

*Economic regulation of NATS (En Route) plc: further update on
approach to the next price control review (“NR23”): CAP2160*

RESPONSE TO CONSULTATION

Background

The CAA Consumer Panel is a non-statutory critical friend, giving expert advice to the Civil Aviation Authority (CAA) as policy is being developed, and making sure the consumer interest is central. The Panel’s objective is to champion the interest of consumers.

General comments

The Consumer Panel welcomes this consultation. We have previously expressed our concerns as to the lack of weight being given to understanding the needs of the consumer in both the process for and the outcomes of the economic regulation of NATS/NERL. This consultation marks a significant step forward in addressing some of our concerns and we thank the CAA for noting, and indeed explicitly referencing, our previous advice in the consultation document and for its ongoing liaison with us.

However, we also urge the CAA to be specific about what it means by “consumers” and “customers.” While this may appear obvious, the consultation document is non-specific on many occasions. The terminology in the final guidance document should be strengthened and applied consistently throughout. It would be very helpful if the second bullet point in the very first paragraph in the opening summary contained a reference to consumers as well as customers as this would clearly specify the CAA’s intent that these are different constituencies at the head of the final guidance. The same principle should be applied in the second bullet point in paragraph 2.1 which fails to signal the fact that consumer and customer consultation are distinct processes. See also paragraphs 15 and 16 in the summary, which refer to NERL taking account of “customers” views in its business plan and planning for initial “customer engagement” in June 2021. Strengthening the terminology in the way we suggest would set out very clearly the CAA’s expectations more than the current consultation document does and signal that a shift in culture to understand that consumers need a distinct voice in NERL’s business planning process.

In terms of timing, we welcome the proposal for a more iterative approach to the business planning process and the proposal for NERL to provide key building blocks by December of

this year in order for the CAA to be assured of the direction of travel, including the incorporation of the consumer interest, in NERL's business plan before it is finalised and submitted for determination. As the recognition, and direct treatment, of consumer interests being distinct from airline/airport customers is new, we also suggest that the CAA engages with NERL at least by the autumn to understand its approach to consumer engagement.

Guiding principles

The CAA has provided additional guiding principles for the development of NERL's business plan. These include the need for NERL to "*demonstrate how it has taken consumers into account in developing its business plan.*"¹ If implemented successfully, this could considerably increase the importance of the consumer voice in the economic regulation of NATS. However, we consider that, in para 2.27, the CAA should provide more specific direction to NERL to undertake appropriate consumer research and also to demonstrate that this aligns with good practice, such as the guidelines used by HAL in its consumer engagement strategy.

We welcome the first guiding principle that the business plan should be based around a plausible range of scenarios. However, we are concerned that the high-level requirement in para 2.10 that the scenarios should take account of "the priorities of consumers and airspace users around cost efficiency" will result in the consumer voice being filtered via the direct airspace users. We suggest that the bullet point should read "the evidence base of the priorities of consumers and also airspace users."

Divergence between airline and consumer interests

We were pleased to see explicit reference to the need for NERL to understand the potential divergence between the interests of airlines and consumers and to demonstrate that understanding in its business plan submissions. We would expect the CAA to monitor the NERL response and to take additional action where it considers it necessary. In this respect, we welcome the fact that the CAA proposes to adopt a more pro-active role in the constructive engagement process as we believe this will enhance the ongoing visibility and importance of the consumer interest.

Consumer engagement

We were also pleased to see the CAA refer to our suggestion that consumer representation should form part of NERL's customer engagement process. We see this as part of a wider constructive consumer engagement that we would like to see becoming business as usual for

¹ CAP2160 Paragraph 13 (e), further developed at paragraphs 2.25 to 2.32

NERL. We recommend that the CAA imposes the establishment of a representational group as part of the formal process.

Areas not yet covered

While welcoming the above developments, we note that the consultation does not explicitly address two other matters we have previously raised. In particular, the CAA has not yet taken the opportunity to:

- Articulate the process it intends to take in defining affordability and protecting consumers' interests, including the consideration of combining empirical surveys (which it does request NERL to consider carrying out) and theoretical economic analysis.
- Address how it intends to determine the allocation of the financial burden of the current pandemic between investors and consumers.

We look forward to picking up these points as part of our wider continuing dialogue with the CAA.

Summary

In conclusion, the Panel welcomes this consultation and we look forward to continuing working with the CAA on this important area. We would appreciate an update from the CAA in due course as to progress. In the meantime we hope the policy team will call on the Panel if there are any further clarifications or questions that would benefit from a discussion with the Panel.