

Annex S6-D: CCPC complaint thread, July to August 2024 (CAS-303342-S1D9H4; contains Plank 1 PFO 8 August 2024 and Plank 2 PFO 26 August 2024)

Message metadata

- **Date:** Mon, 26 Aug 2024 13:21:26 +0000
- **From:** complaints complaints@ccpc.ie
- **To:** Gareth O'Brien gobrien@yupon.com, complaints complaints@ccpc.ie
- **Subject:** Re: CCPC Ref. CAS-303342-S1D9H4 CRM:0406000588

Body

Our reference: CAS-303342-S1D9H4

Dear Mr. O'Brien,

We have received your further correspondence and analysis document in relation to AirNav Ireland's exclusive rights to provide air navigation services at Dublin and Cork Airports.

Based on the content of your email the matter you raise has been reviewed at screening stage and no obvious breach of the Competition Act, 2002 as amended is apparent.

The content of this email is provided for information purposes only, it does not constitute legal advice and should not be relied upon in that regard. The CCPC does not give legal advice or opinion on matters relating to competition law and your complaint to the CCPC does not prejudice your rights under the following sections of the Act:

- Section 14 of the Competition Act, 2002 which gives a right of private action in the Circuit Court or High Court to seek relief to persons aggrieved by behaviour that infringes the Act, or,
- Section 71 of the Consumer Protection Act 2007 (concerning Civil Proceedings) where any person may apply to the Circuit Court or High Court for an order prohibiting a trader or person from committing or engaging in a prohibited act or practice.

Should you wish to pursue an action under one of the above provisions, you may also wish to consider seeking independent legal advice on the matter.

However please note that 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.

We hope this explains the CCPC's position on the matter.

Yours sincerely,

Clodagh Murphy

Competition and Consumer Protection Commission

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Original Message — From: Gareth O'Brien gobrien@yuppon.com; Received: Fri Aug 09 2024 13:20:30 GMT+0100 (Irish Standard Time) To: complaints@ccpc.ie; Subject: Re: CCPC Ref. CAS-303342-S1D9H4 CRM:0406000588

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Dear Ms Murphy,

Thank you for your attention to this matter. You seem to have given a lot of weight in your decision to Ms Brogan's erroneous interpretation of the Air Navigation Transporation Act 2022 (the Act). Terminal services is clearly separated in the Act from the more general Air Traffic Management Services and is a service readily available from multiple EASA-qualified providers, or as in the case of many Irish licenced aerodromes, can be provided directly by the aerodrome operator.

There is nothing in legislation or in any ministerial order or other instrument that requires daa plc and The Shannon Group plc to source this service exclusively from AirNav DAC. The Department's determination that there is such a requirement, based solely on a misinterpretation of Section 14 of the Act, has created a monopoly over the last 30 years which has led to a culture of impunity within AirNav resulting in poor performance with very real consequences to airline customers and residents unnecessarily affected by environmental impact.

Please see the attached analysis of the Department's misinterpretation of the Act. It may not change your position and apologies that it is quite long!

My contention is this: If proper competition were in place at state-owned daa, then state-owned AirNav would have incentive to do a better job or face at least the possibility of being replaced by a better provider. Environmental impact of the airport and disruption of passenger's travel would be lessened.

Does competition law not address this?

Thanks,

Gareth

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

On 2024-08-08 14:51, complaints wrote:

Our reference: CAS-303342-S1D9H4

Dear Mr. O'Brien,

I refer to your recent correspondence to both the Competition and Consumer Protection Commission (CCPC) and the European Commission in relation to the decision to grant AirNav Ireland exclusive rights to provide air navigation services at Dublin and Cork Airports. In your correspondence, you shared emails that you had exchanged with the Department of Transport, where you question the interpretation of legislation that allows for the management of Irish sovereign airspace on behalf of the State by AirNav Ireland.

The CCPC is the statutory body responsible for enforcing consumer protection and competition law in Ireland. Breaches of competition law typically involve an illegal agreement between two or more undertakings (generally designed to fix prices, share markets or rig tender bids), contrary to Section 4 of the Competition Act 2002, as amended. Alternatively, they may arise where an undertaking has abused its dominant position in a particular market, contrary to Section 5 of the Act. The concept of an "undertaking" for the purposes of both Sections 4 and 5 is defined in Section 3(1) of the Act, as amended, as "a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service and, where the context so admits, shall include an association of undertakings".

We have reviewed your correspondence carefully, and while you do raise reasonable arguments regarding the liberalisation of air traffic management services, it does not appear that any breach of competition law has taken place.

It would appear that, EU Member States, as set out in Regulation (EU) 2017/373, are required to ensure that their air traffic management services are provided in a manner that facilitates general air traffic, while taking into account safety considerations and traffic requirements. In addition, it would appear that 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. As the Department of Transport has highlighted, the relevant national legislation requires AirNav Ireland to provide air navigation services at state airports. Section 14 of the Air Navigation Transport Act 2022 states that the Irish Air Navigation Service (AirNav Ireland) is to provide, operate and manage, or arrange for the provision, operation and management of, air navigation services in Irish and other airspace. This legislation appears to comply with and fulfil Ireland's international obligations in this area.

In your correspondence, you also state that you believe there is a poor level of air traffic control service at Dublin Airport, and this may impact passengers' experience. In case you are not aware, AirNav Ireland's Customer Charter commits them to providing a professional and efficient service to all members of the public. If you are unhappy with their service, you can make a formal complaint to AirNav at complaints@airnav.ie.

While we will not be pursuing your correspondence any further, we would like to thank you for taking the time to write to us and for bringing your concerns to our attention, and we hope the information contained above is of some assistance to you.

Yours sincerely,

Clodagh Murphy

Competition and Consumer Protection Commission

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Original Message — From: Gareth O'Brien gobrien@yupon.com; Received: Fri Aug 02 2024 12:34:07 GMT+0100 (Irish Standard Time) To: complaints@ccpc.ie; complaints@ccpc.ie; complaints@ccpc.ie; Subject: Re: CCPC Ref. CAS-303342-S1D9H4 CRM:0406000577

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Hi,

Thanks for your response. I was hoping to get some indication as to what the relevant division might do with the case and how long "in due course" might be.

Regards,

Gareth

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

On 2024-08-02 12:22, complaints wrote:

Our reference: CAS-303342-S1D9H4

Dear Mr. O'Brien,

We have received your further email to the Competition and Consumer Protection Commission (CCPC) in relation to Dublin Airport Authority plc.

Your correspondence has been forwarded to the relevant division and we will revert in due course.

Yours sincerely,

CCPC Contacts Team

Competition and Consumer Protection Commission

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Original Message — From: Gareth O'Brien gobrien@yupon.com; Received: Fri Aug 02 2024 10:36:32 GMT+0100 (Irish Standard Time) To: complaints@ccpc.ie; complaints@ccpc.ie complaints@ccpc.ie; Subject: Re: CCPC Ref. CAS-303342-S1D9H4 CRM:0406000564

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Hi CCPC,

May I please have an update as to the status of this complaint?

Regards,

Gareth

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

On 2024-07-16 13:09, complaints wrote:

Our reference: CAS-303342-S1D9H4

Dear Mr. O'Brien,

Thank you for your email to the Competition and Consumer Protection Commission (CCPC) in relation to Dublin Airport Authority plc.

The content of your correspondence is currently being screened and a response will issue in due course.

Yours sincerely,

CCPC Contacts Team

Competition and Consumer Protection Commission

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Original Message — From: Gareth O'Brien gobrien@yupon.com; Received: Tue Jul 16 2024 08:23:17 GMT+0100 (Irish Standard Time) To: complaints@ccpc.ie; complaints@ccpc.ie complaints@ccpc.ie; Subject: Re: Fwd: State mandate to daa re: terminal services monopoly

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Dear CCPC,

While I received a reply from the European Commission within 48 hours, almost a week later CCPC has not even acknowledged receipt of my email. Can you please confirm that you got this and let me know whether you intend to investigate?

Regards,

Gareth.

10 Jul 2024 17:05:29 Gareth O'Brien gobrien@yupon.com:

Dear CCPC and European Commission,

I am concerned that a 30-year-old arrangement continues to exist in Ireland between the Irish Aviation Authority (IAA) and Dublin Airport Authority plc (DAA), both state owned companies. With the separation of Air Navigation Service Provider (IAA-ANSP) from IAA the practice now continues between DAA and the newly formed AirNav. DAA has given AirNav exclusive right to provide Air Traffic "Terminal Services" at Dublin and Cork airports. Shannon Airport Group has done the same at Shannon Airport. Last year this produced EUR32 million of revenue for AirNav with no competition. The lack of competition has resulted in poorly designed procedures, a culture of impunity and a poor level of service by air-traffic control at the airport. The Irish Department of Transport refuses to engage as you will see below.

Yesterday 9/7/2024 thousands of passengers were delayed because the new state-of-the-art north runway opened in 2022 had to be closed as it cannot be used in low visibility (when it's raining and misty in Ireland). This 50% reduction in aerodrome capacity appears to be the direct result of poorly designed procedures by AirNav who were employed by DAA without holding qualification in aerodrome design and without tender process. This single occasion (not an isolated situation) caused inconvenience and expense to thousands of people, uncompensated as it was explained away as "weather related", and is a direct result of the cosy relationship between DAA and AirNav.

I am told by several pilots who operate regularly into and out of Dublin Airport that the quality of ATC service at Dublin is notorious among pilots. They feel that if a different provider, e.g. NATS from the UK were running Air Traffic Control for Dublin Airport, it would be far more efficient. DAA insists that it is mandated to allow only AirNav to provide terminal services, but is unable to supply any evidence of such a mandate. Instead, as you can see below, they depend on a vague reference to legislation that does not include any such mandate and likely would not be compliant with EU law if it did.

I don't know if either of your organizations can help with this. After a year of running into stone-walling and disinformation, I have little faith in Irish State organizations to do anything, perhaps CCPC will prove the exception or maybe the Commission can help?

Regards,

Gareth.

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

—— Original Message ——

Subject: State mandate to daa re: terminal services monopoly Date: 2024-07-10 16:35
From: Gareth O'Brien gobrien@yupon.com 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 Copy: Transport Minister 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

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

[X]

Angela Flynn | COMMUNICATIONS

Community Engagement Manager

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Is féidir fógraí maidir le príobháideacht an CCPC a léamh <https://scanner.topsec.com/?d=2448&r=show&u=https%3A%2F%2Fwww.ccpc.ie%2Fbusiness%2Fdata-protection-and-privacy&t=f463aa61cc9711fcb6c42fd7e083dcf62d1aab30> chun eolas a fháil ar an gcaoi a bpróiseálann sé do chuid sonraí pearsanta.

Ní féidir ráthaíocht a thabhairt go bhfuil an ríomhphost slán ná saor ó earráidí, is ortsá atá an fhreagracht a chinntiú go bhfuil an ríomhphost seo (lena n-áirítear na ceangaltáin) sábháilte agus údaraithe le húsáid i do thimpeallacht. Is ar an bhfaighteoir atá an fhreagracht a chinntiú go bhfuil sé saor ó víreas agus ní ghlacann an Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí aon fhreagracht as aon chailliúint ná damáiste a thioctadh as é a úsáid ar aon slí. *****

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Is féidir fógraí maidir le príobháideacht an CCPC a léamh <https://scanner.topsec.com/?d=2448&r=show&u=https%3A%2F%2Fwww.ccpc.ie%2Fbusiness%2Fdata-protection-and-privacy&t=f463aa61cc9711fcb6c42fd7e083dcf62d1aab30> chun eolas a fháil ar an gcaoi a bpróiseálann sé do chuid sonraí pearsanta.

Ní féidir ráthaíocht a thabhairt go bhfuil an ríomhphost slán ná saor ó earráidí, is ortsá atá an fhreagracht a chinntiú go bhfuil an ríomhphost seo (lena n-áirítear na ceangaltáin) sábháilte agus údaraithe le húsáid i do thimpeallacht. Is ar an bhfaighteoir atá an fhreagracht a chinntiú go bhfuil sé saor ó víreas agus ní ghlacann an Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí aon fhreagracht as aon chailliúint ná damáiste a thioctadh as é a úsáid ar aon slí. *****

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