

Submission on the exposure draft of the Civil Aviation Bill

Introduction

The ATM Policy Institute would like to thank the Ministry of Transport for this opportunity to provide feedback on the exposure draft of the Civil Aviation Bill.

We submit that the proposed Section 31 should be removed from the Civil Aviation Bill and that Section 99 of the Civil Aviation Act 1990 should be repealed. This submission explains why we consider that continuing to provide Airways with a statutory monopoly is potentially harmful to airspace users and, ultimately, consumers.

Who we are

The ATM Policy Institute has been created to lead the debate on how to improve the efficiency and performance of air traffic management (ATM) through market liberalisation. We provide research on ATM policy issues, and communicate the benefits of enabling air navigation service providers (ANSPs) to compete with each other for the provision of ATM services. Our members include national ANSPs, the industry trade group CANSO, and terminal air navigation service (TANS) providers.

More information about the ATM Policy Institute's activities can be found on our website: www.atmpolicy.aero.

Repeal of Airways' statutory monopoly

The ATM Policy Institute is opposed to the proposed Section 31

Section 31 of the exposure draft of the Civil Aviation Act provides that Airways is the sole provider of specific ATM services. These are control services, approach control services, and flight information services. Aerodrome control services and aerodrome flight information services are excluded from this provision. It is consistent with Section 99 of the Civil Aviation Act 1990.

The ATM Policy Institute does not believe it is appropriate that the Bill provides Airways with a statutory monopoly for the provision of these ATM services. This is because the proposed Section 31 would preclude other ANSPs from entering the market for these ATM services in New Zealand now and in the future, even where it is technically feasible and would be beneficial to airspace users.

ATM can no longer be classified as a natural monopoly

Traditionally, ATM was considered a natural monopoly. The potential benefits of competition were outweighed by the high cost of building and maintaining a duplicate network.

This natural monopoly status is being challenged. Technological advances in the ATM industry are increasingly providing opportunities for ANSPs to compete with each other for the provision of ATM services without compromising the safety of airspace users. Meanwhile, the success of liberalisation in other industries that were previously considered to be natural monopolies, such as telecommunications and energy, demonstrates the potential for greater competition in ATM.

However, by limiting the provision of many ATM services to a single provider – Airways – the current draft of the Civil Aviation Bill would preclude much of this potential competition.

Competition in ATM could bring significant benefits to airspace users

Standard economic theory notes that competition between firms for the provision of goods or services generally results in better outcomes than if those goods or services were provided by a single supplier. Greater competition in the provision of ATM services in New Zealand could bring significant benefits to airspace users and, ultimately, consumers.

Competition would generate downward pressure on prices. This, in turn, creates stronger incentives to improve cost efficiency so as to compete on price without compromising safety. Competition for the provision of TANS in Spain is estimated to have resulted in cost savings of around 50%.ⁱ It is worth noting that Airways has recently announced a 21.4% increase in user charges over the period 2019-2022. Lower ATM charges would have wider benefits as it should, in turn, lead to lower fares for passengers and stimulate aviation activity that increase choice for passengers.

Greater competition in ATM would also create stronger incentives to adapt to the needs of airspace users and provide a customer-focussed ATM service. This may include improvements in service quality, the faster adoption of new technologies that benefit airspace users, and investments that allow ANSPs to meet the demands of their customers.

We understand the importance on maintaining, and even improving, current safety standards in New Zealand's airspace. Concerns have been raised previously that removing Airways' statutory monopoly may have safety implications. However,

competition could encourage innovation and the adoption of new technologies which actually improve safety. Similar safety concerns were voiced in the lead-up to the liberalisation of the airline industry and have since proved to be unfounded.

The CAA would, however, need to provide safety oversight of any ANSP operating in New Zealand airspace. The existing Civil Aviation Rules (Part 172) give the CAA this power.

Opportunities for greater competition in ATM

We have identified three examples where there is potential for alternative providers to compete with Airways in the short to medium term, subject to ending Airways' statutory monopoly. Technological advances can be expected enable competition to be expanded to other areas of ATM over time.

Franchised control services

This would allow ANSPs to compete (for example, through a tender process) for the exclusive right to provide ATM services in specific airspace or sectors within an airspace for a fixed period, subject to meeting certain performance indicators. Advances in technology could enable en-route services to be provided remotely using virtual centres.

There are several examples where this is already occurring. Airways provides en-route services in the upper airspace above Tonga, Samoa, Cook Islands and Niue. It is therefore itself a participant in a competitive ATM market. In Europe, the airspace above Kosovo is managed by the Hungarian ANSP, while the upper airspace of Belgium, Netherlands, Luxembourg and north-west Germany is managed by the Maastricht Upper Area Control (MUAC) Centre.

Flight information and data services

There is scope to allow airlines to choose a preferred ATM provider over oceanic airspace, including the 26 million square kilometres of oceanic airspace currently controlled by Airways. The increasing use of automation in oceanic airspace, including satellite-enabled self-separation, allows aircraft to take over much of the traditional role of controllers. This offers the potential for different ANSPs to provide individual airlines with the necessary flight information data to enable them to self-separate and plan their routes over oceanic airspace.

Aerodrome control services

Markets for the provision of aerodrome control services – also known as TANS - are developing in a number of countries, including the UK, Germany, Spain, Sweden and the US and have already proven to be effective.

While the exposure draft does not extend Airways' statutory monopoly to aerodrome control services, it does grant Airways a monopoly over approach control services. This can be an important element of TANS in New Zealand where traffic levels at regional airports are such that it can be inefficient to separate aerodrome control and approach control services. It therefore limits the potential for an alternative ANSP to provide aerodrome control services at these airports.

In conclusion

Technology is rapidly changing how ATM is performed and is providing the potential for ANSPs to compete with each other to provide many ATM services. It is therefore vital that barriers to entry are minimised in the sector. We believe that retaining Airways' statutory monopoly would impede any potential competition in this area in New Zealand. This would be to the detriment of airspace users and, ultimately, consumers.

ⁱ Helios 'Study into Air Navigation Service to be Opened to Competition in Norway: Part 1' 2015