



Date 21 October 2020

Civil Aviation Authority
CAA House
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London
WC2B 6TE

By email only economicregulation@caa.co.uk

Dear Sir, Madam,

Economic regulation of NATS (En Route) plc: Consultation on licence modifications and guidance CAP 1967

IATA welcomes the opportunity to engage with the CAA on the proposed licence modifications and guidance set out in document CAP 1967. In its final report issued in August 2020, the Competition and Markets Authority (CMA) determined that modifications to NERL's licence were required to enable the CAA to exercise regulatory control over NERL in RP3 so that NERL was constrained in setting higher prices than necessary.

IATA's comments on the CAA's consultation to proposed modifications are detailed below:

Condition 10A

IATA fully supports the new condition that requires NERL to establish, maintain and manage an Airspace Change Organising Group (ACOG) and create and maintain an Airspace Masterplan.

In IATA's view Condition 10a is an important enabler for Airspace Modernisation, to ensure steady progress is made towards delivering the upgrades set out in the AMS.

The purpose of the Masterplan is to set out where airspace changes could be taken forward to provide benefits and to consider potential conflicts, trade-offs and dependencies. IATA request greater clarity regarding the timelines for the creation of the Masterplan and the approach to engagement with airline stakeholders during the development phase.

ACOG is intended to operate as a separate and impartial unit within NERL, coordinating the development and delivery of the Masterplan. IATA request that the international airline community is offered representation within the governance arrangements that oversee ACOG's activities.

Condition 10a requires that NERL ensure the Masterplan is consistent with the UK Airspace Modernisation Strategy (AMS), which sets out a series of specific airspace and ATM upgrades that are considered by DfT and CAA as a critical investment in the UK's transport infrastructure. IATA requests greater clarity regarding the management of conflicting priorities if the airline customers' requirements for airspace modernisation (expressed via the SIP process) do not align with specific upgrades required by the AMS.

The new condition also requires NERL, where necessary, to assist other stakeholders with preparing and submitting airspace changes. IATA again requests greater clarity regarding the management of funding,



resources and opportunity costs, should NERL be required to revise its service and investment plans on the instruction of the CAA to assist other stakeholders in their airspace changes at the expense of commitments made to the airlines.

The CAA's consultation documents states that, "The impact of Covid-19 on traffic levels has reduced the urgency of the need for airspace modernisation". IATA disagrees. Airspace modernisation is a critical enabler for the aviation sector's recovery, ensuring that the air transport network is efficient, sustainable, and resilient. Specifically, airspace modernisation is required in the UK to;

- Support aviation's commitment to reach net-zero emissions by 2050
- Increase capacity and reduce delays as traffic levels recover
- Improve the management of aircraft noise around airports
- Open-up the airspace for all users including General Aviation and Drones
- Enable the removal of outdated ground-based navigation infrastructure

Condition 22- Oceanic Charges

In Chapter 1 of CAP 1967, the CAA sets out the modifications it considers are needed to remedy or prevent the adverse effects specified in the CMA's final report. In relation to Condition 22 – Oceanic charges, the CAA notably comments:

"Adding Atlantic and Tango charge formulae to implement the CMA's determination. The charges comprise a base charge and a satellite data (ADS-B) charge, with adjustments for differences between forecast and actual inflation and traffic levels. The Tango, but not the Atlantic, ADS-B charge includes an adjustment related to differences between actual and forecast traffic in the Tango area."

Yet, the formula to calculate the Maximum Permitted Average Charge Per Atlantic Flight (A_t) includes an adjustment to account for the difference between forecast and actual number of North Atlantic flights in the relevant year t ($ATVAR_t$).

IATA is of the view that a traffic adjustment is indeed required to reflect the difference between the actual number of flights and the CAA forecasts IATA is however concerned about the CAA's proposal to give a value of 0 to $ATVAR_t$ and $TTVAR_t$ for 2020 and 2021.

Pursuant to section 14(2) of the Transport Act 2000, the CAA must suggest modifications of the conditions of the licence as it thinks are needed to remedy or prevent the adverse effects specified in the CMA report. In its final report, the CMA noted that the SB ADS-B data charges were paid to Aireon on a per flight basis, rather than a fixed annual lump sum, thus protecting UK airspace users from the impact of lower flight volumes on SB ADS-B charges (such as during the pandemic).¹ IATA is of the view that by giving a value of 0 to $ATVAR_t$ and $TTVAR_t$ for 2020 and 2021, the CAA de facto frustrates the effect of that contractual clause. Yet, the CMA did not identify any adverse effects in relation to Aireon's per flight basis charging methodology; to the contrary, it identified this element as granting a certain protection to UK airspace users. IATA therefore urges the CAA to reconsider its decision to give a value of 0 to $ATVAR_t$ and $TTVAR_t$ for 2020 and 2021.

¹ CMA final report, paragraph 12.38.



Requirement for NERL to certify that it is operating a fully SB ADS-B based service to 99% of flights in the Oceanic area

In its letter to the CMA dated 15 April 2020, IATA stressed the need for the CMA to re-assess the case for SB ADS-B considering the unforeseen and highly material change of circumstances caused by the pandemic. It makes indeed no sense to require airlines to pay for a service that managed traffic at levels that NERL can in fact manage safely for many years to come without the addition of SB ADS-B.

IATA is of the view that the requirement for NERL to certify that it is operating a fully SB ADS-B based service to 99% of flights in the Oceanic area must be appreciated considering this change of circumstances. Levels of traffic are currently low. The 99% target is therefore likely to be reached more easily than before the pandemic –Any successful achievement in that regard will likely be a result of extremely low traffic volumes and operational steps taken in response, and not necessarily attributable to NERLS efforts. IATA request further clarifications on specific areas:

- Over what period will the 99% measured?
- We suggest the inclusion of an independent assessment of whether the service being provided, as opposed to NERL self-certification? This could be a consideration also for the increased role of the independent reviewer?
- Can the UK CAA fully define what “being provided with an ADS-B enabled service” mean? (It should not include any compromised or degraded service level, which does not enable full application of the reduced separation standards ADS-B enables. It should also include the filing of user preferred routes when that capability is delivered.)
- If there is a lack of “regulatory approval” (for instance if ICAO withdrew approval) to use ADS-B then can it really be considered fully available and surely, in such circumstances, NERL should not be entitled to charge for the service?

IATA also believe that the proposal could be strengthened by including the following in the licence revision:

- A clear indication of when the said report should be commissioned, inclusive of consultation of airlines or their representatives on the scope and material to be reviewed
- Ensuring the scope, form and level of detail and full terms of reference of the independent review be included in the licence revision – to provide clarity for all stakeholders

DRAFT Guidance on NERL Capital Expenditure Engagement incentive

Currently, in paragraph 20 and again in paragraph 33, the proposal is that the ‘weighting’ given to a project is determined in accordance with the capital spend. IATA believe it is likely that airspace users would value projects in terms of the benefits they are meant to deliver, as opposed to how much they cost. A relatively low capex project could be expected to deliver a disproportionately high user benefit and the weighting should be able to be amplified to reflect this.

A clarification is also required on the process and timing of steps 5 & 6 “envisage that steps (5) and (6) would take place at the RP4 price control review.” Given that we would now expect a new price control period to commence in 2023 it is unclear if this reference to RP4 simply means the next period of price control, or if it remains aligned with the EC regulatory periods and means commencing 2024? IATA is of the view that with the likelihood that the UK will not continue to be subject to the EC regulatory process by RP4, this provision should be amended to reflect the regulatory price control period starting in 2023.



In paragraph 27, you say "If during the period the value of projects is changed, new projects are added, or projects are discontinued or deferred, it may be appropriate to adjust the weighting of projects in the overall score."

IATA recognise the need for this mechanism to ensure:

- in certain cases, where necessary, that NERL is held to account for engaging well with stakeholders on why the decision to defer or delay was made; and
- there is no perverse incentive on NERL to deliberately descope or delay projects, on which it could be seen that they were failing to engage well on, in order for them to reduce the weighting on this project and consequently reduce any penalty that they may have faced.

Given that, in these circumstances, the direct link to weighting projects only on capital spend would be broken, the argument for project weighting to be developed in accordance with airspace user prioritisation (made above) is supported.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Sergison'.

Rory Sergison
Assistant Director, ATM Infrastructure
Safety and Flight Operations, Europe