



# Economic regulation of NATS (En Route) plc: Update on approach to the next price control review

## CAP 2119

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

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## Introduction

1. This document outlines the formal written response to CAP 2119 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 - we represent effectively the entire workforce of professionals involved in UK ATM.

## Summary

2. In general, Prospect agrees with the overall direction of the proposals made in CAP 2119. We are particularly supportive of a regulatory period re-start in the year 2023 as well as the associated commencement of a five-year price control period. Prospect has advocated this approach as it will give the industry as much certainty and time as is possible for stability to return.
3. In addition, Prospect agrees that neither side should be revisiting the items already determined by the CMA as part of that process which ended in early 2020 (chapter 3, 3.4).
4. Prospect asks the CAA to consider the implementation of the recommendations of Project Palamon (CAP 2100) more strongly in its considerations going forward. This will have a particular impact especially around regeneration (chapter 1, 1.33 and chapter 3, 3.34). If NERL is to have the resources to enhance resilience and address the recommendations in Palamon, an increase in prices in real terms in the medium term will be required. It would be contradictory for the regulator to demand staffing and resilience improvements and at the same time, deny the mechanisms for that to happen. Similarly the recovery of revenue via a modified traffic risk sharing mechanism of three years' revenue without a real terms cost increase would be unrealistic.

## Development

5. Prospect notes that the absence of a clear definition of 'affordability' remains. Notwithstanding the statement that the CAA hasn't 'crystallised a clear definition' of affordability and that it calls on stakeholders to provide their views (summary, para 9), we believe that there will be ongoing problems exacerbated by this focus on affordability. It has the potential to raise airspace users' expectations but without an agreed understanding of the concept. When considering affordability we continue to press the CAA to assess ATM charges in the round against airspace users' other costs. As mentioned in previous submissions, the ATM costs of airspace users' cost bases are proportionally low, and whilst a significant change in allowed costs could severely impact ATM service provision (resilience or technological improvement funding for example) the percentage differences to airspace users' costs are very small, and when passed through to passengers, they would be negligible on the ticket price.
6. Prospect supports the reconciliation of revenue as part of efficient costs. However, the question of what are 'efficient' costs, especially when looked at with hindsight, could well lead to problematic interventions (chapter 1, 1.12). It would be grossly unfair for the CAA to look at actions NERL took as a result of Covid-19 during an entirely unprecedented global event, with the intent to maintain liquidity and its operational status with the benefit of hindsight. There is a risk that such decisions may be determined to be 'inefficient', yet they may have been perfectly reasonable at the time, given the unprecedented circumstances. We counsel extreme caution in this area. We welcome the publication in due course of the CAA's approach and working paper on the reconciliation of costs.
7. Prospect suggests that the reconciliation exercise itself is held toward the end of 2022 so that actual costs can be considered as much as possible. Given that the future is still incredibly uncertain, accurately forecasting costs could prove very difficult. By delaying

the exercise until as much real data as possible is available would reduce the need to make adjustments later on.

8. We agree that there could be potentially unwanted outcomes due to Covid-19 in the area of incentives. It is our view that, in order to avoid unnecessary complications and perverse results, incentives should be removed for the years 2020-2022. This would seem sensible whilst the reconciliation and recovery mechanism is in place, and traffic is so low that incentives have little value.
9. With respect to the current traffic risk sharing mechanics we support the CAA's intention to make modifications in support of its approach to the years 2020-2022. We maintain that the CAA should only modify the mechanism for this crisis only, and that any long-term changes should be proposed through the normal consultation process.