

## Consumers and Markets Group

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9 August 2021

Dear Thea

### **Further guidance on the approach to the next price control review, NR23**

Thank you for your response to our further update on approach to the next price control review, “NR23” (our “June 2021 update”).<sup>1</sup>

In your response, you set out your proposed approach in response to our guidance around the use of planning scenarios and the recommendations from Project Palamon. We have identified some concerns around your proposed approach in these two areas. In the rest of this letter we seek to clarify our expectations, to be read alongside the business planning guidance in our June 2021 update.

#### **Approach to scenarios for business planning**

In our June 2021 update, we said that NERL’s business plan should be flexible around a plausible range of integrated scenarios, taking account of different traffic forecasts, levels of service quality, cost efficiency and other key factors for the investment programme such as airspace modernisation. We also said that NERL should present and discuss with stakeholders the options and trade-offs it has considered, and to justify its preferred approach.

NERL’s response sets out that it will focus on a “base traffic forecast” and “variations” around this as the only practical approach. These variations will contain different traffic scenarios, options for phasing costs and revenues, and changes in efficient costs including trade-offs. NERL says it will not be developing multiple detailed business plans using a bottom up approach.

To clarify, we do not expect NERL to develop multiple detailed business plans, which we would not expect to lead to a better outcome for consumers. However, we are concerned that the terms used by NERL (“base” and “variations”) indicates that it is focusing on its service and costs under a single traffic scenario, which may not lead to a plan that is resilient and efficient under other plausible outcomes. As set out above, we expect NERL to show it has developed a plan that is flexible to different plausible scenarios with integrated assumptions (for traffic, costs and service). It should also show in detail the options and trade-offs that were considered under each scenario and how it selected its preferred approach. We consider that uncertainty mechanisms will be an important tool to provide this flexibility in the business plan.

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<sup>1</sup> Economic regulation of NATS (En Route) plc: further update on approach to the next price control review (“NR23”), CAP 2160, June 2021

An approach to more fully considering different traffic scenarios appears to be supported by other stakeholders. For example, one airline suggested that NERL could start by showing the core requirements under a low traffic scenario, and then explain what additional capex and opex are required to deliver appropriate service levels under higher traffic forecasts and if airspace modernisation is ahead of or behind schedule.

### **Interpretation of the Project Palamon recommendations**

In the June 2021 document, we said that NERL should take account of the outcome of the Palamon decision, including Recommendation 1 – NERL should provide a resilient service that is capable of satisfying a range of reasonable scenarios for a rebound in traffic demand for various areas of its regulated air traffic services.<sup>2</sup>

NERL's response sets out that as a result of the Palamon decision, it is uncertain what it is expected to achieve in terms of sector-specific delay performance to meet its licence obligations, and it should not plan to operate a sustained gap between operational demand for ATCOs and supply for any areas of airspace. It says this will have a detrimental impact on its flexibility to manage flow of traffic across the network and that the focus on resilience at the local level inevitably means a higher total cost for NERL, including having ATCOs in excess of demand in the early part of NR23.

We are concerned that NERL may have mis-interpreted the Palamon recommendations. This creates a risk that NERL will take a planning approach that is unduly conservative and costly where this has not been discussed with stakeholders or demonstrated to be in the interests of consumers and airspace users. In particular, we consider that:

- the essence of the Palamon findings were that NERL should avoid significant and repeated failings in the provision of its services to key parts of its network. The Palamon findings also say that we intend to take account of wider considerations when investigating possible future complaints regarding NERL delay performance, not solely compliance with delay targets;
- bearing this in mind, the Palamon recommendations, in themselves, do not set higher expectations of performance for NERL to comply with its licence;
- the Palamon recommendations would not necessarily lead to reduced flexibility and higher costs during NR23. We would expect to see options for resilience to be provided by making staffing more efficient and agile, for example, and voluntary overtime may remain an important tool for providing the necessary flexibility in staffing. We also consider that service and resilience should be appropriately tailored to local areas and circumstances, not one-size-fits-all;
- while there will be challenges in planning operations as traffic levels recover, including because of the lead times in training ATCOs, NERL should challenge its business processes to ensure they can be as efficient and flexible as possible; and

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<sup>2</sup> The full recommendation in CAP 2100 (February 2021) was: *“NERL should improve the staffing resilience available to London Approach airports and in Essex airspace in particular, including by making staffing arrangements more efficient and agile, to avoid a reoccurrence of the historical difficulties encountered at the Stansted and Luton approaches, before demand substantially recovers to pre-covid-19 levels. NERL should provide a resilient service that is capable of satisfying a range of reasonable scenarios for a rebound in traffic demand for the various areas of its regulated air traffic services. That said, we appreciate that some level of delay is expected in normal operations, as is some variation in performance across different parts of the network.”*

- during engagement on NR23, NERL should explore with airspace users and, where appropriate, consumers on the trade-offs between costs and expected service levels, at a network and local level, and take their views into account in the business plan. We would expect NERL to engage proactively and transparently with airspace users, and to formally set out what information it needs to consider these trade-offs, such as traffic forecasts at a local level. We would expect airspace users to engage with NERL in a constructive and cooperative manner, in line with recommendation 3 of the Palamon decision.

We remain open to discussions with NERL on these issues and other key planning assumptions ahead of the submission of its NR23 business plan.

We will publish this letter on our website and it should be read alongside the business planning guidance in our June 2021 update.

Yours sincerely

A handwritten signature in black ink that reads "Paul Smith". The letters are cursive and slightly slanted to the right.

**Paul Smith**

Director Consumers & Markets Group