Mr. Matt Claydon,
Programme Director,
Economic Regulation & Competition Policy
Civil Aviation Authority
Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

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Ref IATA response to CAP 3121

By Email to economicregulation@caa.co.uk

Dear Economic Regulation Team

**IATA Response to consultation on the Economic Regulation of NERL: Initial proposals for modifying the Licence to support the implementation of a UK Airspace Design Service (CAP 3121)**

The CAA, while in the main have addressed many of the key points raised in the previous related consultations (CAP3029/CAP3026/CAP3106) however, the fundamental concept of having enroute charges finance the Airspace Design Service (ADS) and Airspace Design Service Support Fund (ADSSF) is not in line with ICAO Charging principles and requires significant revision.

IATA is of the opinion that the concept is not in line with ICAO cost relatedness principles; as aircraft who will transit the airspace will be paying a charge for ACP`s (see figures below) which have little or no advantage for them. Most of the ACP`s already listed for the UK are at an airport, or Terminal area and some that are listed are Military or Business Aviation Airfields, while others are currently closed to operations. Equally, the larger airfields listed below have considerable sunk cost that have likely already been financed through airport charges, how these costs will be reconciled remain unclear?

Details CAP 3106a:

**Figure 3 State of ACPs making up the masterplan (as of February 2025)**

| Airport | Initial develop & assess gateway estimate (Stage 2) | Date develop & assess gateway passed (Stage 2) |
|---|---|---|
| Edinburgh | 28th February 2020 | 8th March 2023 |
| Glasgow | 24th June 2022 | 1st September 2022 |
| Bristol | 25th February 2022 | 3rd August 2022 |
| Exeter | 29th November 2019 | Not yet completed |
| Manchester | 29th May 2020 | 31st March 2023 |
| Liverpool | 30th November 2018 | 6th October 2023 |
| East Midlands | 29th May 2020 | 23rd November 2023 |
| Leeds Bradford | 28th October 2022 | Not yet completed |
| Heathrow | 30th June 2023 | 11th July 2024 |
| Gatwick | 29th July 2022 | 17th October 2023 |
| Stansted | 31st January 2020 | 13th April 2022 |
| Luton | 25th March 2022 | 1st April 2022 |
| London City | 20th December 2019 | 24th June 2022 |
| Southend | 31st July 2020 | 31st October 2024 |
| Southampton | 24th April 2020 | 3rd February 2023 |
| Bournemouth | 31st July 2020 | Not yet completed |
| Biggin Hill | 31st January 2020 | 8th March 2023 |
| RAF Northolt | 24th June 2022 | 29th November 2022 |
| Manston | 27th March 2020 | 3rd October 2022 |
| Farnborough | 23rd February 2024 | 8th November 2024 |

Further references from CAP 3029:

IATA believe that the ADS Charge, and subsequent ADS Support fund financing, is a newly developed charge that our members are not levied within other jurisdictions.

The UKCAA have statutory duties to ensure that under article 15 of the Chicago Convention, there is a level playing field. IATA are of the opinion that the separate ADS and ADS Support Fund Charges could contravene this, the principle of article 15 is that states charges for the use of facilities should not be higher for foreign aircraft than for the state's own domestic aircraft engaged in similar international operations. As the UKCAA propose to impose a charge to finance a separated entity for airspace design, on all aircraft that transit its FIR, we believe this may be in direct contravention of article 15. Similarly, as already pointed out, in previous submissions ICAO DOC 9082 states:

*"The allocation of the costs of air navigation services among aeronautical users should be carried out in an equitable manner. The proportions of cost attributable to international civil aviation and attributable to others (including domestic civil aviation, State or other exempted aircraft, and non-aeronautical users) should be determined in such a way as to ensure that no users are burdened with costs not properly allocable to them according to sound accounting principles"*

This must be further considered, as the costs associated with the listed ACP`s do not encompass significant changes to the upper level of the FIR (above 7,000ft) and as such would place a significant charge on aircraft who are transiting the UK FIR, but not intending to arrive at a UK Airport covered by the ACP`s, again IATA are of the opinion that the charge would encompass costs that are not allocable to these airlines, and as such contravenes ICAO recommended practices.

We have structured our response in line with the specific areas of the CAP and have elaborated further on the applicability aspects later in this submission.

**Licence modifications to implement the creation of the Airspace Design Service**

We understand the overall intention is for the UKCAA is to go ahead with the licence modifications as consulted in November. While we appreciate the further development of policy documents on Governance, Airspace design fund and ACOG, the policy papers still leave many questions unanswered. Our views on having airlines play a central role in the governance appears to have been overlooked, instead the airlines will be offered a potential seat on the "Advisory Board" with zero decision making powers, this is at odds with similarly proposing them as full financiers of the system.

## Geographical Scope

IATA had previously raised concerns on the role of the ADS in overall planning for UK airspace, equally we retain some concern over the proposed future development of ACOG. It appears confusing as to why ACOG would be removed from the licence, however be still required to play a role in airspace change outside the LTMA? Within this section it appears to further identify that NERL will be required to provide the full UK ADS?

The geographic scope needs to be tightly defined in correlation with the strategic objectives of the ADS. The LTMA, which is proposed as the main focus and driver of this entire change and development, is acknowledged throughout the documentation as being the most complex airspace cluster and has the potential to deliver the most significant benefits from airspace modernisation, it will also be considered as an enabler for potential expansion at Heathrow. The geographic scope and, or objectives of the ADS should, at the appropriate point in time, be reflected in a licence modification and duly consulted upon. For that reason, IATA are inclined to support Option 1 as it is an already established process that in our view, can deliver the assurance of wide consultation and a clearly defined appeal mechanism. While it may take more time for a change to progress, it appears the most appropriate means for airlines, as key stakeholders to mitigate any potential emerging risks or changes in prioritisation driven by other stakeholders, including the ADS itself.

## Nature of the Obligation

IATA can support the intent of the obligations as set out in the Initial Proposals subject to due consideration and full revision following consultation and any amendments to associated regulatory frameworks and processes, such as the air navigation directions and the subsequent CAP1616 revision. We believe that specific reference to the geographic scope for the single design and ACP should be included in the obligation to provide utmost clarity and explicitly defined obligation for the ADS in its first phase of operation. Equally Airlines should be included in the relevant parties to be consulted when developing and setting the strategic objectives.

## Governance, the Advisory Board and reporting

We take note of the additional policy paper that was published in conjunction with this consultation. While the policy paper outlines the envisaged set up of the ADS, its board and the Advisory Board, it falls short of giving the airlines, as proposed financiers and

beneficiaries of the updated development the much-needed core strategic oversight or role in decision making associated with airspace designs. The governance paper states, "*The obligation to create the Strategic Delivery Plan, to consult with the co-sponsors, and to keep the Plan up to date would be a requirement in the licence"*. This could be seen as only the DFT and CAA as co-sponsors have the knowledge experience and expertise to ascertain is the plan is correct and meets the requirements of industry.

This is also critical as depending on the designs and technologies used for its implementation, it may necessitate similar investments for airlines in training or technology. Will there equally be funding available for airlines in case of a requirement to retrofit, train or forward fit aircraft will appropriate technology?

What is similarly lacking is an outline as to how success will be measured? Delivery obligations and geographical scope set correctly as a prerequisite. Now, delivery to the plan mentioned, however the benefits stated are high level in terms of capacity and environmental performance improvements however airlines require greater detail as to how delivery will be tracked, and implementation will be measured.

Who will in turn qualify/quantify the benefits/improvements, as we cannot accept that the ADS will be responsible for same?

**Administration of the Airspace Design Support Fund**

IATA are not inclined to support the ADS administrating the Airspace Design Fund. We believe that with the complexities associated with the ADS set up and immediate implementation of LTMA ACP`s the focus should be on just that, delivery. We reiterate our view that the UKCAA could act as the as the independent manager of a potential UK Airspace Design Support Fund if this option is taken forward.

**The role and scope of ACOG**

Further clarity is required to on the ringfencing of obligations if ACOG, as a separate unit within NERL, is disbanded and the residual functions outside of LTMA are completed within the ADS business unit. There are clearly consequences for the geographic scope and obligations on the ADS.

The reallocation of ACOG funds provided under NR23 Determination needs to be accounted for in establishing the new funds for the ADS, if the CAA's proposed approach is pursued and would still be relevant if ACOG continues to fulfil a reduced scope and function.

## Cost related aspects

### Users of the service considerations

### Clarification on Military Airspace users

It is important to note that in the most recent proposals, there is no mention of which airports will have their ACP covered through the proposed UKADS and the ADSF In fact, this is only mentioned in the Egis report from November 2024, and indirectly in CAP3029 from October 2024. The 12 airports in question are located within the London TMA. Of these 12 airports, at least one (RAF Northolt) is a military base, while another (Manston) is currently closed for operations. The costs related to UKADS have been estimated by Egis at GBP 100m to 160m from mid-2025 to mid-2035 (in 2024 prices). Assuming an equal cost distribution across the ACPs, 16% of the total cost (between GBP 16m and 26m) relates to military airfields and a currently closed airfield. In CAP3121 point 5.89 the UK CAA state: "Under the Eurocontrol Principles, "Determined Unit Costs" (charges) are required to be expressed using Total Service Units ("TSUs"), which include both civil and military flights. However, as it is proposed that military and other exempt flight service units do not pay the Charge (nor do they pay the en route charge), NERL can only receive revenue from Chargeable Service Units ("CSUs"). As per our normal approach for setting the en route charge, we increased determined costs (and hence charges) by the percentage difference between TSUs and CSUs – 1.24%, using 2024 data".

IATA would like to highlight that this approach is not consistent with the EUROCONTROL Principles for Establishing the Cost-Base for En-Route Charges and the Calculation of the Unit Rates (Eurocontrol Principles doc No. 20.6.02). Within this (point 3.6), EUROCONTROL states: "Contracting States shall cover the costs for the services that air navigation service providers have provided to flights exempted from en route charges**. "**Separately, the Eurocontrol document states: "Account shall be taken of the whole of the en route air navigation facilities and services for which each Contracting State is responsible by virtue of the ICAO Regional Air Navigation Agreements and the associated Regional Air Navigation Plan based on which national plans are established.

This means that only facilities and services provided for civil and military traffic operating in accordance with ICAO rules and regulations (General Air Traffic: GAT) can be included**.** The Contracting States shall apply the principles to all their providers of air navigation facilities and services whose costs are included in their cost-bases." Furthermore, ICAO's Policies on Charges for Airports and Air Navigation Services DOC 9082 notes "The proportions of cost attributable to international civil aviation and other utilization of the facilities and services (including domestic civil aviation, State or other exempted aircraft, and non-aeronautical

users) should be determined in such a way as to ensure that no users are burdened with costs not properly allocable to them according to sound accounting principles.

Finally, in the initial proposal for NR23 (CAP2394c) the UK CAA states that "The UK keeps its compliance with State obligations under review to ensure that the costs of services provided to exempted flights is not passed on to other airspace users through its unit rate". However, in the final decision on NR23 (CAP 2597) the UK CAA states "MoD uplift. This adjustment is necessary to ensure the reconciled costs are uplifted for the costs of military and exempt flights included in Total Service Units (TSU). This allows us to derive reconciled Determined Costs used for the purpose of setting unit rates under the Eurocontrol Principles "(point 3.4). In point 6.14: "The Eurocontrol Principles require DUCs to be expressed using total service units (TSUs), to take account of both civil and military flights. As military and exempt flights are funded separately, NERL's DUCs are expressed in terms of CSUs for civil flights only.

To express NERL's DUC in a way consistent with Eurocontrol Principles, NERL's Determined Costs have been grossed up for military and exempt flight service units (the difference between CSUs and TSUs) in a way that means the DUC calculated using TSUs is the same as calculated using CSUs."

IATA requests that EUROCONTROL and ICAO charging principles are upheld and that civil airspace users do not cover the cost-of-service provision for military users.

Fundamentally, airspace change around military airbases should be covered by the State and not by commercial aviation.

We request additional clarity on how the military elements of UKADS and UKADSF will be funded. This relates specifically to the ACP needed at RAF Northolt, but also in relation to military aircraft operating in the other airspace areas in question.

**Non-commercial users**

It is also important to recognize that Biggin Hill and Farnborough airports do not serve commercially scheduled civil flights. They are primarily bases for business aviation. According to Eurocontrol, 7% of European traffic (in terms of IFR movements) is business aviation. In line with the user pays and cost relatedness principles of charging, costs of airspace change around business aviation airports should be covered by business aviation. Under the current proposal, 93% of the costs of airspace change at business aviation airports would be covered by users who never make use of the airspace in question.

**Emerging groups of airspace users**

The proposed ACPs will safeguard the needs of emerging groups of airspace users, such as eVTOLs or unmanned aviation entities. In line with the user pays principle, these costs should not be levied on existing commercial aviation users. If it is not possible to execute the

charge from the airspace users concerned, the State should cover the relevant proportion of the costs.

**Commercial aviation**

We remain concerned and do not support by the application of the ACP costs to the en route cost base. According to EUROCONTROL, 19% of movements in the UK airspace are overflights. It is likely that the overflight Service Units account for more than 19%.

As such, 19% of the costs would be levied on users who do not benefit from the changes. Again, this is not consistent with the overarching charging principles of Eurocontrol and ICAO.

**Risks of double counting**

We note that the majority of costs of UKADS and UKASDF relate to staff costs. It would be our expectation that these experts are already employed by NERL, and their efforts will now be redeployed to new ACP related topics. If the costs for these experts are already included in the NERL cost base, we expect to see a corresponding reduction in cost there.

Transparency will be crucial to ensure that airspace users are only charged for new costs that would not be incurred otherwise. The Uk CAA must ensure that there is no double-counting for staff costs, i.e. that the cost for any particular staff member is not included in both the cost base for NR23 and separately UKADS and UKASDF. Additionally, there is a risk of double counting related to other airspace change projects which are already included in the NR23 agreement. Similarly, additional detail is required to understand the possible overlaps between the existing and planned activities of ACOG and the new UKADS.

**Risk Management**

All parties involved in the creation of UKADS and UKASDF recognize that there is a very large level of uncertainty surrounding the project in the early stages of project definition and kick off.

The UK CAA proposes that in the early stages all the costs are simply "passed though" to the users. The UK CAA also notes that at such an early stage it would be "challenging to develop formal delivery incentives for NERL". In the context of these uncertainties, it is of utmost importance that the UK CAA requires NERL to provide increased transparency on costs, processes and decisions made. Simply passing the costs to users is not appropriate, especially given that users do not currently have the ability to meaningfully comment on or influence the costs.

Enhanced oversight would be required during this period to ensure that airspace users are not charged for any unreasonable costs, and that NERL is efficient with both its decision

making and related expenditure. In relation to the proposed margin of 1% to be charged on top of the Opex costs, we question the actual level of risk for which NERL needs to be compensated. In the current proposal (at least in the short term) NERL would be allowed to recover all their costs. As such there is no risk related to under recovery and, consequently, no need to apply an additional margin.

Similarly, we do not support the capitalisation of OPEX in the RAB. Given the significant proportion of costs are OPEX generated, the level of CAPEX is unclear, and the proportionality of regulation would be questionable for the size and complexity of creating and administering an additional or shadow RAB for the ADS within NERL's licence.

**Charging mechanism proposed**

In relation to charging based on unit rate vs a movement, if the charge is indeed levied on the en route cost base, we believe the service unit approach is more appropriate.

Having said that, we continue to question whether the costs should be levied on en route operations.

We agree that a true-up is a vital component of the agreement. However, full transparency of costs is required for this to be appropriately and credibly applied.

For ease of collection and administration, we believe the costs should be collected by CRCO, and that the reporting timelines are aligned with the wider NR agreements

**In conclusion**

We call on the CAA to refine its evidence base with updated cost estimates reflecting improved clarity of scope for ADS. The UKCAA should provide greater definition of the scope and obligations on the ADS, in combination with completing its reforms to CAP1616 and Air Navigation Guidance frameworks, to significantly reduce uncertainties associated at this stage with proposals and thus provide a solid base for cost estimates to be developed upon to better inform any further consultations. The revision and update of these elements should be subject to consultation before the proposed final decision.

IATA also insist that the UKCAA include a full review clause in the future development of the UKADS for NR28. As mentioned there remains significant uncertainties associated with its OPEX /CAPEX, and potential diminished efficiency incentive presented from a cost pass through approach for the remainder of NR23. To ensure that the baseline for any determined cost considerations for NR28 are based on efficiently incurred NR23 costs there will be a requirement for an efficiency review of same.

Yours sincerely,

Rory Sergison,

Head, ATM Infrastructure Europe

Flight & Technical Operations,

IATA