



## **NTUS Response to**

# **CAP 1287 : *Initial proposals on modifications to NATS (En Route) plc licence in respect of Governance and Ring-fencing***

## Introduction

1. The NTUS is the trade union body representing staff within NATS, and is made up of 3 constituent groups, Air Traffic Control Officers, Air Traffic Systems Specialists, and Support Staff, through two recognised Trade Unions, Prospect and PCS.
2. The NTUS has taken a keen interest in the CAA's work on the area of NERL governance following the publication of the ad hoc report in 2013, and submit the following comments in response to the consultation on the proposals contained within CAP1287.

## Ring Fence

3. We agree that the CAA as regulator should regularly review arrangements for the governance of NERL and it is important that NERL is run in an effective way. We are broadly supportive on the proposals for greater clarity and information within the resource certificates to demonstrate that there are adequate operational as well as financial resources. We do not consider that this would significantly increase the burden on NATS and that by the provision of this information the regulator will gain the required clarity it seeks.

## Cross Subsidy

4. The NTUS would ask the CAA to review and reconsider its proposals with respect to cross subsidy. Whilst we accept that the potential for a cross subsidy which distorts commercial services is an issue which requires appropriate measures to be in place, we do not agree with the proposal as contained in Appendix D. We are concerned that the proposed change has potential unforeseen consequences and that the burden to demonstrate compliance with the amended licence clause would be significant.
5. We believe that it is appropriate to consider that in certain circumstances, a technical argument may be made in which a perception of a cross subsidy may exist. A specific example would be around the Trust of a Promise (ToAP) provision resulting from the PPP process. It is unclear and it would be difficult for NATS to declare outright that its obligations under ToAP do not constitute a cross subsidy. In this example the proposals in the consultation document could put NATS, and therefore the smooth operation of ToAP at risk. ToAP is a key protection provided to our members at the time of PPP and any subsequent regulatory approach, which threatens its operation, breaks the covenant of that agreement and could lead to industrial unrest.
6. We therefore reject the proposal to amend the NERL licence as set out in Appendix D of the consultation document, but would propose to keep the existing wording, or to re-word in such a way that recognises that in limited and justifiable circumstances, such as in the case of ToAP, a perceived or specific or cross subsidy could exist.

## Gearing

7. The NTUS agrees that it is important to ensure that NATS has adequate funds to finance the operation of the regulated business, NERL, in an efficient manner and that it would not be in the interests of either consumers or staff if it were to significantly increase its debt. Whilst we support the modest growth in the un-regulated activities of NATS, we agree that these should not be at the detriment of ensuring that the regulated business is adequately resourced. As is consistent with our previous responses to various CAA consultations we remain supportive of the gearing mechanisms that apply to NERL.

## NERL Board Governance

8. We believe that the comparisons of the approaches by regulators in other industries are not entirely appropriate. We do not support the justification for proposals in the consultation document that seek to draw comparisons between NERL and industries that supply services directly to the general public. The regulatory environment that NATS and NERL operate in is, by deliberate design, very different from such utilities. We would highlight the fact that NERL, as part of the wider NATS is operated under the PPP provisions, and as such has a very different construct and different arrangements. The provisions of the PPP ensure that protections are in place that exceeds those in some of the comparative industries that the consultation document uses.
9. We believe that a material consideration is the fact that the NATS board includes partnership directors with significant powers over and above those of traditional non-executive directors, including powers of veto, as well as representatives of NATS' customers. The airline group and its shareholders also have significant lobby powers, industrial influence and indeed are part owners of NATS. This arrangement ensures that all areas of NATS and particularly NERL are subject to strong scrutiny. In this context we feel that the CAA has not fully recognised the roles of the partnership directors and the Airline group.
10. The NTUS has considered carefully the proposals set out by the CAA with respect to NERL governance. Following our assessment of the proposals, we do not agree that there is a need for further direct independent directors specifically for NERL and in that respect reject the CAA's proposals for two independent NERL directors. The partnership directors already have strong powers (including powers of veto) and requirements placed on them from the PPP process to ensure that NATS is governed and managed appropriately, and given that NERL is approx. 75% of NATS, then it would seem unlikely that NERL wouldn't receive the right level of oversight.

11. Furthermore we would suggest that having an overview of all of NATS' activities wider than those of just NERL allows the partnership directors to have an understanding of the business as a whole, and this will provide an early warning of any issues with the NERL – NSL relationship that the CAA suggests. Directors appointed solely to a NERL board would not have this wider overview, and may not have access to information that the current partnership directors have, and may end up taking a 'silo' approach.
12. We therefore ask that the CAA to consider whether alternative arrangements could be made to address the concerns on governance in which the Partnership Directors are required to provide specific input to the NERL board (using their existing powers and with their existing responsibilities), and if necessary this board could be operated in a more transparent way to avoid 'nesting'.

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