
Supplementary Submission #6 to European Commission

Complaint ref: CPLT(2026)00881 Filed: 2 March 2026

To: European Commission, DG Environment (EC-CPLT-ENV@ec.europa.eu) From: Gareth O'Brien BE (Civil) MSc, North Runway Technical Group Date: 28 April 2026 Re: Developer and provider competence at Dublin Airport. AirNav terminal-services monopoly, classification arbitrage, and breaches of Regulation (EU) 2017/373, Regulation (EU) 139/2014, Article 5 of Directive 2011/92/EU, and Article 9 of the Aarhus Convention

Dear Ms Ziane,

I write to file supplementary submission #6 to complaint CPLT(2026)00881.

The point is single: the entity that performed the aerodrome redesign at Dublin Airport, AirNav Ireland (constituted as IANS DAC), is not legally entrusted with that work on the statutory text, is not professionally competent to do it, and is not certified to do it under the EU regulatory framework. The Irish State has nevertheless treated AirNav as the lead provider for the North Runway redesign on the basis of an asserted statutory monopoly that does not exist. The same State has, in two forums within twenty months, given mutually incompatible characterisations of the airport operator (daa plc) to defeat substantive review: “not an undertaking” when competition law is invoked, “commercial semi-state” when freedom-of-information and Ombudsman jurisdiction is invoked. The combined effect is a breach of four of the six EU instruments cited in the original complaint: Regulation (EU) 2017/373, Regulation (EU) 139/2014, Article 5 of Directive 2011/92/EU, and Article 9 of the Aarhus Convention (transposed by Regulation (EC) 1367/2006 and Directive 2003/35/EC).

1. The asserted statutory entrustment of AirNav with terminal services does not exist on the verified text

The Department of Transport's stated legal basis for AirNav's exclusive provision of terminal services at Ireland's three State aerodromes (Dublin, Cork, Shannon) is Section 14(1)(c) of the Air Navigation and Transport Act 2022 (Act No. 40 of 2022, commencement S.I. No. 220 of 2023). This was set out in writing by Ms Ethna Brogan, Assistant Secretary for Aviation at the Department of Transport, on 12 July 2024 (in the correspondence thread at Annex S6-A): “Under Section 14(c) of the ANTA, AirNav Ireland is statutorily entrusted with the provision of terminal services at state aerodromes.”

The verified text of Section 14(1) of Act No. 40 of 2022, retrieved from the Irish Statute Book at <https://www.irishstatutebook.ie/eli/2022/act/40>, states (relevant subparagraph in full):

14. (1) The principal objects of the IANS shall be stated in its memorandum of association to be: [...]

(c) to such extent as the IANS considers appropriate, to operate and manage terminal services at State aerodromes and licensed aerodromes,

Three points follow on the text:

- (a) Section 14 is a principal-objects clause: it defines the corporate capacity of one company (IANS). It cannot be read as creating a duty on separate legal persons (daa plc; the Shannon Airport Group plc) to procure exclusively from that company. The qualifier “to such extent as the IANS considers appropriate” places discretion in IANS as to whether to offer the service; it does not place a correlative duty in any third party.
- (b) Section 14(1)(c) refers expressly to “State aerodromes and licensed aerodromes.” Only Dublin, Shannon and Cork are State aerodromes; the other category covers aerodromes licensed by the Irish Aviation Authority under the Irish Aviation Authority (Aerodromes and Visual Aids) Order 2008 (S.I. No. 355 of 2008), which are privately or municipally owned. An exclusive reading of paragraph (c) would confer the same entrustment at both categories under identical text. AirNav Ireland is not, to NRTG’s knowledge, the terminal-services provider at licensed aerodromes generally (Kerry, Donegal, Waterford, Weston, and Sligo are not served by AirNav). The Department has not explained how its reading of Section 14(1)(c) survives this contradictory practice on the same words.
- (c) The words “exclusive,” “sole,” “only IANS,” “restricted to,” and “no other person may” do not appear in Section 14, in the surrounding provisions of the 2022 Act, or in the transitional provisions in S.I. No. 220 of 2023. A statutory entrustment of a EUR 32 million per annum revenue stream would not be implied by silence.

The Act in fact presupposes a regulated market with multiple providers. It refers repeatedly to air navigation services provided by “Eurocontrol, the IANS, the Minister or any other person.” The Irish Aviation Authority Act 1993, the predecessor instrument, gave the (then combined) IAA both the operational role and the regulatory role over terminal services at Section 14(1)(d): “to such extent as the company considers appropriate, to operate and manage terminal services at State aerodromes and at licensed aerodromes and to regulate the provision, operation and management of terminal services at State aerodromes and at licensed aerodromes.” ANTA 2022 retains the operational half for IANS at Section 14(1)(c) and locates the regulatory function in the IAA in its post-merger single-regulator form. Regulation of “the provision” of a service is market-access language and presupposes multiple providers; an exclusive entrustment would foreclose the question. The Oireachtas drafted both the operational and the regulatory limb. It cannot coherently have intended both an exclusive entrustment and a regulated market.

The phrase “terminal services” is defined at Section 2 of the Irish Aviation Authority Act 1993 (Act No. 29 of 1993, definitions still operative): “the air navigation services provided for aircraft landing at or taking off from an aerodrome or while in the vicinity of an aerodrome before landing at or after taking off from that aerodrome.” That definition is operational: it describes services

provided to aircraft and does not extend to the engineering design of the aerodrome or of its instrument flight procedures.

The Department has had ten months in which to address these points. Five direct questions were put to Ms Brogan on 7 and 27 May 2024 (in the thread at Annex S6-A); a detailed inline rebuttal of the 12 July 2024 letter was sent on 9 August 2024 (Annex S6-A); a recorded-post follow-up issued on 24 April 2025 (Annex S6-B); a chase on 29 August 2025 (Annex S6-C). None has been acknowledged. The licensed-aerodromes test, in particular, has never been answered.

2. The CCPC closed the competition file on a ground inconsistent with both the State's own characterisation and the governing CJEU authority

NRTG filed a competition complaint with the Competition and Consumer Protection Commission ("CCPC") on 10 July 2024 (Ref CAS-303342-S1D9H4) on the AirNav terminal-services arrangement and the absence of competitive tender across thirty years. Two Preliminary Findings of fact were issued by the CCPC (Clodagh Murphy):

Plank 1 (8 August 2024; in the thread at Annex S6-D): "Member States are allowed to organise the provision of certain specific air traffic services in a competitive environment, but there is no requirement on them to do so." The CCPC's reasoning adopted the Department's reading of Section 14 as a premise. It did not adjudicate the construction issue.

Plank 2 (26 August 2024, Annex S6-D): "An entity, such as Dublin or Cork airport, acting in the exercise of official authority where the activity in question is a task in the public interest, which forms part of the essential functions of the State, is not an undertaking and therefore its activity does not fall within the scope of competition law."

Plank 2 invokes the *Diego Cali* doctrine at the level of the general principle but does not apply the controlling CJEU authority on airport operators: *Aéroports de Paris v Commission*, Case T-128/98 (CFI, 12 December 2000), upheld on appeal in *Commission v Aéroports de Paris*, Case C-82/01 P (ECJ, 24 October 2002). The Court of First Instance and the Court of Justice both held that the management of airport infrastructure is an economic activity and that airport operators are undertakings within the meaning of Article 82 EC (now Article 102 TFEU). The *Diego Cali* exception is narrow and applies to functions "by their nature, aim and the rules to which they are subject, typical of a public authority"; it does not cover the commercial provision of aerodrome services to airlines for a fee at a revenue-generating airport. Plank 2 is incompatible with *Aéroports de Paris*.

The CCPC has not adjudicated the merits. It has closed the file by classification and directed NRTG to Section 14 of the Competition Act 2002, which provides for a private action in the Circuit or High Court.

3. The Irish State characterises daa in mutually incompatible ways across contemporaneous proceedings

The CCPC's "not an undertaking" characterisation of daa (26 August 2024) is irreconcilable with the Department of Transport's own characterisation of daa, given on the public Dáil record nineteen months later. In its written answer to Question 25673/26 of 14 April 2026 (Deputy Ann Graves TD; Annex S6-E), the Department described daa as a "commercial semi-state" company, in order to explain daa's exclusion from the Freedom of Information Acts and the Ombudsman's jurisdiction.

The two characterisations are taken in writing, in different proceedings, by State organs of the same Member State, within twenty months, and produce opposite outcomes:

- "Not an undertaking" (CCPC, August 2024): closes the competition complaint and removes daa from Articles 101 and 102 TFEU and the Competition Act 2002.
- "Commercial semi-state" (Department of Transport, April 2026): excludes daa from the Freedom of Information Acts and Ombudsman oversight, on the ground that it is a commercial semi-state body engaged for gain in the provision of a service.

Section 3(1) of the Competition Act 2002, as amended, defines an undertaking as "a person... engaged for gain in the production, supply or distribution of goods or the provision of a service." A "commercial semi-state" body engaged for gain in the provision of a service is, by the State's own characterisation, an undertaking on the statutory definition. The two positions cannot co-exist on the merits.

The pattern is consistent: the State adopts whichever characterisation excludes the regime currently being pressed. No domestic forum has had the two characterisations placed before it simultaneously, because they arise in proceedings that do not communicate.

The same Department of Transport contributes to both characterisations: the CCPC's Plank 1 reasoning adopted the Department's statutory reading on Section 14 ANTA, and the Graves PQ answer is the Department's own. The contradiction is not between two unrelated bodies but within a single Department's positioning of a single entity.

4. The technical consequence: AirNav was not competent to perform the aerodrome redesign

The North Runway project was not an isolated instrument-flight-procedure design within an already-completed aerodrome redesign. It was the engineering conversion of a single-runway aerodrome to a parallel-runway aerodrome, requiring aerodrome-design and airspace-design competence at the level of a chartered engineering organisation. The redesign produced 30-degree to 86-degree turns at 400 ft AGL on departure, on routes never assessed in the 2007 Environmental Impact Statement (PL06F.217429); the population impact, documented in supplementary #5 (Annex S5-G, Zenodo DOI 10.5281/zenodo.19567671), is 4,008 buildings and 13,923 residents newly overflown within the 1.5 km half-width corridor under the routes actually flown, against 330 buildings and 998 residents under EIS-consistent alternatives (a twelve- to

thirteen-fold increase). The Commission has already found Ireland's process non-compliant with Regulation (EU) 598/2014 in Decision C(2026) 919 of 10 February 2026.

AirNav is, on the documentary record:

- (a) not qualified to perform engineering design as a corporate matter. Its principal objects under Section 14(1)(c) ANTA 2022 are the operation and management of terminal services. Engineering design of aerodrome redesigns is not within those objects, and AirNav has no chartered engineering structure capable of taking responsibility for one.
- (b) not certified as a Procedure Design provider under Annex XI (Part-ASD) of Regulation (EU) 2017/373. daa's own letter of 19 April 2024 (Annex S6-F) conceded that AirNav "in turn contract[s] expert, EASA qualified, Instrument Flight Procedure designers as required." AirNav accepted the procedure-design role without holding the certification, made the design decisions itself, and outsourced only the IFP coding to externally-certified designers. The Regulation requires the responsible procedure-design provider to be certified; outsourcing the coding while retaining the design decisions does not satisfy that requirement.
- (c) silent on aerodrome-level redesign competence. The record does not identify any certified procedure-design provider or chartered engineering organisation as the responsible designer of the North Runway aerodrome redesign as a whole. The IFP procurement at (b) is one output within a larger redesign for which no responsible engineering entity has been named. NRTG has put this question to the Department since May 2024; it has not been answered.

The technical character of the routes flown since August 2022 is consistent with this competence gap.

5. The four EU instruments engaged

- (i) Regulation (EU) 2017/373 (ATM/ANS Common Requirements). The instrument-flight-procedure design that determined the routes flown since August 2022 was performed without any organisation in the record holding procedure-design certification under Annex XI (Part-ASD) of the Regulation. AirNav has confirmed it contracts IFP design externally and is not itself a procedure-design provider. The aerodrome-level redesign of which the IFP procurement was one output has no responsible engineering organisation of record.
- (ii) Regulation (EU) 139/2014 (Aerodromes). Dublin Airport's certification as an aerodrome operator presupposes that the procedures and infrastructure supporting its operation were designed by competent providers. If the engineering of the single-to-parallel-runway conversion was performed by a non-certified procedure-design provider and at no point by a chartered engineering organisation, the certification basis is in question. EASA's Confidential Safety Report #4851 (filed by NRTG on 29 October 2025; acknowledged 17 November 2025) addresses an adjacent point on the wildlife-hazard limb of Reg 139/2014 and is under investigation.

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- (iii) Article 5 of Directive 2011/92/EU (Environmental Impact Assessment). Article 5 requires the developer to provide an Environmental Impact Assessment Report containing the information specified in Annex IV. Annex IV(6) of the consolidated Directive requires “a description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.” The 2007 EIS assessed straight-ahead departures; the routes flown since August 2022 turn 30 to 86 degrees at 400 ft AGL. The deviation is not operational drift but a different design, which was never assessed under Annex IV. The body that produced the redesign was not, as a matter of statutory entrustment, corporate competence, or EASA certification, qualified to do so. Article 5 EIA is engaged at the developer-competence level: the assessment-producing function was assigned to a body without the competence to produce it, and no assessment of the redesign was produced.
- (iv) Article 9 of the Aarhus Convention (transposed by Regulation (EC) 1367/2006 and Directive 2003/35/EC). Three Article 9 problems run together:
- The CCPC has closed the competition file by classification, without adjudicating the merits, and has directed NRTG to a private action in the Circuit or High Court. That route, at approximately EUR 10,000 per sitting day, is “prohibitively expensive” within the meaning of the Convention. No other forum has adjudicated the underlying statutory-monopoly point.
 - The CCPC’s “not an undertaking” device contradicts the Department of Transport’s “commercial semi-state” characterisation in the Graves PQ 25673/26 answer of 14 April 2026, and the contradiction has not been reconciled in any domestic forum.
 - A precision parliamentary question on the Section 34C / EIA-baseline / de facto retention point was tabled by Deputy Roderic O’Gorman as PQ 422 on 21 April 2026 (Question 28679/26; Annex S6-G), aligned with this complaint. The Ministerial answer (Annex S6-H) recites the chronology of the separate An Coimisiún Pleanála night-flights appeal of 17 July 2025 and the Commission’s notification of 10 February 2026 (Decision C(2026) 919), and concludes “Given that this is currently an open case with ACP, it would be inappropriate to comment further at this time.” The answer addresses none of the three substantive questions asked. The s.34C application under the Planning and Development Act 2000 (ABP-314485-22) is not the same proceeding as the s.10 / Reg 598 night-flights appeal; the conflation by the answering Department is on the public record and is itself an Article 9 access-to-information failure.

The Ministerial recital of C(2026) 919 in answer to a question that did not ask about C(2026) 919 is the first occasion on which a Minister of the State has affirmed the Commission’s adverse Balanced-Approach finding on the Dáil record. That affirmation may be useful to the Commission’s preliminary assessment on its own terms.

6. The Schiphol and BER pattern (footnote)

For completeness on the cross-Member-State dimension: Commission Implementing Decision (EU) 2025/519 applied Regulation (EU) 598/2014 to Schiphol; Berlin Brandenburg (BER) administrative-court litigation (BVerwG 4 C 34.13) addresses departure routes deviating from the EIS without reassessment. Ireland's pattern at Dublin shares the same structural element: routes deviating from the EIA without reassessment, in three Member States. NRTG holds this comparator material and is prepared to develop it in a further supplementary should the Commission wish.

7. Request

NRTG respectfully requests:

- (a) that the Commission examine the documentary record at Sections 1 to 4 above as part of the preliminary assessment of complaint CPLT(2026)00881 expected by approximately 12 May 2026;
- (b) that the Commission consider whether Article 5 of Directive 2011/92/EU, the certification framework under Regulation (EU) 139/2014, and the procedure-design provider requirements under Annex XI (Part-ASD) of Regulation (EU) 2017/373 have been complied with in circumstances where the entity performing the aerodrome redesign at Dublin Airport (i) is not entrusted with that work on the verified statutory text, (ii) is not certified as a procedure-design provider, and (iii) procures the underlying IFP design from external designers without identifying any responsible engineering organisation for the aerodrome-level redesign;
- (c) that the Commission take note that the access-to-justice route invoked by the CCPC (Section 14 of the Competition Act 2002, private action in Circuit or High Court) is "prohibitively expensive" within the meaning of Article 9(4) of the Aarhus Convention, and that no other domestic forum has adjudicated, or is willing to adjudicate, the merits;
- (d) that the Commission take note of the contradictory characterisation of daa by Irish State organs (CCPC, August 2024; Department of Transport, April 2026) and consider whether the use of mutually incompatible characterisations across contemporaneous proceedings, each excluding a different EU or transposing instrument from operating on the entity, is consistent with the principle of effectiveness in EU law.

The original complaint and earlier supplementaries (including the Zenodo-deposited GIS evidence at Annex S5-G) are already on file at CPLT(2026)00881.

Yours faithfully,

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Annexes

- S6-A: Department of Transport correspondence thread, May to August 2024. Contains: (i) NRTG questions A to E to Ms Angela Flynn (daa), 7 May 2024; (ii) departmental escalation to Ms Ethna Brogan (Asst Sec Aviation, DGCA) and others, 27 May 2024; (iii) Ms Brogan's letter of 12 July 2024 asserting the statutory entrustment under Section 14(c) ANTA 2022; (iv) NRTG inline rebuttal of 9 August 2024 with three substantive arguments and the licensed-aerodromes test. Source: `correspondence/dept-transport/2024-08-09 G0 to EB terminal services monopoly rebuttal.eml`. Working analysis at `wip/analysis-eb-rebuttal-9aug2024.md`.
- S6-B: NRTG follow-up to Ms Brogan, 24 April 2025, sent by recorded post. Source: `correspondence/dept-transport/2025-04-24 G0 to Brogan recorded-post follow-up.pdf`.
- S6-C: NRTG chase to the Minister for Transport, 29 August 2025, recording lack of acknowledgement of the 24 April 2025 letter and three further unanswered formal letters. Source: `correspondence/minister-sent/2025-08-29 G0 to Minister chase recorded-post.pdf`.
- S6-D: CCPC complaint thread, July to August 2024, Ref CAS-303342-S1D9H4 (Clodagh Murphy). Contains both Preliminary Findings of fact: Plank 1 (8 August 2024) restating the Department's Section 14 ANTA reading as a premise; Plank 2 (26 August 2024) applying the *Diego Cali* doctrine to close the file on classification. Source: `correspondence/ccpc/2024-08-26 CCPC PF0 terminal services CAS-303342-S1D9H4.eml`.
- S6-E: Department of Transport written answer to Deputy Ann Graves TD, Question 25673/26, 14 April 2026 ("commercial semi-state"). Source: `correspondence/pq-tracking/PQ 25673-26 Graves FOI Ombudsman reply.eml`.
- S6-F: daa (Angela Flynn) letter to NRTG, 19 April 2024, follow-up to the meeting of 5 April 2024. Concedes that AirNav contracts external EASA-qualified IFP designers ("They in turn contract expert, EASA qualified, Instrument Flight Procedure designers as required"). Source: `correspondence/daa/2024-04-19 Flynn followup actions 5 April meeting.eml`.
- S6-G: PQ 422 by Deputy Roderic O'Gorman to the Minister for Transport (Question 28679/26), 21 April 2026. Three-part question on Section 34C, EIA baseline, and de facto retention of unassessed routes. Source: <https://www.oireachtas.ie/en/debates/question/2026-04-21/422/> and `correspondence/pq-tracking/PQ-422-28679-26-OGorman-section-34C-EIA-baselin`
- S6-H: Ministerial answer to PQ 422, 21 April 2026. Recitation of the unrelated ACP night-flights appeal and the Commission's Decision C(2026) 919; "open case... inappropriate to comment further." Source: `correspondence/pq-tracking/PQ-422-28679-26-OGorman-section-34C-E`

Statutory and case-law sources verified against the Irish Statute Book at <https://www.irishstatutebook.ie/eli/2022> (ANTA 2022, retrieved 2026-04-15) and against the IAA Act 1993 revised consolidation at [legal-sources/irish/revised/iaa_act_1993_revised.pdf](https://www.legal-sources/irish/revised/iaa_act_1993_revised.pdf). CJEU authorities (*Aéroports de Paris*, Case T-128/98 and Case C-82/01 P; *Diego Cali*, Case C-364/92) cited as published in the Court Reports.