Prospect & PCS response to CAA Consultation October 2008
NATS (En Route) Plc
Price Control Review for Control Period 3 2011-2015

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INTRODUCTION

Prospect and PCS welcome the opportunity to respond to the consultation currently taking place on the CP3 price control review process. Both PCS and Prospect recognise that we are at an early stage of the consultation process and look forward to playing an active part throughout.

Prospect and the PCS represent members within NATS who undertake a range of functions, including Air Traffic Controllers, Assistants, System Specialists (engineers and scientists) and support staff. Our members have continued through CP2 to make a fundamental contribution to the aviation industry and the interests of the travelling public in terms if safety, historically low levels of delays, developing capacity and dealing with increasingly complex airspace.

Air Traffic Control, particularly given the nature of UK airspace requires long term and consistent investment, not simply in terms of technology and equipment but also in terms of staffing and training. Our members are rightly proud of what they have been able to achieve over the past number of years and agree in terms of the approach taken that safety must remain the absolute paramount concern of those involved in the consultation process.

We are alert to the general economic downturn and the impact that this is having on the airline industry. That said, this is against the backdrop of a general growth in aviation which has outstripped over a number of years most predictions. It is vital in this context that a long term view is taken with regard to ATM provision - in order that the UK is well placed to again deal with rising levels of traffic. History has shown the dangers of under investment in staffing, training and equipment and the time lag attached to ensure that capacity meets demand.

Quite rightly, environmental concerns will come increasingly to the fore. We believe that effective ATM provision has a significant role to play in ensuring that we have sustainable aviation growth for the future. Reducing delays and seeking more effective routing benefit the environment and the industry by reducing fuel burn. Particularly in airspace as congested and complex as the UK however there are few “quick wins” that have not already been achieved and seeking significant improvements will require further investment in both staff training and technology.

We welcome the fact that the CAA is encouraging a debate and discussion with stakeholders on the future approach to CP3. We also recognise that amongst stakeholders there will be varying priorities for example between cost and the need to develop capacity, and differing interests in terms of delivery. We also recognise that challenges in terms of seeking stakeholders to look to the long term in the face pressing and very immediate commercial pressures.

Turning to the specific questions raised as part of the consultation:
Q.1. The CAA invites interested parties to comment on the potential usefulness of benchmark analysis to inform the CP3 price control review, and on the CAA’s proposed approach to developing analysis of the available European data on comparative ANSP charge performance.

This is a complex issue and we welcome the early thinking of the CAA. It is important that the approach taken is robust and recognises the very specific demands and challenges attached to providing ATM services in airspace as complex and congested as that of the UK. We agree that the simple use of the unit rate can be and is misleading. We need to arrive at a benchmark analysis that, as far as possible, all stakeholders can have confidence in.

There is a real danger that without this approach, stakeholders will put forward figures and analysis that best serve their arguments rather than being a considered objective approach. One of the key issues for consideration needs to be the issue of ‘comparability’ and ensuring that comparisons are made or adjusted to achieve a like for like and consistent outcome.

Q.2. The CAA invites views on which of the two approaches outlined above would enable the CAA better to fulfill its statutory duties.

Q.3. Under the customer consultation approach the CAA invites views on:

• the suggested structure and governance of the customer consultation process;

• the proposed allocation of issues to NERL-airline consultation and to CAA scrutiny, respectively;

• the timing and balance of the review between customer consultation and the subsequent CAA consultation on regulatory proposals;

• the nature of the CAA mandate; and

• suggestions as to the procedures and protocols for consultation which might be incorporated in such a mandate.

Q.4. Do respondents have any other suggestions on how the process for the CP3 review might best be structured to meet the CAA’s regulatory requirements, recognising the scope for and constraints on airline users participating in this process?

Prospect and PCS have broadly welcomed the more pro-active approach by NATS to engage with customers on a range of issues. Transposing such an approach into the realm of economic regulation however presents a fresh set of challenges.
Such an approach would demand the positive engagement of a sufficient number of customers. This will be demanding of customers both in terms of time, resource and approach. There is a danger, particularly in the current economic context, that such an approach will be difficult to achieve.

That said, there is a real case for customer engagement and ensuring that the customer is sufficiently aware of the challenges posed in terms of the delivery of effective ATM provision and the need for a long term and strategic approach to be taken. All too often it can feel that ATM provision is seen ‘as a given’ by some rather than the case that decisions we take today will have a long term impact on ATM provision and service delivery for the future.

Q.5. Do respondents agree that Eurocontrol charges need to continue to be controlled by a revenue or price condition?

We note that as part of the volume risk sharing arrangement that customers have benefited from £19m reduced charges due to the upturn of traffic during 2006-2008 net of the downturn of traffic projected for 2009. We support the retention of the risk sharing arrangements and believe that this is in the best interests of customers and service delivery going forward.

Q.6. Do respondents agree with the CAA’s preliminary views on the scope of regulation of the London Approach?

We believe that London Luton and London City should be brought within the scope of the regulated London Approach service. From the perspective of customers and operational co-ordination as well as future development we believe this is the appropriate approach.

Q.7. Do respondents agree that there should be a separate price control for Oceanic services based on a relatively simple and low cost price review process?

We agree that separate arrangements should continue.

Q.8. Do respondents agree that there should continue to be no price cap for North Sea Helicopter services but the costs and revenues (excluding the East Shetland Basin) should continue to be taken into account in the charging till for setting the en-route charge condition?

We agree that the current arrangements should continue.

Q.9. Do respondents agree that it is appropriate for NERL work as part of the SESAR Joint Undertaking to be conducted by the regulated business and recovered through the Eurocontrol charge?

We believe that any costs incurred which are not funded through the SJU contribution should be recovered through the en-route charge.
Q.10. What are respondents’ views on how the risks of the SJU should be reflected in the price control?

As with our response to the above, the benefits of NATS involvement with the SJU will ultimately return to customers in the future. Against that backdrop we would expect any additional costs to be treated as cost pass through.

Q.11. Do respondents agree that the CAA’s approach described above represents a workable approach for the medium term, which is sufficiently flexible to accommodate currently foreseeable change?

How developments in Europe and the impact various FAB initiatives will have is still less than clear. The arrangements put in place need to give NATS a level of certainty and security to ensure that long term planning and investment can take place whilst giving a level of flexibility to revisit and review issues where there is an operational need.

Q.12. What are respondents’ views on the balance of incentives facing NERL and the potential risks to users in the development by NERL of new products?

Q.13. What are respondents’ views on the regulatory incentives and/or constraints which might be placed on NERL during CP3 in this respect?

While the focus of economic regulation should, rightly, focus on the ‘core business’ of ATM service delivery - NATS should not be penalised where it is able to develop products and services in line with customer needs.

Q.14. Do respondents have any other views on the scope issues raised in this chapter, or on questions on scope which have not been covered here?

NATS operates in an environment where its ability to recruit, retain and motivate highly professional staff is absolutely crucial to service delivery and safety over the short and long term. It also operates in an environment of economic regulation which stands into sharp contrast to the more usual European full cost recovery model. Whilst Prospect and PCS continue to question whether the PPP model of provision is appropriate, in the current context it is important that any settlement provides a sustainable basis for service provision.

Over the past number of years, the unions within NATS have been in detailed discussions on a range of issues and most notably fundamental changes have been made to redundancy and pension arrangements within NATS. These changes, whilst ultimately agreed, have been seen by our members as ‘detrimental’ changes. The unions are concerned that the continued ‘downward pressure’ in terms and conditions is one which cannot be sustained and if this pressure continues there is a real danger of industrial unrest and the subsequent impact upon service delivery.
In addition to the above - there is an emerging market and a recognised skills shortage worldwide for ANSP staff. There is certainly anecdotal evidence to point to NATS staff looking to take their skills elsewhere both in terms of other EU member states and the Middle East.

Given the above we are deeply concerned that an overly stringent approach toward economic regulation will have a negative impact upon staff and a consequent impact upon service delivery.

In the light of the above, and the very significant movement on addressing pension and redundancy issues within NATS, both in terms of cost and risk, we are seeking a favourable approach to be taken in addressing the issues of cost and risk as part of the regulated settlement given the steps taken.

Our concerns with regard to the above are compounded by the potential for ‘negative’ RPI and a deflationary environment and the potential this may have on the application of the price control mechanism. Given the nature of the service delivery requirement and conditions of the Licence, the ability of NATS to respond to such an environment is extremely limited. Against that backdrop - arrangements must be put in place to safeguard against the impact of a negative RPI figure.

**Q.15. The CAA invites views on its provisional assessment of the Potential interaction between UK economic regulation of NERL and the proposed SES II performance regime.**

Prospect and PCS are concerned about the potential impact of ‘dual’ regulation. As previously noted, the structure and charging mechanism for the UK is fundamentally different to the arrangements in place for our European counterparts. There is a real danger that the UK will be the subject of more stringent and possibly contradictory requirements emanating from the UK and Europe.

**Q.16. The CAA invites views on its proposed approach to the scope and conduct of the CP3 review, which seeks to align as far as possible the outcome of the CP3 review with the requirements on the UK which are likely to stem from SES II.**

Whilst this may be a laudable objective, our concerns remain.

**Q.17. The CAA would therefore welcome views on the relative weight that should be attached to the two objectives set out above.**

Given the concerns raised by Prospect and PCS at the time of PPP and the comments above in relation the contrasting structures across Europe, we place more weight on the need to focus on robustness in order to underpin long term investment and service delivery.
Q.18. Do respondents agree that the two alternative approaches are as set out above; or are there any other approaches to the regulation of finance?

Q.19. Do respondents agree that the CAA should pro-actively regulate NERL’s financial arrangements via licence conditions?

We believe that an effective balance needs to be struck between the two arrangements. We would also be concerned, as we are sure that stakeholders would be, if incentive/penalty arrangements impacted upon day to day operational decisions that in any way impinged upon safety.

Q.20. The CAA invites views on what, if any, changes should be made to the existing licence regime.

We believe the arrangements in place are sufficient.

Garry Graham
National Secretary
15.1.09