure 9.1: Focus of quality of service and other impacts analysis



Source: Steer Davies Gleave

9.2 Where issues have been identified, we describe whether these were temporary, how long the impact lasted for, and whether they might be avoided in other circumstances.

9.3 We provide a summary of the issues identified on declared capacity / quality of service, and the relationship between the incoming provider and airport. No issues were raised by any stakeholder around areas of safety and business interruption.

## Declared Capacity/Quality of service

### Description of situation

9.4 Gatwick is designated as a Coordinated (Level 3) in accordance with EU regulation 95/93 (as amended) and with the formal designation by the Secretary of State for Transport. A Level 3 airport is one where a slot cleared by a coordinator is mandatory for all flights.



- 9.5 Slots are allocated in accordance with Regulation (EEC) No 95/93 (as amended), which is built on the principles of the IATA system. Preference in slot allocation is given to commercial air services and in particular scheduled and programmed non-scheduled services. Historic precedence exists and airlines must use 80 per cent of their allocated slots, or risk losing them in subsequent years (the “use it or lose it” rule). Airport Coordination Ltd. (ACL) is responsible for administering the process of slot allocation at Gatwick and for monitoring the slot performance of airlines with respect to the *use it or lose it* rule.
- 9.6 Gatwick, the busiest single-runway airport in the world, is operating close to the limits of its capacity during peak periods, and as a result does not have a great degree of flexibility in its ability to cope with changes to procedures or possible disruption. Innovative ways of delivering Gatwick’s operations was one of the key reasons that GAL put the provision of TANS out to tender.

### **Stakeholder comments**

#### *AOC*

- 9.7 The Airport Operators Committee (AOC) asked members about their experience of the TANS transition process at Gatwick. Generally, the member airlines did not notice anything at all during the transition or after the transfer of the TANS provision to ANSL, with no operational impacts reported.
- 9.8 Despite airlines having been quite nervous about the TANS contract going out to tender, from the airlines’ perspective everything went smoothly with the transition, which was described as a transparent, well-handled and well-delivered transition. Key to this was the regular and consistent communication with GAL and ANSL which maintained airlines’ confidence through the process.
- 9.9 In terms of introducing innovation to airlines’ operations at Gatwick, the first few months of ANSL’s provision have been “ops normal” - as per the CAA’s requirement noted in Chapter 7 – but ANSL has recently started engaging with some of the larger airlines at Gatwick to begin putting the right tools in place for exploring new ways of providing terminal services.

#### *ACL*

- 9.10 We discussed declared capacity with Airport Coordination Limited (ACL). As noted above, Gatwick is a Coordinated (Level 3) airport, where ACL monitors the slot performance of airlines. ACL reported that during the transition period there was no decline in On-Time Performance (OTP). ACL did not have to take any actions to enforce the compliance of slots and received no negative feedback from airlines. After the transition, over the Summer 2016 (S16) season, there has been an overall degradation in performance at Gatwick, although this is not necessarily related to capacity at the airport or the delivery of this capacity by ANSL.
- 9.11 Gatwick’s capacity for W15 and S16 was declared well before TANS provision transferred to ANSL, with the coordination process for S16 completed in October 2015. ANSL shadowed this process, but was not directly involved with it. The coordination process for Winter 2016 has recently been completed with ANSL, with the equivalent process for Summer 2017 kicking-off in July 2016. Growth in the W16 schedule has been achieved through coordination, rather than additional capacity (i.e. demand has been accommodated within existing movement limits).

- 9.12 ANSL has not yet had the opportunity to deliver a schedule of operations which it has been involved in modelling and coordinating with ACL. The impact of any changes in TANS provision from a coordination perspective will potentially not be known until W16, when they will be tested for the first time. ACL noted that ANSL has changed the way airport capacity at Gatwick is modelled, by moving to a model (AirTOP) with enhanced capabilities compared to that used previously (Hermes). The new model is being adapted and tailored to Gatwick's needs and draws on a larger number of inputs (e.g. far more components of the real schedules, historical operational knowledge and forecast data) and models vortices, separation viability, aircraft types, and ground holding times (separation time is the binding constraint at Gatwick). However, it will not be possible to assess the impact of this modelling change on outturn operations until several seasons relying on the new modelling have passed.
- 9.13 ACL added that the new modelling takes longer to run than that used previously, which results in fewer iterations being made (or being practical). This is welcome, as it improves focus through the process and avoids the modelling of impossibilities (e.g. more than 56 movements an hour). The innovation introduced by ANSL then is aiming to contribute to improved resilience of Gatwick's operation, by building in a few extra seconds through the schedule.
- 9.14 From what ACL has observed so far, ANSL is seen as well placed to deliver the innovation promised when it entered the market, by introducing new systems, approaches and efficiency to the UK system.

#### **Assessment and emerging findings**

- There were no reported issues with the quality and continuity of TANS services provided to airline users during the transition process according to interviews held with the AOC and ACL.
- ACL noted that ANSL has started introducing new systems and modelling approaches to the UK system, which it welcomes and observes with interest. The impact of these changes at Gatwick will be tested in Winter 2016 for the first time.

### **Incoming provider - Airport relationship**

#### **Description of situation**

- 9.15 The transition at Gatwick was described by stakeholders as a tri-party transition, involving the incoming (ANSL) and outgoing (NSL) providers, as well as the airport itself (GAL). GAL saw itself as a facilitator for the whole process. It established ways of working and communication and helped bridge NSL and ANSL's expectations. Regular (weekly) meetings involving all three parties were critical in enabling this.
- 9.16 ANSL noted that that GAL generally remained neutral through the transition in the role it adopted as facilitator, perhaps influenced by having been the main defendant through the litigation. ANSL added that although very close to the whole process, GAL, as a customer airport, felt that it was ANSL's responsibility to drive and complete the transition process.
- 9.17 GAL and ANSL developed a close working relationship through the process, although some cultural differences in terms of ways of working were noted by GAL at the start. From ANSL's side, it was important that it was able to maintain GAL's confidence, particularly at board level. ANSL reported to the GAL board regularly, and it also reported to the GIP board. Regular meetings and processes for ongoing operational updates were also set up.

9.18 ANSL's focus from start was to be a positive partner of the airport, through considering the needs of the airport and looking to introduce innovation across a number of areas that would potentially increase the resilience and capacity of airport operations. These areas include:

- New ways of supporting ATCOs: "how can ANSL make their lives easier?";
- Environmental issues: reducing noise impacts on local community through curved arrivals approaches;
- Cooperation with NERL to deploy wider initiatives together (e.g. curved arrivals approaches above);
- Replacement of EFPS; and
- Cooperating with GAL on equipment transfer and replacement, including the specification and implementation of new equipment.

**Assessment and emerging findings**

- The airport played an important role in facilitating the transition through setting up ways of working and communication between the incoming and outgoing providers.
- The responsibility to drive and complete the transition was placed on the incoming provider, which from the start was focussed on being a positive partner of the airport, maintaining its confidence at all levels and particularly the board, given the sensitivity around the letting of this contract.

## CONTROL INFORMATION

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