

Annex S6-A: Department of Transport
correspondence thread, May to August 2024
(NRTG questions to Ms Flynn 7 May 2024;
departmental escalation 27 May 2024; Ms
Brogan letter 12 July 2024; NRTG inline rebuttal
9 August 2024)

Message metadata

- **Date:** Fri, 09 Aug 2024 12:50:36 +0100
- **From:** Gareth O'Brien gobrien@yupon.com
- **To:** "Ethna Brogan (Transport)" Ethna.Brogan@transport.gov.ie
- **Cc:** Alan Farrell TD alan.farrell@oireachtas.ie, Joe Carey joe.carey@oireachtas.ie, cathal.crowe@oireachtas.ie, Alan Dillon alan.dillon@oireachtas.ie, Martin Kenny martin.kenny@oireachtas.ie, michael.lowry@oireachtas.ie, steven.matthews@oireachtas.ie, james.oconnor@oireachtas.ie, darren.orourke@oireachtas.ie, Duncan Smith duncan.smith@oireachtas.ie, Lynn Boylan lynn.boylan@oireachtas.ie, gerard.craughwell@oireachtas.ie, regina.doherty@oireachtas.ie, Timmy Dooley timmy.dooley@oireachtas.ie, Gerry Horkan gerry.horkan@oireachtas.ie, North Runway info@north-runway.com, Helen McEntee Helen.McEntee@oireachtas.ie, Thomas Byrne thomas.byrne@oireachtas.ie
- **Subject:** Re: State mandate to daa re: terminal services monopoly

Body

Dear Ms Brogan,

You have explained your interpretation of the primary legislation that you feel establishes AirNav as a monopoly provider of terminal services within the state. I have addressed your answers inline below (my text in bold).

In short, your interpretation of the Act is incorrect. The Department's erroneous interpretation has led to a cartel arrangement between IANS DAC, daa plc and The Shannon Airport Group plc (all state-owned companies) that grossed 32M Euro for IANS in 2023. No other provider has been invited to compete for the provision of terminal services.

IANNS (previously IAA-ANSP) has had 30 years of monopoly operation without effective oversight or governance. Absent competition, the company's service performance is poor, leading to delays and disruption to passengers and permitting operating conditions that reduce safety. Their involvement in the development of the north runway at Dublin Airport has been beyond the scope of the company's objects and beyond their professional capabilities. The result is the present aerodrome operations that see 100,000 flights per year unnecessarily showering noise and air pollution over:

* a primary school with an additional needs unit serving

noise-sensitive children with autism, * a nursing home * and the homes of 30,000 people.

None of these people were ever consulted or even informed while living along routes that have never had an environmental assessment. While daa and AirNav insist they use Noise Preferential Routes, no state entity has ever assessed, approved or designated these routes as preferential for noise. Had a qualified, competent, experienced design firm undertaken the redesign of the aerodrome these considerations would have been properly included in the process.

I have repeatedly asked you to engage with our technical group to ensure you have an external perspective on the situation at Dublin Airport. While you are in routine contact with the state-owned entities whose poor performance has caused the situation, you refuse to hear from those of us who are suffering the effects. There are multiple mechanisms by which the flawed procedures developed by AirNav (IANNS) can be corrected. Our proposal to daa was stalled for 6 months while AirNav supposedly assessed it. To no one's surprise, at the end of that period there was no report, no modelling released, simply a statement that "it's complex and regulated" along with a commitment from daa to do nothing to fix the problem but to create a process about a process to receive input.

As the most senior state officer in charge of civil aviation, I would greatly appreciate if you would seek legal advice on your interpretation of the Act which is fundamental to the management crisis at daa and AirNav. We remain open to constructive engagement with the Department to help you address the problems at daa and AirNav to the betterment of the airport and its neighbours.

Regards,

Gareth O'Brien BE (Civil) MSc

Dear Mr O'Brien,

...

The main question you pose in your email is whether AirNav Ireland has the exclusive right to provide terminal services at the State airports and if this is compliant with EU law. In summary response, yes the national framework for air traffic management (ATM) in Ireland is in compliance with the EU ATM legislative framework, commonly referred to as the Single European Sky. ATM/ANS services are regulated by the Irish Aviation Authority, which since 1 May 2023 is the single aviation regulator, encompassing safety,

security, economic and consumer protection regulation. The IAA undertakes this work in compliance with European Aviation Safety Agency (EASA) and International Civil Aviation Organisation (ICAO) regulations and standards.

I expect you included this as background or context, however it is important to note that the work of the IAA is not relevant to the exclusive provision of terminal services by AirNav. IAA is limited to processing submissions strictly and solely on the basis of compliance with safety regulations and has no role in general oversight of the aviation industry. According to daa, AirNav's exclusive provision of terminal services is a "directive from the Department" and thus nothing to do with IAA.

AirNav Ireland is the State air navigation service provider ('ANSP'). The ANSP functions of the IAA were vested in AirNav Ireland on 1 May 2023 following the enactment of the Air Navigation and Transport Act 2022 ('ANTA'). Under Section 14(b) of the ANTA, AirNav Ireland is statutorily entrusted with the provision of air navigation services in Irish and related airspace (e.g. Shanwick Oceanic Control Area).

This is not relevant to the provision of terminal services which both the 1993 Act and the 2022 ANTA (the Act) clearly separate from the general ANSP function. If ANSP were inclusive of terminal services, it would not be separately defined and separately treated by the Act.

Under Section 14 (c) [sic] of the ANTA, AirNav Ireland is statutorily entrusted with the provision of terminal services at state aerodromes.

Section 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

Section 14(1)c of the ANTA does not statutorily entrust AirNav with the provision of terminal services at state aerodromes. Such an interpretation is incorrect on several grounds:

* Section 14 defines the principle objects of the company (IANS). The only statutory effect of this section is to establish what those objects shall be. There is no possible interpretation of a bill establishing the objects of one company as binding the commercial decisions of other companies, including daa plc, as to which of the multiple EASA-authorized service providers across the EU they shall use at Dublin, Shannon and/or Cork airports. * Section 14(1)c refers to both state and licenced aerodromes. IANS is not the provider of terminal services at many of the licensed aerodromes in the country. If your interpretation of 14(1)c were correct that "AirNav Ireland is statutorily entrusted with the provision of terminal services at state aerodromes" the text of the act is clear that the same interpretation would also apply to licensed aerodromes. The reality on the ground demonstrates this not to be the case. * You may have mistaken the phrase "_to such extent as the IANS considers appropriate" _as giving IANS authority as the sole arbiter of where it can force the aerodrome operator to use its services. This

is not correct. The objects of a company define the activities that the owner of the company permits it to offer. Under 14(1)c IANS may chose to, or chose not to, offer terminal services at state and licenced aerodromes. None of this implies a statutory requirement on other independent entities to permit only IANS to provide terminal services at their aerodromes, be they state or licenced.

Terminal services are defined in Section 2 of the Irish Aviation Authority Act 1993 as “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”. The design of instrument flight procedures is an air navigation service provided by AirNav Ireland.

The design of instrument flight procedures is an engineering process that AirNav is

- * Not qualified to perform having no trained engineers on staff,
- * Not approved by the IAA to perform as IANS is not an Approved

Procedure Design Organization (APDO), * Not authorized to provide by the objects of the company which do not encompass the provision of professional engineering services.

According to EASA: “Air Navigation Services” means air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services. (Article 2(4) of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky.)

The Act permits AirNav “to operate and manage terminal services”. It is an impossible stretch to include professional design of aerodrome procedures in operating or managing terminal services. There is no legitimate interpretation of “air navigation services” that includes providing engineering services by professional air traffic controllers acting as amateur engineers.

The aerodrome was converted from a single runway to dual runway facility. To describe the complete redesign of a fundamentally changed aerodrome as “design of instrument flight procedures” is to lay bare the root of the problem. AirNav, not having properly qualified engineers or designers, approached this exercise exactly as though they were adding a few procedures, leaving the old ones alone as much as possible. As they wrote to the Minister, they considered themselves unrestrained by planning permission while acting as daa’s contractor, claiming that planning permission was daa’s domain. Had the process been carried out by properly instructed, trained engineers with appropriate relevant expertise and experience it would not have been such a complete failure.

Finally, with regard to your query on Regulation (EU) 139/2014 Dublin Airport is a certified aerodrome under this Regulation.

Thank you for clarifying this.

Gareth O’Brien +353-87-277-9281 Mobile

On 2024-07-12 17:25, Ethna Brogan (Transport) wrote:

Dear Mr. O'Brien

I apologise for the delay in responding to your original email.

The main question you pose in your email is whether AirNav Ireland has the exclusive right to provide terminal services at the State airports and if this is compliant with EU law. In summary response, yes the national framework for air traffic management (ATM) in Ireland is in compliance with the EU ATM legislative framework, commonly referred to as the Single European Sky. ATM/ANS services are regulated by the Irish Aviation Authority, which since 1 May 2023 is the single aviation regulator, encompassing safety, security, economic and consumer protection regulation. The IAA undertakes this work in compliance with European Aviation Safety Agency (EASA) and International Civil Aviation Organisation (ICAO) regulations and standards.

AirNav Ireland is the State air navigation service provider ('ANSP'). The ANSP functions of the IAA were vested in AirNav Ireland on 1 May 2023 following the enactment of the Air Navigation and Transport Act 2022 ('ANTA'). Under Section 14(b) of the ANTA, AirNav Ireland is statutorily entrusted with the provision of air navigation services in Irish and related airspace (e.g. Shanwick Oceanic Control Area).

Under Section 14 (c) of the ANTA, AirNav Ireland is statutorily entrusted with the provision of terminal services at state aerodromes. Terminal services are defined in Section 2 of the Irish Aviation Authority Act 1993 as "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". The design of instrument flight procedures is an air navigation service provided by AirNav Ireland.

Finally, with regard to your query on Regulation (EU) 139/2014 Dublin Airport is a certified aerodrome under this Regulation.

Yours sincerely

Ethna Brogan

Assistant Secretary, Aviation

An Roinn Iompair

Department of Transport

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Lána Líosain, Baile Átha Cliath, D02 TR60

Leeson Lane, Dublin, D02 TR60

www.gov.ie/transport [1]

Ethna Brogan is a Designated Public Official within the meaning of the term in the Regulation of Lobbying Act 2015

From: Gareth O'Brien gobrien@yupon.com Sent: Wednesday, July 10, 2024 4:36 PM To: Ethna Brogan (Transport) Ethna.Brogan@transport.gov.ie; Daragh Phelan (Transport) Daragh.Phelan@transport.gov.ie; Adam Monaghan (Transport) Adam.Monaghan@transport.gov.ie; Nicola Hayes (Transport) Nicola.Hayes@transport.gov.ie; Bill Morrissey (Transport) Bill.Morrissey@transport.gov.ie; Susie O'Connor (Transport) Susie.Oconnor@transport.gov.ie; Catherine Phillips (Transport) Catherine.Phillips@transport.gov.ie Cc: Transport MINISTER'S OFFICE Minister@transport.gov.ie; Eoin Keary eoinkeary@gmail.com; Cllr Toole gillian.toole@memberse.meathcoco.ie; Cllr Killian nick.killian@members.meathcoco.ie; thomas.byrne@oireachtas.ie; darren.orourke@oireachtas.ie; helen.mcentee@oireachtas.ie; Minister James Lawless james.lawless@oireachtas.ie Subject: State mandate to daa re: terminal services monopoly

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Dear Ms Brogan,

Is it possible that you or someone in your department could please acknowledge receipt of this e-mail? I sent the message below in May seeking assistance from the Department and have not heard anything in reply. I'm wondering if it perhaps slipped through the cracks?

Regards,

Gareth.

Gareth O'Brien +353-87-277-9281 Mobile

On 2024-05-27 10:42, Gareth O'Brien wrote:

Dear Transport Department,

As you'll see below daa told a group of us in a face-to-face meeting that IAA-ANSP (now AirNav) has for 30 years had exclusive right to provide terminal services at state aerodromes because that is "mandated by the Department". According to AirNav's last annual report, the company grossed EUR32M from the provision of terminal services at state airport. According to daa no competition for the provision of this service is required, leaving the 100% state-owned DAC, IANS (AirNav), in the position of holding a state-mandated monopoly. On its face, this seems to be a breach of competition law, but perhaps there is an explanation.

daa seems now to have changed its position on this being a Department mandate, instead making a vague non-specific statement about interpretation of legislation. This in the context of a 30-year period during which daa has given exclusive access to this lucrative revenue stream to the company that was throughout the period also the aerodrome regulator. Given the lack of coherent answer from Ms Flynn, I asked a series of follow up questions which you will find below.

Separately, the daa used IAA-ANSP as its design contractor for the redesign of the aerodrome as part of the north runway project. There is no indication that this contract went out to tender and IAA-ANSP appears to have been given sole-supplier status. Is there a reason why this would be permitted under competition law?

As Ms Flynn has now refused to even acknowledge receipt of the questions, is anyone in the Department of Transport able to engage?

Regards,

Gareth

Gareth O'Brien +353-87-277-9281 Mobile

—— Original Message ——

Subject:

Re: Follow up on actions from meeting 05 April 2024

Date:

2024-05-22 11:05

From:

Gareth O'Brien gobrien@yupon.com

To:

Angela Flynn Angela.Flynn@daa.ie

Copy:

Eoin Keary eoinkeary@gmail.com, Cllr Toole gillian.toole@members.meathcoco.ie, Cllr Killian <nick.killian@members.meathcoco.ie> A Kenny Jacobs kennyj.jacobs@daa.ie, Gary McLean Gary.McLean@dublinairport.com

Hi Angela,

Could you please let us know if we should expect an answer to this question that remains open from our meeting?

Regards,

Gareth

Gareth O'Brien +353-87-277-9281 Mobile

On 2024-05-07 17:33, Gareth O'Brien wrote:

Hi Angela,

Thank you for your follow up. I see Eoin has separately asked for some further detail and similarly I am still not clear on the IAA-ANSP/AirNav question. With regard to your point 2, I would appreciate some further clarification.

I have included questions A through E below which might help in answering the fundamental question during the meeting which was "Why does daa exclusively use AirNav for terminal services in Dublin and why was IAA-ANSP given the task of redesigning the aerodrome?" During the meeting daa told us that this was "mandated by the Department". I asked for that mandate to be forwarded and you have instead sent the following:

"The Irish Air Navigation Service, trading as AirNav Ireland, is designated under the Irish Aviation Authority Act, 1993 to provide Air Navigation Services at state airports. This interpretation is consistent with more recent iterations and revisions of the legislation including the Air Navigation and Transport Act 2022 and EU Regulation 139/2014."

A. During the meeting daa told us that the provision of terminal services at EIDW by IAA and now AirNav was "mandated by the Department". It sounds like that position may have changed. Is this the case? Could you please clarify who supplied the interpretation of the 1993 and 2022 acts? Was it daa, or the Department of Transport, or has daa received a legal opinion as to the interpretation of these laws? The text of the 1993 Act appears to give IAA permission to provide terminal services at State and Licenced Aerodromes by way of defining the company's objects. The 2022 Act provides similarly in the objects for IANS (AirNav). However, nothing in these Acts instructs or mandates daa to permit only AirNav to provide terminal services at its aerodrome EIDW. Can you please clarify why AirNav is the only supplier of terminal services that daa permits to do business at Dublin Aerodrome?

B. You refer in your response to EU Regulation 139/2014. Can you please clarify in the context of this regulation is daa the Aerodrome Operator, or was IAA prior to the creation of AirNav, and is now AirNav the Aerodrome Operator? The IAA must be the Competent Authority in this context. Such Competent Authority (NAA) must certify any entity to operate an aerodrome. Did IAA certify itself, IANS (AirNav) and/or daa as the Aerodrome Operator for EIDW aerodrome?

"AirNav Ireland is the authority Dublin Airport engage with respect to the development of Instrument Flight Procedures. They in turn contract expert, EASA qualified, Instrument Flight Procedure designers as required."

C. I am unable to find any reference in the 2022 Act to IANS (AirNav) as an “authority”. It is a DAC under the 2014 act that provides commercial services to the aviation industry and thus surely would be contracted by daa on the basis of a commercial contract between a PLC and a DAC rather than any requirement to do so that might be implicit in the term “authority”. Have I misunderstood?

Further, the question was not specifically about that portion of the exercise that involved the development of IFR procedures but rather the process of redesigning the aerodrome as a result of changing from single runway to parallel runway operations as discussed in some detail during the meeting. The reason I differentiate is that the process of IFR design can only be completed in concert with the engineering / development of aerodrome operations. Such a process must consider among many others: the business cases to be addressed, the requirements for various modes of operations of the runways at different times of day and different times of the year. It would be necessary to include the cost-benefit analysis of modes of operation that can supply for example greater departure capacity but at the cost of requiring many more air-traffic controllers who would need to be hired several years prior to initiating such complex modes of operation to be suitably experienced when needed. The development process must further consider external requirements such as compliance with the client’s planning permission, the need for noise abatement and routing choices that minimize impact on the airport’s future ability to develop and expand.

It must be apparent that the job given to IAA/AirNav in the context of the north runway project was either:

1. Exactly as you imply, simply the creation of IFR procedures based on an already completed aerodrome redesign, or
2. much more than the creation of IFR procedures for routes that were already chosen at the end of an engineering process, but in fact the execution of that engineering process to determine the appropriate instructions to the subcontractor which actually created the procedure documents.

D. If scenario 1. is correct then please explain who carried out the engineering process if not IAA; was it daa?

E. If scenario 2. is correct then please explain what qualification the then IAA had to provide such engineering design services to Dublin Airport Authority at the time and why daa continues to rely on AirNav as its sole supplier of aerodrome design services and aeronautical expertise?

I look forward to your clarification.

Regards,

Gareth.

Gareth O'Brien +353-87-277-9281 Mobile

On 2024-04-19 13:43, Angela Flynn wrote:

Dear All,

Firstly, thank you for meeting with myself and the daa team on Friday, 05 April. We appreciated your time and the feedback you provided us on various topics relating to airport operations and the impact of same.

As promised, I am reverting to you on the three agreed action items arising from the meeting which are as follows:

1. Follow up on the outcome of Mr. O'Brien's meeting with AirNav Ireland and daa in relation to flight paths, which took place October 27, 2023.

Following this meeting and based on the suggestion of Mr. O'Brien and his colleagues, daa requested that AirNav Ireland undertake a review of the procedures that are in place at Rome FUI airport. The findings of this review were shared with daa. The output of the review reaffirms that this is a complex proposal in the context of Dublin Airport airspace and there are a wide range of factors that must be considered. Ultimately, proposals of this nature need to be considered in a structured and coherent manner and not in isolation.

Therefore, in addition to the above, we have now engaged with the relevant agencies to determine how a consultation process could be run in the future, which would provide scope to further explore other suggestions and community proposals in respect to flightpaths. As part of this, daa, in conjunction with AirNav Ireland, are seeking engagement with other airports who have implemented similar consultation processes. This will enable us to further develop our thinking in this regard.

At our meeting, it was clear the impact that aircraft noise is having on your lives and we are sorry to hear that. We are conscious however, that there are multiple variables that need to be taken into account when seeking to adjust flight paths. This includes how we can adequately investigate varying requests from groups which may run contrary to each other. We are however, taking steps to address these proposals as outlined above.

1. daa to advise where it is stated that AirNav must be used by Dublin Airport for airspace design etc.

The Irish Air Navigation Service, trading as AirNav Ireland, is designated under the Irish Aviation Authority Act, 1993 to provide Air Navigation Services at state airports. This interpretation is consistent with more recent iterations and revisions of the legislation including the Air Navigation and Transport Act 2022 and EU Regulation 139/2014.

AirNav Ireland is the authority Dublin Airport engage with respect to the

development of Instrument Flight Procedures. They in turn contract expert, EASA qualified, Instrument Flight Procedure designers as required.

1. daa to check if it can provide Terms of Reference for engagement with AirNav regarding the current Service Level Agreement discussions

The historic Service Level Agreement (SLA) in place between daa and IAA-ANSP is currently being revised to allow for the formal transition of responsibilities to AirNav Ireland and also to develop agreements around the implementation of noise mitigation and abatement procedures amongst other requirements. We are not in a position to share the Terms of Reference for engagement relating to these discussions.

We hope the above sufficiently answers your queries and please do not hesitate to contact me should you have any further questions.

Have a lovely weekend.

Best Regards,

Angela

Angela Flynn | COMMUNICATIONS

Community Engagement Manager

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chreideann tú go bhfuair tú an ríomhphost seo trí earráid, bheimis buíoch dá gcuirfeá é sin in iúl dúinn láithreach. Scríos gach cóip den ríomhphost seo agus ceangaltá(i)n ar bith ó chóras do ríomhaire chomh maith le do thoil. Mura bhfuil sé luaite go sainráite, níl sé beartaithe leis an ríomhphost seo caidreamh conarthach ar bith a chruthú. Murar seoladh an ríomhphost seo i gcúrsaí fhostaíocht an tseoltóra nó i gcomhlíonadh a dhualgas/a dualgas ní ghlacfaidh daa dliteanas ar bith as ábhar na teachtaireachta nó ceangaltá(i)n ar bith. daa cpt. Oifig Chláraithe: Aerfort Bhaile Átha Cliath, Co. Bhaile Átha Cliath. Uimhir Chláraithe: 9401 Éire.

Document Classification: Class 1 - General

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[1] <http://www.gov.ie/transport>