steer davies gleave

Review of TANS provider transition at Birmingham

Final Report (PUBLIC)
January 2017

Civil Aviation Authority

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) is reviewing the experience of transition between Terminal Air Navigation Services (TANS) providers at Birmingham Airport Limited (BAL) from NATS Services Limited (NSL) to an in-house provider (Birmingham Airport Air Traffic Limited (BAATL)).

1.2   The review takes place in the context of the United Kingdom's TANS market experiencing an increased number of changes to airports' chosen TANS provider, requiring 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 Gatwick Airport Limited 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 for TANS in the UK.

1.3   This report provides Steer Davies Gleave's independent and impartial review of the transition process for TANS provision at BAL. The review covers the transition process, and the processes and roles of the key stakeholders: the airport (BAL), the outgoing provider (NSL), the new provider (BAATL), and the CAA as the certifying authority. We have also sought the views of the airport coordinator and airlines on whether there was any noticeable impact on capacity declared or quality of service delivered during the transition; and TANS providers' staff to understand how they were impacted by the transition.

1.4   The review was asked to cover:

- The airport's and new provider's 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 airport and new TANS provider;
- Interviews with the airport, outgoing provider and new provider 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 Committee (AOC) focusing on:
  - issues raised by staff during the transition; and
  - observations about the quality of services delivered during and immediately after the transition;
- Identification of the key challenges and issues that were faced during the transition, particularly where these had cost and timetable impacts;

- Identification and explanation of any effect on airport capacity resulting from the transition, 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;
- Whether the airport made the best choice of TANS provider; and
- Whether the TANS market is subject to competition.

1.6 The study began in February 2016 and reported in April 2016. This is the draft final report.

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 BAL 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 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?
- 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; Policy Programmes Team: Tim Johnson on Trust of a Promise.
- 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.

1.9   Documents reviewed included transition plans and documents supplied from BAATL to the CAA in support of Certification and Designation, and the Trust of a Promise Agreement.

Structure of this report

1.10   The remainder of this report is structured into the following:

- Section 2: provides background to the BAL TANS transition;
- Section 3: reviews the Certification and Designation requirements;
- Section 4: reviews the transition plans and the key issues faced during transition;
- Section 5: describes the impact of transition on quality of service; and
- Section 6: provides our emerging findings.

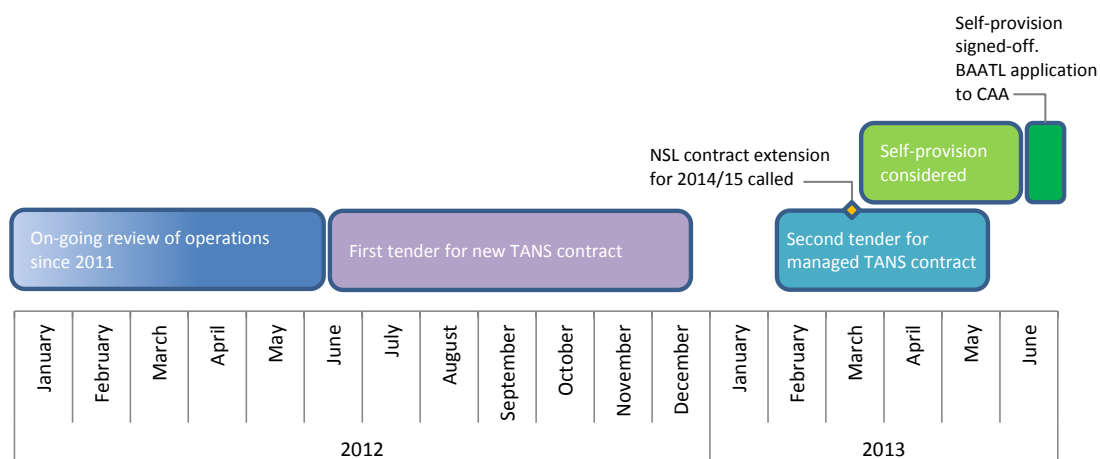# 2 Birmingham TANS provider transition: background

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)[1]. With only one compliant bid received from NSL, the airport then re-tendered for Managed TANS provision in March 2013[2]. 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[3]. 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 specialist management team 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 2.1 below illustrates the tender timeline.

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[1] OJEU Tender ID: 2012/S 117-194183

[2] OJEU Tender ID: 2013/S 29-45717

[3] OJEU Tender ID: 2013/S 91-153686

Figure 2.1: Birmingham TANS provision tender timeline

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 2.2 below illustrates the transition timelines.

Figure 2.2: Birmingham TANS provision transition timelines
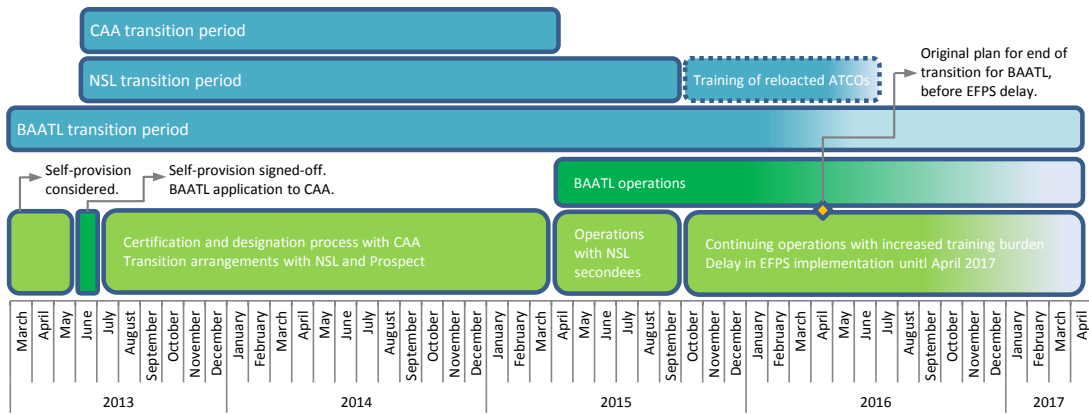
Source: Stakeholder interviews, Steer Davies Gleave analysis

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 2.3 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
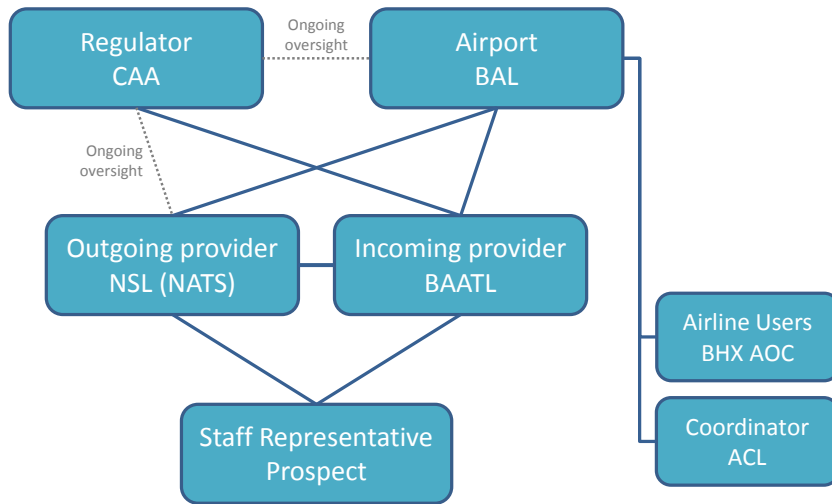
Source: Steer Davies Gleave

Anticipated risks

2.11   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.

2.12   Figure 2.4 summarises these guidance points.

Figure 2.4: Change in TANS provision guidance points
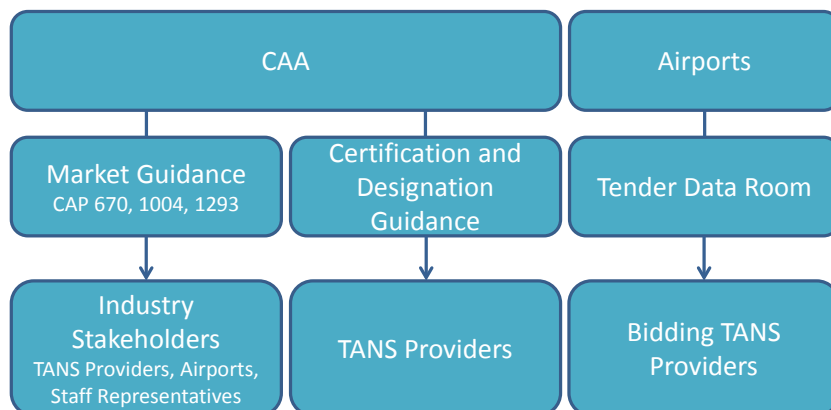
Source: CAA, stakeholder interviews, Steer Davies Gleave analysis

2.13   The tendering and transition process at Birmingham took place alongside the national debate about TANS market contestability, which was perceived by the incoming provider to influence the behaviours and positioning of different stakeholders (BAL, NATS, Prospect), particularly since this was the first time that such a transition was taking place at a large airport (with Birmingham serving 10.2 million passengers in the 2015 calendar year) and the fact that it would set a precedent for the way future transitions, for example at Gatwick, would be conducted.

2.14   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.

3 Birmingham: Certification and designation requirements

Introduction

3.1 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.

3.2 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.

3.3 Our analysis focusses on the CAA-incoming TANS provider relationship, as shown in Figure 3.1 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 3.1: Focus of certification and designation analysis
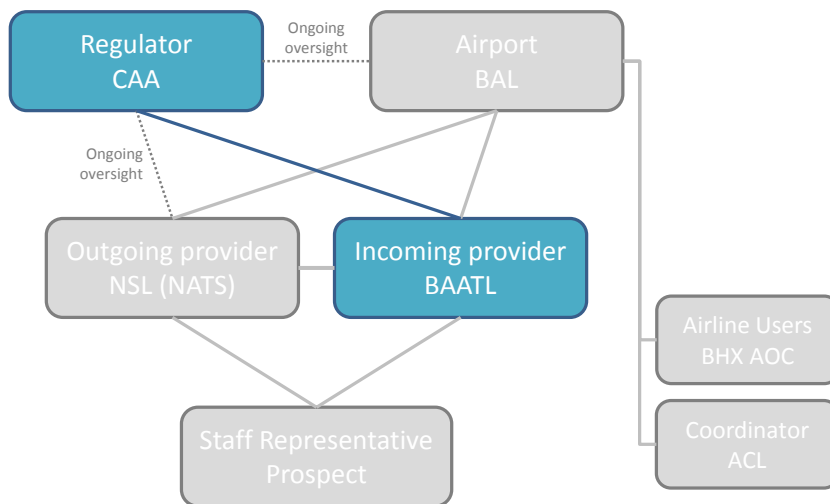
Source: Steer Davies Gleave

3.4 Activities and relationships with the outgoing TANS provider are reviewed in Chapter 4. Our recommendations are summarised in Chapter 6.

Management system documentation

Description of requirements and CAA guidance

3.5 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.

3.6 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.

3.7 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

3.8 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.

3.9 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.

3.10 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

3.11 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.

3.12 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.

3.13 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

3.14 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

3.15   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.

3.16   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.

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

3.18   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

3.19   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

3.20   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.

3.21   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 4 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.

3.22   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

3.23   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

3.24   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

3.25   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.

3.26   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.

3.27   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.

3.28   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.

3.29   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

3.30   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.

3.31   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

3.32   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.

3.33 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

3.34 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

3.35 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 were 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.

3.36 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.

3.37 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.

3.38   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

3.39   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.

4 Birmingham: Review of transition process and issues faced

Introduction

4.1 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.

4.2 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.

4.3 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.

4.4 Our analysis focusses on the outgoing-incoming TANS provider relationship, as shown in Figure 4.1 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 4.1: Focus of transition process analysis
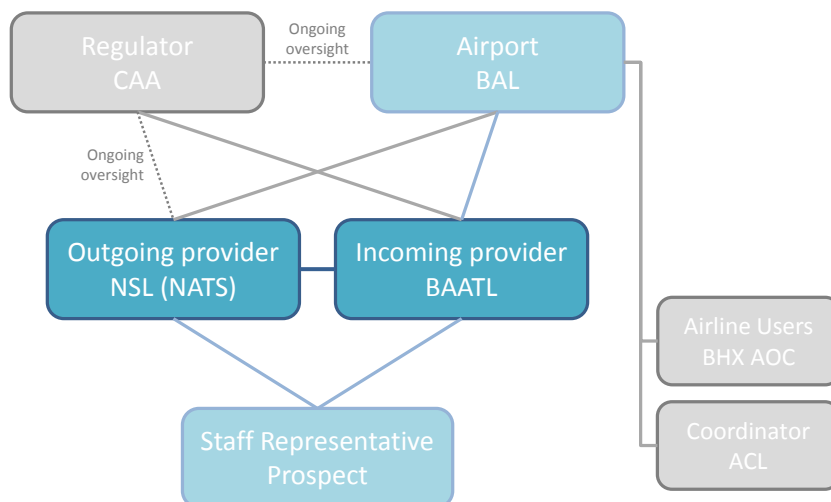
Source: Steer Davies Gleave

4.5 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. Our recommendations are summarised in Chapter 6.

Staff

CAA Guidance

4.6 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.

4.7 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.

4.8   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.

4.9   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.

4.10   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.

4.11   ToaP is a legally binding agreement between the Secretary of State, NATS Ltd and the Law Debenture Trustees.

4.12   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

4.13   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.

4.14   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.

4.15   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.

4.16   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.

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

4.18   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.

4.19   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

4.20   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.

4.21   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.

4.22   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.

4.23   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

4.24   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.

4.25   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.

4.26   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.

4.27   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 requirement as the 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.

4.28   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 local NATS management.

4.29   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

4.30   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.

4.31   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.

4.32   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

4.33   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.

4.34   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.

4.35   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.

4.36   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.

4.37   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.

4.38   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.

4.39   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

4.40   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 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.

4.41   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.

4.42   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

4.43   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 are 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

4.44   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.

4.45   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.

4.46   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

4.47   As also noted in Chapter 3, 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.

4.48   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 3, BAATL found that some safety cases had to be re-drafted in order to meet expected quality, which required some work.

4.49   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 3). 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

4.50   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

4.51   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.

4.52   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

4.53   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.

4.54   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.

4.55   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.

4.56   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.

4.57   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.

4.58   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.

4.59   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.

4.60   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

4.61   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.

4.62   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

4.63   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.

4.64   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.

4.65   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

4.66   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

4.67   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.

4.68   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.

4.69   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.

4.70   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

4.71   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.

4.72   Figure 4.2 below illustrates the transition timelines:

Figure 4.2: Birmingham TANS provision transition timelines
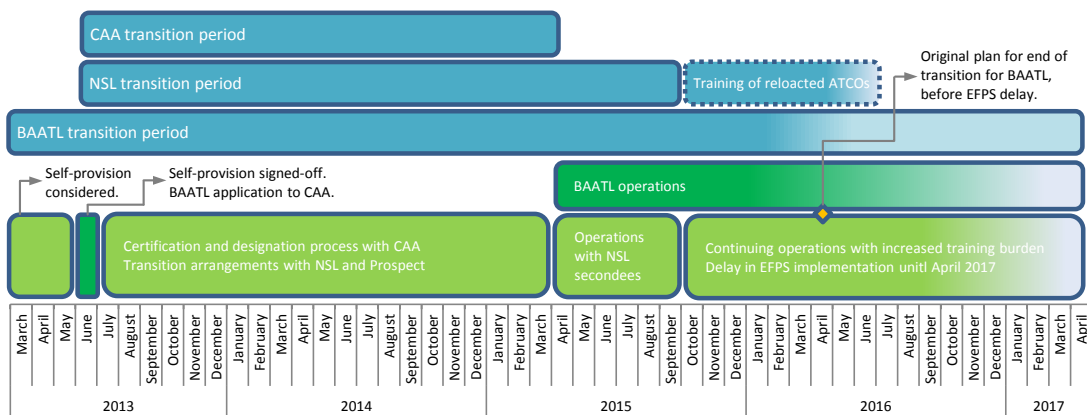
Source: Stakeholder interviews, Steer Davies Gleave analysis

4.73   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;
- The training and development required to meet the forecast increase in traffic, which has blurred into the transition training.

4.74   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.

4.75   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 3, 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.

4.76   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.

4.77   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

4.78   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.

4.79   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.

4.80   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

4.81   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.

5 Quality of service and other impacts

Introduction

5.1   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 5.1 below shows the relationships that this section focusses on.

Figure 5.1: Focus of quality of service and other impacts analysis
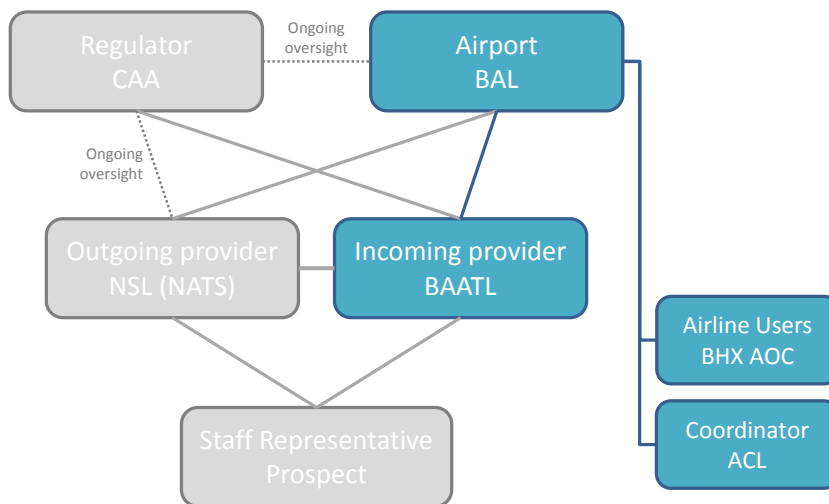
Source: Steer Davies Gleave

5.2   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.

5.3   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

5.4   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.

5.5   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.

5.6   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

5.7   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.

5.8   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

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

Stakeholder comments

5.10   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.

6   Emerging findings

Introduction

6.1   In this chapter we recap our assessment and initial findings on the TANS provider transition at Birmingham Airport. We summarise our assessment into aspects that went well during the transition, and aspects that could have gone better.

6.2   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 potentially support improvements to the TANS provider transition process.

What went well

Certification and designation

6.3   Below we summarise the aspects of the certification and designation process that were assessed to have gone well.

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 the staff completing the matrices have 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; and
- The CAA's feedback to BAATL was structured and constructive.

Assets and 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; and
- CAA guidance on the safety management system and the common requirements was considered good.

Financial aspects
- The high-level requirements for the financial information that had to be provided was clear; and

- 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.

Other issues
- The certification and designation process at Birmingham benefited significantly from the regulatory experience of BAATL's management team.

Transition process

6.4   Below we summarise the aspects of the transition process that were assessed to have gone well.

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.
- Although NATS only had limited 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; and
- 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.

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 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; and

- 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.

Timing and costs
- The transfer and training of staff is the key determining factor of the length of BAATL's transition period. The time allowed by BAATL for transition was sufficient for it to deliver its plans successfully; and
- 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.

Quality of service
- 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; and
- 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.

What could have gone better

Certification and designation

6.5   Below we summarise the aspects of the certification and designation process that could have gone better.

Management system documentation
- BAATL noted that it would have preferred a quicker turn-around by the CAA. Greater 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
- The quality of existing safety cases was lower than expected by BAATL, 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;
- 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.

Financial aspects
- The business plan and annual plan templates provided by the CAA were not found to be sufficiently detailed.

Other issues
- 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.

Transition process

6.6   Below we summarise the aspects of the transition process that could have gone better.

Staff

- 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;

- 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; and

- 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.

Assets and equipment

- No aspects of the transition process for assets and equipment were identified that could have gone better.

Information and data

- 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.

Timing and costs

- 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.

Quality of service

- No aspects of the transition process impacted quality of service were identified.

Suggestions for potential improvements

6.7   Below we present some options which may support improvements to the TANS provider transition process, based on the evidence from the transition at Birmingham. These options are to be discussed with the CAA and should also be supplemented with evidence from the review of the transition at Gatwick.

6.8   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.

Certification and designation

CAA Communications

6.9   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.

CAA guidance

6.10   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

6.11   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.

6.12   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.

6.13   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.

6.14   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.

6.15　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.

Transition process

6.16　The possibility for enforcing CAA guidance on critical issues for the transition process was raised by some 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.

CAA guidance and the staff transfer process

6.17　Given the prominence of staff issues, the CAP 670 guidance was described by some stakeholders as not adequate and that more would be welcome. Evidence from stakeholder comments 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. Areas highlighted through this review were:

- 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; and
- 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.

CAA guidance and transparency of Trust of a Promise

6.18　The transparency around the Trust of a Promise agreement, its implications and its application could be improved. 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.

6.19　The guidance available from the CAA on the Trust of a Promise agreement is limited. 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).

6.20　Some guidance on ToaP is available in CAP 1004 and CAP 1293. However, the description of ToaP provided in these documents appears to not be sufficiently clear, since some confusion was caused when used by stakeholders during the transition at Birmingham. 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 such encouragement and to have to justify why it would not be able to match the DB scheme on commercial grounds, particularly since NATS too no longer offers a DB scheme.

6.21   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.

We also note that 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.

6.22   To improve the transparency around the Trust of a Promise agreement, the CAA could:

- take steps to ensure that bidders are provided with the legal text when responding to airport tenders; and
- 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.

6.23   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. The CAA may wish to explore whether it would be able to provide an estimate of the attrition rate at each airport, which may be a useful indicator to industry.

CAA guidance on secondments

6.24   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.

CAA guidance on other issues

6.25   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.

6.26   The CAA could 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 this could involve additional costs;

- 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).

6.27 The CAA could 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.

6.28 The CAA may also 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.

6.29 The CAA could highlight to incoming providers that:

- They should consider the balance between buying IP or investing in developing it and training staff; and
- 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.

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