

Evaluation Report of SES Market Conditions

**Review of advice on SES Market Conditions for Terminal
Air Navigation Services in Spain**



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Acronyms

ACRONYMS	DEFINITION
ANSP	Air Navigation Service Provider
AO	Airport Operator
ATC	Air Traffic Control
ATS	Air Traffic Service
TANS	Terminal Air Navigation Service

1 Introduction and Summary

This document contains an analysis to determine whether Spanish terminal air navigation services (TANS) provided at Ibiza and Alicante airports, particularly aerodrome air traffic services (ATS) are subject or not to market conditions. In case market conditions exist, Spain can then apply to the European Commission (EC) for exemption from those elements of the new EC's Implementing Regulation that apply to the provision of TANS, whose last draft was approved in the last ad-hoc Single Sky Committee in December 2018. The official version of this new Regulation was published as Commission Implementing Regulation (EU) 2019/317 of 11 February 2019 and repeals the Implementing Regulations N° 391/2013 and N° 390/2013. From now on, this new regulation will be referred along the whole text as “Performance and Charging Scheme Regulation”.

If market conditions are accepted by the EC, Spain will not be required to calculate determined costs, set financial incentives, and set terminal unit rates for those TANS to which the exception during RP3 applies.

It is important to bear in mind the current circumstances about public and private sectors coexistence to provide air navigation services, with the objective to analyse whether a competitive market is guaranteed or not.

This study has been developed in response to the need of performing an exhaustive analysis to determine the level of the existing competence in the Spanish market, where the air navigation service providers perform their activities. This assessment is necessary to prepare the third reference Period (RP3) of the Single European Sky (SES) performance scheme, which will run from 2020-2024. This study has been conducted against the test set out in Annex X of the new “Performance and Charging Scheme Regulation”.

1.1 Legal Framework

The Performance and Charging Scheme Regulation sets out measures to improve the overall performance of air navigation services, through setting targets to drive performance in four key performance areas (safety, environment, capacity, and cost-efficiency).

Member States must apply the performance regulation to TANS provided at airports with 80,000 or more instrument flight rules (IFR) air transport movements (ATMs) per year.

Member States may decide not to apply the performance regulation to TANS provided at airports with fewer than 80,000 IFR ATMs per year.

The charging regulation lays down a common charging scheme for air navigation services and allows for exemptions from some aspects of the performance scheme, including the requirement to set cost efficiency targets for TANS, where the provision of TANS is subject to market conditions.

This assessment confronts the provision of Terminal Air Navigation Services in Spain against the criteria laid down in Annex X of the Performance and Charging Scheme Regulation to assess whether the provision services concerned are subject to market conditions. The existence of market conditions is a necessary, but not sufficient, condition for effective competition to exist. The airports, currently in scope, to assess whether or not are subject to market conditions are Ibiza and Alicante.

1.2 Scope of the Regulation and the AESA's assessment

In the preparation for RP3, it is essential to determine the scope regarding the terminal air navigation services. Two important elements related to this task can be identified:

1. Member States could exclude from Performance and Charging activities all those services provided at airports with less than 80.000 IFR air transport movement per year, considering Article 1, paragraph 4 of the Performance and Charging Scheme Regulation.
2. Member States could exclude from Charging activities all those terminal air navigation services provided under market conditions, in due consideration of Article 35 of the Performance and Charging Scheme Regulation. In order to apply this possibility, it is necessary to prove that all the established requirements in the Annex X of this Regulation are met. Regarding to this scheme, in case a Member State intends to declare market conditions to be exempted from the application of Performance and Charging arrangements, the affected State should present a supporting analysis to the Commission 12 months before the beginning of the Reference Period, or whenever such conditions are identified.

Regarding the first bullet, AESA's evidence collection has included 8 airports in order to analyse whether they reach the value of over 80.000 IFR air transport movement per year.

According to the Regulation, this number has to be calculated as the yearly average over the preceding three calendar years. The data collected are shown in the tables below:

Year 2018

Airports	IFR Departures	IFR Arrivals	IFR Air Transport Movements
Madrid-Barajas	204,937	204,739	409,676
Barcelona-El Prat	167,833	167,801	335,634
Palma de Mallorca	110,098	110,108	220,206
Málaga-Costa del Sol	68,794	68,715	137,509
Gran Canaria	63,985	63,880	127,865
Alicante	48,287	48,274	96,561
Ibiza	37,506	37,511	75,017
Tenerife Sur	34,010	34,038	68,048

Year 2017

Airports	IFR Departures	IFR Arrivals	IFR Air Transport Movements
Madrid-Barajas	193,818	193,699	387,517
Barcelona-El Prat	161,771	161,700	323,471
Palma de Mallorca	104,339	104,355	208,694
Málaga-Costa del Sol	67,425	67,392	134,817
Gran Canaria	57,961	57,829	115,790
Alicante	47,557	47,576	95,133
Ibiza	36,664	36,672	73,336
Tenerife Sur	34,252	34,216	68,468

Year 2016

Airports	IFR Departures	IFR Arrivals	IFR Air Transport Movements
Madrid-Barajas	189,062	189,016	378,078
Barcelona-El Prat	153,931	153,874	307,805
Palma de Mallorca	98,722	98,708	197,430
Málaga-Costa del Sol	61,043	60,990	122,033
Gran Canaria	54,813	54,620	109,433
Alicante	43,420	43,410	86,830
Ibiza	34,676	34,692	69,368
Tenerife Sur	32,200	32,178	64,378

Table 1 - IFR movements per year

Airports	IFR Air Transport Average Movements	ANSP
Madrid-Barajas	391,757	ENAIRES
Barcelona-El Prat	322,303	ENAIRES
Palma de Mallorca	208,776	ENAIRES
Málaga-Costa del Sol	131,453	ENAIRES
Gran Canaria	117,696	ENAIRES
Alicante	92,841	FerroNATS
Ibiza	72,573	FerroNATS
Tenerife Sur	66,964	ENAIRES

Table 2-Airports covered by the study

Regarding the obtained results, among the eight airports analysed, two of them are below the 80,000 IFR movements per year mark: Ibiza and Tenerife Sur. However, Ibiza airport (operated by FerroNATS) is very close to the threshold value, so it will be addressed accordingly in the scope of this analysis.

Considering the above results, and the fact that ENAIRES is a public entity that at first glance does not meet some of the requirements, the possibility of market conditions will be analysed only for the services provided by FerroNATS.

FerroNATS is a private Spanish Air Navigation Services Provider (ANSP), certified by AESA and designated by the Ministry for Transport (*Ministerio de Fomento*) to provide ATC services at Alicante and Ibiza. FerroNATS is the result of a joint venture of Ferrovial Services and the British ANSP NATS Services Limited. This enterprise was created to bid for the contracts for the provision of the aerodrome ATS services put out to tender by AENA

(airport operator) at several of airport control towers in 2011, under the umbrella of the law that effectively liberalised these services in Spain (*Ley 9/2010*).

FerroNATS provides aerodrome air traffic control services from the airport tower, that is: the management of arrivals to and departures from the runway, the taxiways and the airspace under the responsibility of the airport tower. Once the baseline scenario of this analysis has been introduced, the following chapters will attempt to prove the existence of market conditions at Alicante and Ibiza airports, both operated by FerroNATS.

1.3 Summary of the assessment

AESA, after having conducted the analysis in chapter 4 of this document against the criteria laid down in Annex X of Performance and Charging Scheme Regulation, considers that the airports involved in this study (**Alicante and Ibiza**) are **subject to market conditions**, as summarized below:

- No significant legal or economic barriers are found that prevent a service provider from offering to provide or withdraw from the provision of TANS (only taking on board the part of aerodrome control service);
- No significant barriers are found in relation to the tendering process and the value and scope of this assessment.
- No significant barriers are found in relation to the existence of any procedure that could affect the intellectual property or staff to be transferred.
- No significant legal or economic barriers are found that prevent airport operators from choosing the air traffic services provider;
- There is a range of TANS service providers and there are public tendering processes at these Spanish airports;
- These airports are either subject to economic regulation or actively compete for airline business – and so all face commercial incentives to manage the costs of TANS;
- FerroNATS, ATS provider at Ibiza and Alicante do not provide enroute services
- This assessment applies to TANS operations (only for aerodrome control service) at Ibiza and Alicante airports subject to the relevant EC regulation.

1.4 Timetable

This review has had the following milestones:

- September 2018: AESA and DGAC started the challenge to evidence market conditions at some Spain aerodromes;
- 26 October 2018: AESA called for evidence from FerroNATS regarding the provision of TANS in Spain;
- November 2018: AESA finalised the initial draft document to be distributed to the DGAC;
- December 2018: the initial draft is distributed to the DGAC.
- February 2019: the consultation document is distributed.
- March 2019: the deadline for the consultation process is finalised.
- April 2019: the final version of the document is sent to the EC for evaluation.

1.5 Structure of this document

This document sets out the analysis and findings around the state of market conditions in Spain. It is structured as follows:

- Chapter 2 covers the definition and background of TANS.
- Chapter 3 provides the analysis against the criteria of the market conditions test.
- Chapter 4 is the analysis the market conditions.
- Chapter 5 provides a conclusion of the analysis.

2 Chapter 2 - Definition and Background of TANS

This chapter outlines the development of TANS in Spain and covers the following bullets:

- Definition of TANS;
- Background of TANS provision in Spain.

2.1 Definition of TANS

From a type of service perspective, Air Navigation Services are divided in:

- Air Traffic Services (ATS): whose objectives are to avoid airborne collisions, accidents between aircraft and the ground and a harmonised traffic flow. This includes flight information services, alerting services and where applicable Air Traffic Control Services.
- Other services: whose objective is to support the provision of ATS. These services include Communication, Navigation and Surveillance (CNS), Air Information Services (AIS), etc.

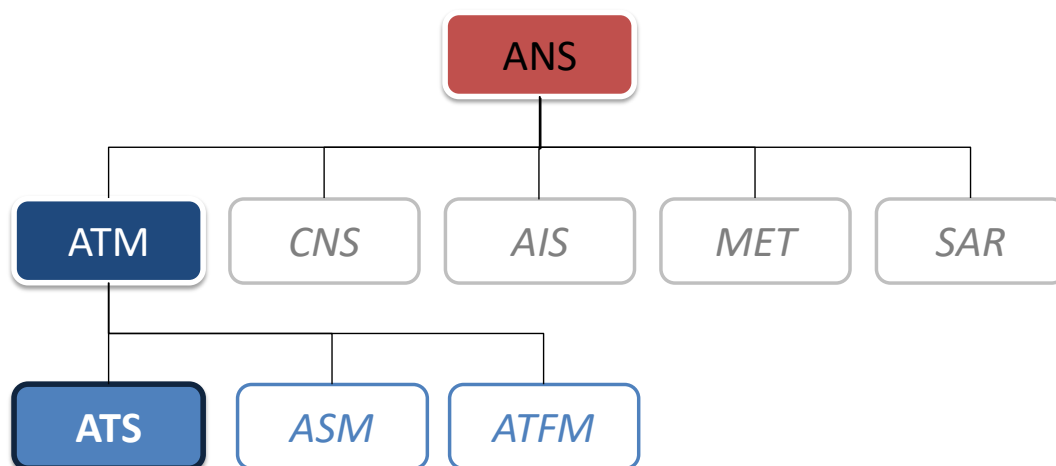


Figure 1 (above): ATS as part of Air Navigation Services

From a service provision standpoint, Air Traffic Services are divided into “enroute”, “approach” and “aerodrome” services:

- Area (en-route) ATS encompass the air navigation services during the cruise phase of the flight.

These services are provided in Spain by ENAIRE only, accordingly with Law 9/2010, and more in concrete with article 1, that defines the designated ANSPs to provide air traffic services. According to this legal provision, the area and the approach service provision, as well as the flight information, alert and assessment services, related with all those airspace volumes in which these services are provided, will continue being directly provided by AENA (currently ENAIRE), as designated entity for this function.

- Approach ATS comprise the phase that connects the route with the aerodrome inside what is commonly known as TMA (Terminal Management Area): radar or conventional approach and departure service provided within the airspace around the airport.

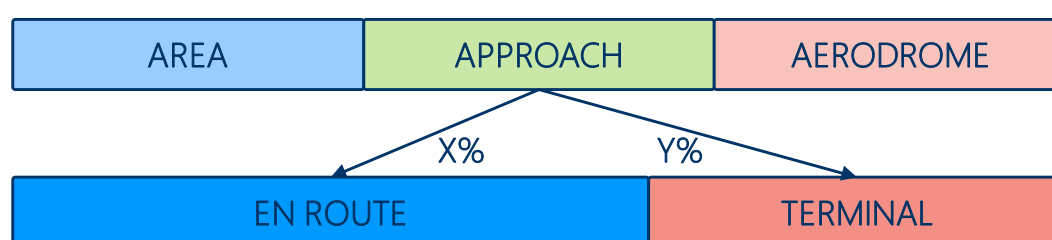
These services are provided in Spain by ENAIRE only, accordingly with Law 9/1010, and more in concrete with article 1, that defines the designated ANSPs to provide air traffic services.

- Aerodrome ATS are the ones provided to operate at airport: allowing aircraft to use runways and taxiways as well as the immediate surrounding airspace.

In particular, Air Traffic Services (ATS) provided at airports in Spain are liberalised, and effectively so at some locations (defined by the Ministerial Order FOM/3352/2010).

- The rest of the Air Navigation Services (ANS) are distributed accordingly in a manner consistent with the distribution of ATS.

SERVICE PROVISION



TRANSLATION INTO CHARGING ZONES

Figure 2 (above): service provision vs cost allocation

Finally, **from a charging regulation point of view**, the cost of providing the different services are allocated (Article 22 of Performance and Charging Scheme Regulation) between:

- En-route ANS: everything that is not Terminal.
- Terminal ANS (TANS from now on), including:
 - Aerodrome ATS.
 - Approach ATS within a certain distance consistent with the operational requirements.
 - An appropriate allocation of the other ANS.

The scope of this study will focus in demonstrating market conditions for a very specific part of the Spain's TANS: **Aerodrome ATS provided at Alicante and Ibiza airports.**

2.2 Background on Spanish TANS provision

As explained, TANS are defined as including some of the approach services and the aerodrome services.

At national level, all the approach air navigation services are provided by a public entity: ENAIRE.¹

The provision of aerodrome air navigation services, has also been traditionally provided by public entities, generating a monopoly at this domain. With the entry into force of the European Single Sky (SES) Regulations, Spain envisaged the possibility to allow other air navigation service providers (ANSPs), duly certified by a Competent Authority (Article 4 of Regulation (EC) no 549/2004 or Article 80 of the Regulation (UE) 2018/1139), to provide air traffic control services in Spanish Aerodromes. The intent was to introduce a new concept of competitiveness in this sector, being essential the improvement of technical and economic conditions to render these services. These principles are included in the Spanish regulation with Law 9/2010.

Law 9/2010 has established a new model in the Spanish provision of air navigation services, with the objective to ensure a seamless and efficient provision of the services.

In accordance with this objective, Law 9/2010², of 14 April, that regulates air navigation service, establishes the following:

- For all the aerodromes, air navigation service could be provided by Aena (currently ENAIRE) or by any other certified air navigation service provider once formally

¹ Except for MET services, provided by another public entity: AEMET.

² <https://www.boe.es/boe/dias/2010/04/15/pdfs/BOE-A-2010-5983.pdf>

liberalised by a Ministerial Order, in accordance with the second Additional Provision of Law 9/2010. This is the case for a number of liberalised aerodromes including Alicante and Ibiza.

- Currently, the following air navigation service providers are duly certified in Spain:

Air Navigation Service Provider	Validity of the Certificates
Saerco	31/12/2020
FerroNATS	31/12/2020
ENAIRE	31/12/2020

- For all those aerodromes stated by the Ministry for Transport, the airport operator should start the procedures to select the new air navigation service providers, in accordance with Law 31/2007 of October 30th on Water, Energy, Transport and Postal Services Contracts Procedures and Law 9/2017, of November 8th on Public Sector Contracts.

Considering the above statements, a **competitive environment is set out in the provision of air navigation services in Spain, and more specifically for the provision of aerodrome ATS**. Therefore, the main objective in the following sections is to demonstrate the existence of market conditions at individual aerodromes, just for a part of the TANS: **for aerodrome ATS (more specifically air traffic control - ATC) at Ibiza and Alicante aerodromes**.

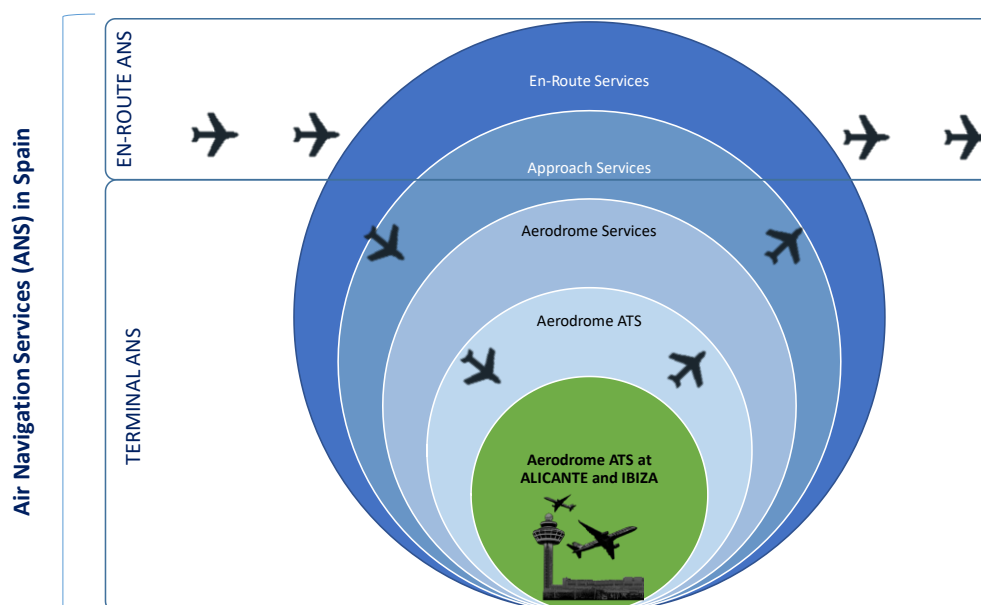


Figure 3 (above): scope of the market conditions analysis (in green) within the provision of Air Navigation Services in Spain.

3 Analysis

Regarding the third Reference Period (RP3), it is essential to determine the scope of the following question extracted from the Performance and Charging Scheme Regulation:

“Member States could exempt from the application of Charging scheme all those terminal air navigation services subject to market conditions regarding article 35 of Performance and Charging Scheme Regulation”.

With the aim of evaluating whether it is possible to declare market conditions and hence, exempt airports from the provisions of the Performance and Charging Regulations in terms of charges and financial incentives, it is essential to analyse and verify if the requirements listed on the Performance and Charging Scheme Regulation are accomplished.

This document presents the evaluation of possible market conditions in the provision of aerodrome air traffic control services at Ibiza and Alicante airports, managed by FerroNATS according to Law 9/2010, comparing the provision of this same service as a public monopoly when provided by ENAIRE.

This study will go over the existence of possible market conditions for a specific air navigation service at individual aerodromes, without intending to prove these conditions exist at network level for all TANS. Bearing in mind all those arguments, an extensive study has been conducted against the criteria laid down in Annex X of Performance and Charging Scheme Regulation, in the following sections and for the following airports:

Airports	IFR Air Transport Average Movements	ANSP	Service
Alicante	92,841	FerroNATS	Aerodrome ATC
Ibiza	72,573	FerroNATS	Aerodrome ATC

Table 3-Airports under analysis

4 Market Conditions Test

This chapter sets out the conclusions against each criterion of the test, provided for in the charging regulation.

4.1 Criterion 1: The extent to which service providers can freely offer to provide or withdraw the provision of these services

The first criterion requires an assessment of the extent to which service providers can freely offer to provide or withdraw from the provision of these services:

- ***The existence or otherwise of any significant legal or economic barriers that would prevent an air navigation service provider from offering to provide or withdrawing from the provision of air navigation services;***

No significant legal or economic barriers are found that prevent a service provider from offering to provide or withdraw from the provision of TANS (in particular aerodrome air traffic control service).

Law 9/2010 introduced a new scheme for the provision of air navigation services in Spain, modifying the framework applicable to aerodrome ATS. According to this law, the aerodrome ATS is to be provided by any civil air navigation services provider certified by a National Supervisory Authority and designated by the Ministry for Transport upon the proposal by the airport operator once the associated tendering process is over. Consequently, the provision of aerodrome ATS by other provider different from ENAIRE is enabled when the particular airport is set up by a Ministry for Transport order. The airport operator then opens a tendering process for the selection of an ANSP.

In case the ANSP decides to withdraw from the contract, the airport operator is enabled to impose a penalization to the ANSP, retaining the amount of the deposit initially claimed. This obligation is listed both in the technical requirement sheet and in the signed contract.

However, it is mandatory to ensure the continuity and efficiency of the service before withdrawing from the provision of air navigation services, respecting a safe transition to a new ANSP under the oversight of the NSA (AESA).

- ***The scope, duration and value of service contract;***

The **contracts** established between the airport operator and the air navigation service providers have a **limited duration in order to provide terminal air navigation services in the aerodromes**. Therefore, once the valid period is finished, a new tender process is required. The first default duration was established in five years (5), renewable one year (1). However, a contract modification amended this period and interposed a new one. Currently, the default duration is 7 years, renewable for one additional year (1).

In the following table, it could be seen the initial dates of the contracts for the airports under analysis to have an estimation of the expiration of the contracts:

Airport	Initial date of the contract	Duration of the contract
Ibiza	November 2013	7 + 1 years
Alicante	January 2014	7 + 1 years

Table 4-Contracts dates

In any case, at the end of the contract and to guarantee a seamless and efficient service, a clause in the contract ensures the ANSP will keep providing the same service and with the same conditions, until the new designated ATS provider is in a position to take over.

- ***The existence of procedures allowing tangible and intangible assets, intellectual property and staff to be transferred or otherwise be made available from the incumbent to another party.***

The liberalised activity of the private ANSPs is subject to concessionary agreements, and consequently under the Spanish legislation, in order to guarantee the principle of stability in employment, a labour agreement regulation is required.

Therefore, the stakeholders involved signed a **Collective agreement** to regulate the labour relations of all those private companies that provide air navigation services in Spanish aerodromes. The objective is to ensure the stability and quality principles of the employees, in compliance with Spanish Law 9/2010. This Law establishes the air navigation service providers duties and sets certain controller's labour conditions, including the **corporate subrogation** in the event of a change of the ANSP, as a result of loss, transfer, withdrawal or rescue of the contract by another contractor. All these assumptions are laid down in the Collective agreement signed, published in the Official State Bulletin (BOE) on the 14th of August 2018.

All the above indicate that criteria 1 are satisfied.

4.2 Criterion 2: The extent to which there is a free choice in respect to service provider, including, in the case of airports, the option to self-supply

The second criterion requires an assessment of the extent to which there is a free choice in respect to service provider, including, in the case of airports, the option to self-supply:

- ***The existence of legal, contractual or practical barriers to change service provider, or in the case of terminal air navigation services, to move towards self-supply of air navigation services by airports;***

The termination of the contract could be exercised by the airport operator, under the following assumptions:

- Declaration of insolvency.
- Common agreement between the involved parts.
- Those particular conditions established in the contract document.
- The termination of the service under contract without the previous authorisation of the airport operator.
- The withdrawal or lack of validity of all the needed certifications.

- Modification in the structure of the contractor.
- Failure to provide the service and the absence of a scheduled contract formalisation.
- End of the Contract.

Once the contract expires, given both Alicante and Ibiza are already liberalised airports (by the Ministry Order in force – see section 4.3), a new tender process shall be opened for the selection of an ANSP, that could still be FerroNATS if they continue to be the best offer.

For the time being, AENA has not applied for been certified as ANSP, and therefore cannot self-supply ATS at their aerodromes, and it is not expected that this happens at least in the short-medium term.

- ***The existence of a consultation process to take airspace user views into account when altering service provision arrangement.***

In the case of Alicante and Ibiza the airport operator is AENA, a partially privatised company (51% public owned and 49% private capital), in charge of a large airport network in Spain.

The provision of airport services by AENA is regulated by Law 18/2014. The aerodrome ATC provided at these two airports is part of the regulatory scheme AENA is subject to, called DORA (Airport Regulation Document). Under this scheme, the provision of services including the one analysed in this document is subject to cost-efficiency targets.

At the so called Airport Committees participants can express their opinion on the cost-efficiency and the quality of the service provided.

The CNMC (the Spanish National Commission for Markets and Competition) is an independent organism of the Spanish Administration entitled by Law 18/2014 to oversee the application of the DORA regulated scheme. In this context, the CNMC delivers a report every year on the transparency of the consultation process and the access of users to the information related to airport fares and unit rates. The information regarding the provision

or aerodrome ATC is available. The CNMC has determined the process is compliant with the transparency requirements applicable.³

All the above indicate that criteria 2 are satisfied.

4.3 Criterion 3: The extent to which it can be chosen from a range of service providers

The third criterion requires an assessment of the extent to which the ANSP can be chosen from a range of service providers:

- ***The existence of a public tendering process (not applicable in case of self-supply);***

According to Law 9/2010, in order to enable the actual liberalisation of the aerodrome ATS at a particular airport, before the tender process begins, a Ministry Order setting up that airport has to be published. In the case of Alicante and Ibiza Airport:

“Order FOM/3352/2010, 22 December, which determines those airports of AENA’s network for which new air navigation service providers to render aerodrome air traffic control services are to be selected”. In this Ministerial Order, the following airports are listed and hence, actually liberalised:

Airports
Valencia
<u>Alicante</u>
Sevilla
Madrid- Cuatro Vientos
<u>Ibiza</u>
A Coruña

³ 2016 and 2017 reports are available. 2018 report is close to be published at the time of the drafting of this document.

Melilla
Sabadell
Jerez de la Frontera
Lanzarote
Fuerteventura
La Palma
Vigo

Table 5-Airports in the tender process

It is important to highlight that this tender process is carried out in batches, with the objective of reaching a critical mass or scale economy, so guaranteeing a minimum business volume that allowed ANSPs to provide service in a sustainable and efficient way by the exploitation of synergies. Therefore, only one ANSP is able to provide this service in each batch, and at the same time has to provide the service for the full batch under contract. AENA is a network airport operator, and so the batches for the tendering process are designed using technical criteria with the aim to guarantee the efficiency and sustainability of the net.

Batches	Airports
1	<p>Alicante</p> <p>Valencia</p> <p>Ibiza</p> <p>Sabadell</p>
2	<p>Sevilla</p> <p>Jerez de la Frontera</p> <p>Vigo</p> <p>A Coruña</p> <p>Melilla</p> <p>Madrid- Cuatro Vientos</p>

3	Lanzarote Fuerteventura La Palma
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Table 6-Batches and related airports in the tender process

The selection and later awarding is independent for each batch, so that each one is entrusted to a single ANSP. It is important to highlight that no incompatibility exists in the assignments, so more than one batch could be assigned to the same ANSP.

For this study case, the **batch 1 includes the airports analysed: Alicante and Ibiza.**

- ***Evidence of credible alternative service providers able to participate in a tendering process and having provided services in the past, including the option of self-supply for the airport.***

Before the year 2011, AENA (“Aeropuertos Españoles y Navegación Aérea”) exercised both the airport operator and air navigation services provider functions. Nevertheless, Air Navigation and Airports management roles were separated and two different entities were created by the Council of Ministers.

In this sense, by Council of Ministers agreement, 25 of February 2011, the trading company “Aena Aeropuertos” was created, as development of the Royal Decree Law 13, 3 of December 2010. The intent of this measure was to foster employment and investment, and the upgrading of the airport system throughout the implementation of a new management model.

By the Ministry Order, 7 of June 2011, the start of “Aena Aeropuertos S.A. (Inc.)” activities was set, to exercise the same functions and duties as the public trading entity, Aena, in terms of management and development of the airport services.

As of today, and after the transition of AFIS/ATC provider (outgoing provider: Ineco; incoming provider Saerco) that took place during March 2019 at four aerodromes (VDE, QGZ, RGS and HSK) there are two operating private ANSPs, duly certified by the national authority of Spain (AESA) (Saerco and FerroNATS) which were part of the tendering process back in 2011 that resulted in the award of the batch 1 that included Alicante and Ibiza.

This tendering process was initially envisaged in three different phases:

- Public Notice of the tendering process: the aim of this phase is to make all the required information available to all parties interested in participation in the process that would eventually result in the awarding of the service provision contract. To access to the following stage of the process, the requirements listed on this notice have to be complied.
- Solvency Accreditation: the tendering organisation was required to present proof of the solvency of the company and the certificate as ATS provider for aerodrome ATC.
- Negotiation and Awarding

In the end, the tendering process was carried put in two phases:

- Phase I: Publication of a notice for tendering. The document “*Documento de características para el proceso de selección*” (Document containing the characteristics for the selection process) established the minimum technical competency requirements that the economic actors interested in participating in the tendering. At the end of Phase I, eight economic actors provided documentary evidence of compliance with the required technical competency requirements, and therefor were invited to participate in Phase II.
- Phase II. Invitation for tender to the interested economic actors compliant with the competency requirements. The conditions governing this Phase II were described in the document “*Pliego de Cláusulas Administrativas Particulares*” (PCAP) (Administrative and Particular Conditions Sheet) according to which the examination of the offers form the different actors was carried out, from both the technical and the economic point of view. At the end of Phase II, two tenders passed all minimum technical and economic requirements.

Regarding the initially envisaged Phase III, Negotiation and Awarding, according to clause 21 of PCAP (Phase II), it was AENA prerogative whether or not to conduct Phase III in case it were necessary. After reviewing the technical offers in Phase II, AENA concluded a Phase III was not necessary.

Considering the particularities of this service, the selected ANSP has to comply with the following requirements before the start of the effective service provision:

- Designation: be designated by the Ministry of Public Works and Transports as civil air navigation service provider at the airports addressed. This process is triggered upon proposal by the airport operator. The designation does not put into question the selection process. It introduces technical and operational requirements on the provision of the service by the designated provider in the specific location.

- Go through the oversight during the transition phase and obtain the favourable reports from AESA.

All the above indicate that criteria 3 is satisfied.

4.4 Criterion 4: For terminal air navigation services, the extent to which airports are subject to commercial cost pressures or incentive-based regulation

The fourth criterion requires for terminal air navigation services an assessment to which extent airports are subject to commercial cost pressures or incentive-based regulation:

- *Whether airports actively compete for airline business;*

Alicante and Ibiza are both important touristic destinations in Spain. In this sense, both airports compete for origin-destination type of traffic with other similar airports accessible mostly to other Europeans. The aim is that the cost and the quality of the services provided at the airports are attractive and not an obstacle that limits the appeal of Alicante and Ibiza as touristic destinations.

This is the most significant condition for Alicante and Ibiza to actively compete for airline business. In the case of Alicante, the high-speed train is also a competitor for domestic flights or for international flights that could use Madrid as a hub.

The materialisation of this competition conditions into incentives for the airline business can be traced in the transparency requirements of the consultation process set within the regulated airport services provision scheme DORA. As already explained in section 4.2, the service provision is subject to cost-efficiency targets and the transparency of the consultation process are assessed annually by the independent CNMC. The provision of aerodrome ATC at Alicante and Ibiza airports is subject to the framework described.

- *The extent to which airports bear the air navigation service charge;*

According to the Fifth Additional Provision of Law 9/2010, all costs related to the provision of aerodrome ATC services are integrated within the airport operator's costs. The contract between the airport operator and the ANSP underwrites the amounts to be transferred to the ANSP for the provision of the aerodrome ATC service subject to the conditions set out in the contract itself.

- ***Whether airports operate in a competitive environment or under economic incentives designated to cap prices or otherwise incentivize cost reductions;***

As already explained in the first bullet of this section, Alicante and Ibiza airports compete with other airports in touristic destination areas to attract traffic. Alicante has the additional challenge of competing with other means of transport (high-speed train, road transport).

Economic incentives are introduced in the regulatory scheme that applies to AENA as an airport operator (DORA), including targets and a transparency process for the establishment of airport fares and unit rates assessed by an independent body (CNMC).

The structure of the contract between AENA and FerroNATS for Alicante and Ibiza also includes a penalty scheme up to 10% of the revenue of the ANSP subject to the fulfilment of quality of service performance targets.

To this end, the contract defines performance indicators that measure the compliance with the procedures and an adequate provision of the service according to the compromised standards. In case these indicators are not accomplished, the penalties are gradually applied. In order to monitor the compliance with all these indicators, FerroNATS has to submit to AENA a monthly report.

In summary, the regulatory scheme (DORA) provides a framework for the cost-efficiency and the quality of the service provision applicable to the aerodrome ATC. Users are consulted about the final outcome of the provision of the service under a standard process subject to assessment by an independent body (CNMC). Eventually, a failure to meet the standards set for the provision of the aerodrome ATC service has an impact on the ANSP.

All the above indicate that criteria 4 are satisfied.

4.5 Criterion 5: The extent to which a provider of terminal air navigation services or CNS, MET and AIS services or ATM data services that also provides en route air navigation services has separate accounting and reporting.

The ancillary or other air navigation services at Alicante and Ibiza airports are provided by other providers different from FerroNATS and that are currently not under market conditions:

- ENAIRE: provides CNS, AIS and ATM Systems
- AEMET: provides the MET services.

The costs of those services are provided separately. The terminal charging scheme applicable in RP3 shall ensure that the activities are accounted and charged separately, in a transparent manner in compliance with the Regulation.

All the above indicate that criteria 5 are satisfied.

4.6 Criterion 6: For terminal air navigation services, the assessment in this Annex shall be carried out at each individual airport, or in groups of airports.

Throughout the document, the most relevant legal and economic barriers that apply to the TANS provision have been considered with a particular focus on the aerodrome ATC service provided at two individual airports, Alicante and Ibiza.

The conclusion of the analysis for these individual airports and this specific type of service is that market conditions apply to the aerodrome ATC services provided by FerroNATS at both Alicante and Ibiza airports.

Therefore, all the above indicate that criteria 6 are satisfied.

5 Conclusion

Based on the assessment of TANS in Spain against the criteria laid down in Annex X of the Performance and Charging Regulation, AESA's conclusion is that the requirements for the application of *market conditions* **are met and therefore, the provision of aerodrome ATC services in the Spanish aerodromes at Ibiza and Alicante (whose provider is FerroNATS) is subject to market conditions.**

Consequently, the exemptions set out in Article 35 of Regulation (EU) are applicable to these services and locations.

Appendix A: Assessment of the existence of market conditions for the provision of TANS

The conditions to be assessed for determining whether terminal air navigation services [...] are provided under market conditions are as follows:

1. The extent to which service providers can freely choose to enter or withdraw from the provision of those services:

(a) the existence of any significant legal, economic or other barrier that would prevent a service provider from offering to provide, or continue to provide those services;

(b) the scope, duration and value of service contracts;

(c) the existence of procedures allowing tangible and intangible assets, intellectual property and staff to be transferred or otherwise be made available from the incumbent to another party.

2. The extent to which there is a free choice in respect to service provider, including, in the case of airports, the option to self-supply terminal air navigation services:

(a) the existence of legal, contractual or practical barriers to change service provider, or in the case of terminal air navigation services, to move towards self-supply of air navigation services by airports;

(b) the existence of a consultation process to take airspace user views into account when altering service provision arrangements.

3. The extent to which a market structure and competition either exists or a credible prospect of competition exists:

(a) the existence of a public tendering process (not applicable in case of self-supply);

(b) evidence of credible alternative service providers able to participate in a tendering process and having provided services in the past, including the option of self-supply for the airport.

4. For terminal air navigation services, the extent to which airports are subject to commercial cost pressures or incentive-based regulation:

(a) whether airports actively compete for airline business;

(b) the extent to which airports bear the air navigation service charge;

(c) whether airports operate in a competitive environment or under economic incentives designed to cap prices or otherwise incentivise cost reductions.

5. The extent to which a provider of terminal air navigation services or CNS, MET and AIS services or ATM data services that also provides en route air navigation services has separate accounting and reporting.

6. For terminal air navigation services, the assessment in this Annex shall be carried out at each individual airport, or in groups of airports.

Appendix B

List of consulted stakeholders

Taking on board article 35 of the Performance and Charging Regulation, it has been evidenced the results of the document through different interviews with airspace users' representatives concerned about the intended decision and about the assessment. The consulted stakeholders, those who responded and those interviewed are listed below.

Consulted Stakeholders	Contact Details
FerroNATS	http://www.FerroNATS.com/es/
Aena	http://www.aena.es/es/pasajeros/pasajeros.html