



Economic regulation of NATS (En
Route) plc: NR23 Business Plan
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Submission by Prospect to the Civil Aviation Authority
Consumers and Markets Group

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Prospect submission on NERL NR23 Business Plan

Introduction

1. This document outlines our response to the CAA Letter to Stakeholders (7th February 2022) inviting responses on NERL's Business Plan, 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 effectively represent the entire workforce of professionals involved in UK Air Traffic Management.
2. The NR23 plan will be crucial for NERL as it seeks to recover from the pandemic. NERL needs the resources to recover in itself, as well as helping the wider aviation industry, and the UK as a whole, rebuild.
3. There will inevitably be pressures on cost - but a long term view is needed to ensure that sufficient resources and investment in technology are available to meet the demands of the recovering economy and the aviation industry.
4. Although there is a degree of uncertainty in the traffic forecasts, traffic will recover and NERL must be allowed to prepare for it within the determined costs for NR23. It would be folly to allow NERL once again to be in the position it found itself in during RP2 when it could not invest to meet demand. This would not only cause NERL internal difficulties but hamper the aviation industry's recovery.
5. Broadly speaking, Prospect can support the proposed NERL business plan. It affords a sensible balance between cost and investment and, on paper at least, seeks to address the need for adequate resourcing. We do, however, have concerns as to the deliverability of the resourcing plan and outline these later in this document.
6. The proposed NR23 business plan comes at a time of employee relations unrest. It is interesting to note that there is no mention in the plan of the *Working Together* employee relations program which has delivered considerable benefit during previous reference periods. NATS usually stresses the value of stable industrial relations in securing delivery of its plan. Its absence this time introduces a degree of uncertainty and risk. There has been a very definite shift in NATS' approach to its relationship with the trade unions, and this has resulted in a deterioration of that relationship. We also expand on this further in this submission.
7. Prospect is again grateful for the opportunity to have observer status during the customer consultation workshops. We would like to thank NERL, the CAA and airlines for agreeing to this. It's hugely beneficial, both to help in gaining a wider view of customer views of the proposals and aids us in communicating with our members on the regulatory and stakeholder objectives, understanding the rationale that leads to the final determination.

Customer Priorities

8. We note that airline customers, the public, NERL and we all agree that resourcing with a degree of resilience is needed. We also note that it has been highlighted there is a risk in being able to provide a high quality service in the high traffic case scenario, which we would agree with.
9. We support the approach by the CAA to request NERL to consult more widely with the travelling public as the end user. We have in previous consultation responses offered our judgment that the public at large would pay slightly more for an improved and

resilient service¹ and we note that this has been confirmed by the consultation exercise undertaken for the NR23 business plan.

10. We agree with airspace user customers and NERL that the CAA should create a charging regime for new airspace users. It is unfair for traditional customers to shoulder this cost, and the CAA should consider this without delay. NERL will need to work proactively on the integration of these users, and this work should be financed by that community or by the government as part of its support for innovation in new industries.

Traffic Outlook

11. Traffic outlook and forecasting remains very volatile and, in addition to the pandemic, the current situation in Ukraine may have significant consequences for traffic numbers. When evaluating the plan, it is crucial that the CAA provides mechanisms for flexibility for NERL when traffic inevitably diverges from the current forecast. As previously stated: in the event of the high traffic forecast materialising it is extremely unlikely that sufficient resources will be available to meet demand.

Performance Outcomes

12. Our ATCO members have been working historically low traffic levels and will need some time to regain the perishable skill that is providing complex air traffic control. It is important that the plan recognises this and provides a margin for these skills to be regained. This lies at the heart of our safety culture as professionals. In addition, training has effectively been suspended for two years and there will have to be a significant effort to recover this lost ground, potentially with an impact on service performance during this process.
13. Our primary concern, however, is that we are sceptical that the resourcing plan will be able to deliver the proposed replacement and additional controllers claimed. We note that the plan refers to overtime - there is no overtime agreement for additional ATCO resources beyond 31 December 2022, and we question why a provision for overtime has been factored into the plan. We believe that it is highly unlikely that an overtime agreement will be reached, particularly given the deteriorating employee relations climate. This will put further pressure on resource levels. The modelling by Steer to assess the impact and value of overtime use should be used *with extreme caution*.
14. We continue to advocate that the ADS-B capability should be utilised in oceanic airspace. The benefits from a safety perspective alone justify the cost. We are convinced that the flexibility that arises from escaping the rigid oceanic track structure and flight-planning more direct and fuel efficient routings will be of considerable benefit to airlines and the travelling public as traffic levels return to pre-pandemic levels.
15. We broadly agree with the proposed performance outcomes and would strongly caution against any tightening of the targets. It will be a very uncertain and finely balanced situation with traffic, resources, resilience and investment. By setting too stringent targets it is likely that NERL will be set up to fail, or that its focus will be on service delivery to the detriment of training and technology improvements (all of which use resource from the same pool of staff). A failure to implement those improvements will have an impact on future service delivery toward the end of the reference period.
16. We continue to support the exclusion of the C1 metric from the incentive mechanism. It is inappropriate for NERL to be held accountable for causes of delay which are outside

¹ <https://www.caa.co.uk/media/sxgiuo2c/prospect-cap1994.pdf>

of its control. Our members across aviation (not just in NERL) are experiencing delays with the CAA Medical Department in regaining medicals and where this is a factor in staffing delays, those delays should be discounted. It is inappropriate for NERL to be penalised for delays because the regulator cannot provide timely and efficient assessments of medical issues for staff to return to work. We also support the exclusion of flights delayed by space launches and the continued application of exemption days, which will be particularly important given the technology updates due to deliver during NR23.

17. The proposal for traffic modulation for C2 and C3 targets is supported given the uncertainty surrounding traffic forecasts. This initiative will ensure that targets are appropriately flexed and allow NERL to plan and resource appropriately on a more tactical level whilst being able to deliver on other elements of the plan. As highlighted above it is important that the situation does not occur in which focus is narrowed on one aspect of the plan to 'chase a target' to the detriment to other areas.

Service Delivery

18. We support NERL's priority of focusing strongly on providing resources and training additional controllers in NR23. We are expecting about a third of our ATCO members in NERL to retire by the end of NR23 and there is a view that a return to near-normal traffic levels is likely to trigger a retirement 'bulge'. Even without a bulge, simply to replace the forecast retirements will require a significant, sustained recruitment and training effort. It is vitally important for the provision of UK ATS that NERL's planned recruitment is resourced appropriately. We have evidence from RP2 as to the impact on delay if investment is not made in resources. Furthermore, to help NERL meet its obligations arising from Project Palamon, it must be afforded the right level of resource.
19. Although it is not something that can be addressed in NR23, we have to note that Prospect opposed the decision to make 122 Trainee ATCOs redundant during the pandemic. While NATS is in the process of bringing a proportion of them back, there was a missed opportunity here to have a larger pool of Students ready to enter on-the-job training once the pandemic allowed.
20. We do not believe that the levels of validations projected in the plan and claims made on pass rates are credible. The plan to reduce the length of training whilst improving the pass rate to circa 100% is simply not realistic. The focus on training and its length have been the subject of numerous initiatives and, apart from cutting out course content, the training time has largely settled at the length it has because that's how long it takes to learn the busy and complex tasks of the job. One cause of delayed training which could be addressed is 'holding' - this is when Students are unable to progress to the next phase of training because there is a lack of capacity in the operation. That is largely due to flawed planning and the consequence of poor decision making. If this was eliminated and training was not subject to constant changes and reorganisations, then the time to validation would be shortened.
21. The option to invest £15 million in training is welcomed, there are very definite practical advantages of having a higher fidelity simulator, based at Swanwick, and ideally the provision for this to be utilised remotely by Prestwick controllers as well. However, there seems to be a disconnect in the plan when this is cited as aiding training time reduction and pass rate increases, given that it is unlikely to be available until the end of NR23.

Capital Investment

22. Prospect broadly supports the planned investment by NERL, and that it is focusing on technology upgrades and airspace modernisation. The latter is particularly important in

order to make efficiency gains through airspace design. This will have real benefits in safety, capacity and for the environment. It is well documented that the external constraints on NERL to make changes in airspace in previous reference periods has hampered efforts to improve service levels and resilience. Together with the ACOG, a welcome initiative, NERL must be afforded the resources to continue this important program.

23. It is also necessary to provide for sufficient resources for dual running. Prior to the arrival of the Covid pandemic, NERL had begun to increase its technical staff headcount in order to support the introduction of the new DP-Voice and DP-En-route technology - these programmes took a significant hit due to the pandemic and many long-serving, experienced staff left as part of a Voluntary Redundancy program to achieve cost reductions whilst traffic was significantly suppressed. Despite claims in NATS' plan ² that the VR programme has enabled new ways of working etc, there is significant risk to resilience due to an ongoing industrial dispute involving our members in our ATSS Branch. VR facilitated the departure of significant experience from NATS and the reduced number of staff is insufficient to deliver the technology programme whilst also supporting the legacy systems which deliver the current service. We believe there are significant risks to the programme here and delivery is likely to require additional expenditure on increased staffing (albeit in a very tight labour market) or increased use of (expensive) consultants and contractors.
24. We support the governance process of the SIP and the sensible approach of the 2+5 concept, allowing investment plans to be updated in real time, rather than solely aligned to control periods.

Costs / Prices

25. NATS took considerable steps in response to the pandemic to maintain its liquidity and to ensure the company could continue to function. Our members also contributed to this, by deferring their 2020 pay award of 2.3%. Our members throughout the UK (not only in NERL) have shown considerable flexibility and have risen to the challenges of Covid, continuing to work through lockdowns to ensure vital and essential aviation services were available.
26. The NERL plan proposes a sensible balance with respect to cost, managing to keep costs reasonable, given the difficult situation facing the industry. NERL has a strong track record of continuing to be efficient and managing its costs appropriately. We are always at pains to stress that great care must be taken when undertaking any benchmarking activity in ATM, as there are many factors which are unique to the provisions of Air Traffic Services and, even within the industry, there are many different pressures and institutional setups. Nevertheless, with that caveat, NERL compares favourably against other ANSPs in Europe.
27. NATS has also made sensible proposals to profile prices with respect to the Traffic Risk Sharing debtor. We support this approach.
28. In order to do this, it is important that the CAA is clear that its approach to regulation will be consistent throughout both NR23 and NR28 and that the Traffic Risk Sharing debtor will be able to be spread over the two reference periods.

² Page 31

Oceanic Plan

29. We continue to support NATS in its use of ADS-B. Although the airline customers may be less than convinced of the benefits, it is clear that the technology is improving safety, and with the withdrawal of the oceanic track structure will allow for more environmentally friendly and optimal routes. We support NERL's proposals to introduce a risk sharing mechanism and this creates consistency with the rest of NERL.

Regulatory Mechanisms

30. The Traffic Risk Sharing Mechanism (TRM) has proved instrumental in the continued liquidity and refinancing of NATS through the pandemic. Although not necessarily designed for events of this order of magnitude, without it, it is clear the company would have been in dire financial difficulty, almost certainly requiring government support. Despite continued calls, bespoke government support was not forthcoming and the TRM is the mechanism required for the company to fall back on. It is therefore crucial that this continues, and the proposals set out by NERL to modify the scheme in light of recent experience are supported.

Pensions

31. Pension provision is a key element of our members' terms and conditions and is also instrumental in staff retention. Our members have always been and continue to be engaged in the pension schemes' sensible stewardship. Together with NATS, we have taken significant steps several times since privatisation, to ensure pension costs are reasonable and appropriate to the labour market within air traffic management service provision.
32. We have been instrumental in supporting the closure of the Defined Benefit scheme, and in reaching agreements with NATS to limit the impact of pensionable pay rises over the last 13 years. As it formed a significant part of the negotiation to close the Defined Benefit scheme, the Defined Contribution scheme arrangements should be viewed in the context of the scheme it replaced, and benchmarked against that, rather than the current market. We view the Defined Benefit scheme, and Defined Contribution scheme which replaced it, as key terms and conditions, and we will robustly defend the arrangements as they exist today.
33. Many of our members have taken the opportunity to opt out of the Defined Benefit scheme and take the Pension Cash Alternative. This has meant increased certainty for the scheme, as well as providing significant savings, numbered in the tens of millions. We support the inclusion of the Pension Cash Alternative costs into the pass through mechanism.

Reconciliation Review

34. As set out in our response to CAP2160 we must stress in the most vigorous terms that the reconciliation review be proportionate to the crisis at the time, and not viewed through the rose-tinted glasses of hindsight. Keeping an organisation running, with no income, in a fast changing and uncertain environment, with legal responsibilities to provide a 24-hour continuous service, in the most difficult of circumstances is the largest challenge ever faced by NERL.
35. As set out in our CAP2160 response *'a consultant-led deep-dive into the minutiae of NERL's costs during 2020-2022 will just result in distraction and unnecessary work,*

*providing few pointers to the future.*³ It is therefore very alarming that the workshop of 3rd March 2022 suggests this may be the direction of travel.

36. We accept that a general assessment of costs incurred should be made, and that NERL should be subject to scrutiny, but that scrutiny must be appropriate and proportionate to the crisis at the time. It was an unprecedented time in NERL's history, a complete unknown, with the situation changing weekly. Decisions made at the time were taken with the best knowledge then available, whilst also ensuring the service could continue, and crucially be able to support a recovery which was continually being predicted with a significant amount of uncertainty.
37. Benchmarking against other organisations – especially airlines if undertaken must be done very carefully. NERL is not an airline. It has legal responsibilities to continue to provide an H24 service and is a part of critical national infrastructure. It must continue operating. An airline can completely stop if it wants to, NERL cannot.
38. Operational staff have recency requirements which require them to work a certain number of hours a month to maintain their skills. This means that staff could not be placed on open ended or extended furlough. As a result, extensive use was made of short term furlough with staff rotated through this to ensure that no more staff were at work than needed. Had staff been placed on open ended or extended furlough, then there would have been a training burden which could have compromised capacity when traffic returned. This would have resulted in additional costs.
39. Despite significant lobbying, the UK Government refused to provide bespoke financial support to NERL. Therefore, it can only be surmised that a political decision was taken that NERL would recover its costs by the mechanism in place, namely the traffic risk sharing mechanism. Consequently it is grossly unfair and inappropriate to modify significantly, using hindsight, the expected costs that can be recovered by that mechanism.

³ <https://www.caa.co.uk/media/5zrl3vwn/prospect-cap2160.pdf>