



Economic regulation of NATS (En Route) plc: further update on approach to the next price control review (“NR23”)

CAP 2160

Submission by Prospect to the Civil Aviation Authority
Consumers and Markets Group

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Prospect response to CAP 2160

Introduction

1. This document outlines the formal written response to CAP 2160 on behalf of Prospect's Air Traffic Control Officers (ATCOs') and Air Traffic System Specialists (ATSS) Branches. With 2100 members in the Air Traffic Control Officers' Branch, 800 members in the Air Traffic System Specialists Branch, and over 250 ATC workers in other branches – including the CAA – essentially, we represent the entire workforce of professionals involved in UK ATM.
2. We welcome the increasing clarity of the CAA on its plans for the future regulation of NERL and the engagement that it has had with stakeholders so far.
3. Decisions to date - particularly with respect to timescales and deferring the reconciliation review until 2022 - are very much appreciated and are welcome evidence that the CAA is taking constructive feedback on-board.

Timetable

4. We support the timetable as set out in CAP2160 and recognise that the CAA has been able to accommodate a request from NERL to provide more time for business plan submission. This will aid the development of a plan based on thorough consultation by NERL and robust data and forecasting - particularly important given the ongoing uncertainty in the industry. We also welcome the delay in assessing costs for the reconciliation exercise until 2022.

Business Plan Guidance

5. The CAA is requesting that NERL builds its plan around a range of scenarios. We caution against these scenarios being too complex or too numerous. The work required to produce these might be disproportionate given the high degree of uncertainty. A small number of scenarios to reflect low, base and high traffic forecasts would enable NERL and the CAA to focus on the plan itself, rather than spending time and effort developing and agreeing models. The plan should be constructed using a building-block approach: identifying the required resources to provide a robust, resilient service for low traffic levels and then additional elements to reflect the base and high scenarios.
6. We urge a relatively straightforward, contingency approach. This would cater for the fact that airspace users have demonstrated short-term memory loss when the choices they make at a particular point in time prove to have unintended, but predictable, consequences. We repeat the need to learn from the experience of RP2. Given that NR23 is likely to be an exceptional reference period - recalibrating NERL following recovery from the pandemic - a sensible, steady and resilient business plan would be prudent, with options limited to perhaps a range of choices in the event that traffic does not recover fully, particularly choices on capital programmes.
7. It is important to acknowledge that the lead-in times to train additional controllers and engineering staff make scaling the number of operational staff very 'sticky'. This would make having a large number of complex scenarios redundant because scaling Opex to match different levels of traffic in, say, the middle of the reference period would be unrealistic. The plan should aim to deliver a post-pandemic, fit-for-purpose NERL as at the end of NR23. It should be noted that NERL has already suspended ab initio

recruitment, with 122 trainee controllers leaving the business before securing their licences. This will result in a training lag which, coupled with an approaching retirement bulge, constraining NERL's ability to significantly increase resources.

8. NERL has to be given the resources to provide a resilient service that complies with the recommendations of project Palamon. Given the uncertainty and the time lag in flexing service delivery, this will require a degree of courage and robust defence against pressures to reduce costs significantly in the short term. We hope that all stakeholders are able to have a mature conversation about longer-term scenarios, rather than focussing on the immediate revenue pressures currently facing the industry.
9. We welcome the suggestion that NERL should take greater account of the consumer. For all too long, the focus has been on the airspace users who, while important, do not fully reflect the interests and priorities of the UK consumer. This is particularly important in the context of Covid insofar as airspace users are likely to be focussing on the immediate viability of their business. Seeking consumer feedback on the balance between price, service levels and safety will be important in building a picture of how best to provide what is key national infrastructure. However, we would like to see the CAA widen the concept of 'consumer' – the wider public beyond air passengers has an interest in air safety and that public good should be considered.
10. For Prospect, we remain convinced that passengers would prefer a safe, resilient and reliable service when they fly were they to understand that the premium would be a few pence on the average ticket. That said, if we are not convinced that any savings in en-route charges would ever find their way into discounts on ticket prices.

Traffic Risk Sharing

11. We caution against any immediate and dramatic changes to the traffic risk sharing mechanism while we are still in the eye of the Covid storm. Whilst we support the temporary adjustments to the legal framework and the importance of the reconciliation exercise, it would be wise to hold off on any major changes to the mechanism until the impact of the current crisis is clearer. The current turbulence in government policy on international travel, quarantine, green/amber lists etc makes any assessment of even month-to-month revenues impossible. Only when we reach some sort of stability will it be possible to assess the success or failure of the mechanism in a crisis. Broadly speaking, Covid-19 aside, the traffic risk sharing mechanism has worked and was never designed to take into account such a shock as Covid-19.

Opex Flexibility Fund

12. We support the concept of this fund or similar mechanism to draw on contingency funding. Particularly during the uncertainty surrounding the recovery, a fund that can be accessed quickly will enable NERL to be agile in meeting unexpected demands. Notwithstanding good project planning, many NERL capital projects are cutting-edge with a high risk of unforeseen challenges during development. Other projects such as airspace redesign face significant risks of external stakeholders seeking specification changes, with the accompanying on-costs.

Reconciliation Review

13. The reconciliation review will have an important role in ensuring that the customer is not required to cover costs that have been funded through measures such as the Coronavirus Job Retention Scheme.

14. It is important that the review is not too involved - questioning every decision, or second-guessing decisions taken under unique and abnormal circumstances. Many of NATS' decisions to continue spending will have had good operational and service continuity rationales – airspace still needed to be open and a service provided, staff needed to remain competent and equipment maintained. And some of its decisions to cut spending (even in the short-term) may have had damaging effects in the longer-term.
15. It is accepted that those decisions should not go without scrutiny by the regulator. But that scrutiny must be proportionate. The CAA must ensure that the review does not become too involved, detailed or take up additional resources that could be better utilised elsewhere - for example constructing a fit-for-purpose NR23 plan, and do only the work needed to ensure that there has been no double recovery. A consultant-led deep-dive into the minutiae of NERL's costs during 2020-2022 will just result in distraction and unnecessary work, providing few pointers to the future.
16. This particularly holds true for pension costs. These are determined largely by existing arrangements - including statutory requirements - as well as being affected by wider conditions in financial markets. Given that the CAA recently published a policy statement on its approach to pensions, a retrospective and detailed look at costs could undermine that statement and create further uncertainty - both in the RPS itself, and the trustees' decision-making going forward, leading to increased costs.