

Decision on modifications to NATS (En Route) plc licence in respect of reporting and Specified Services

CAP 1253



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CHAPTER 1

Introduction

Purpose of this document

- 1.1 This document sets out the CAA's decision on modifications to the air traffic services licence held by NATS (En Route) plc ('NERL') in respect of regulatory reporting and Specified Services.

The CAA's proposals

- 1.2 With NERL's consent under section 11(1) of the Transport Act 2000 ('the Act') the CAA published, on 17 November 2014, proposals to modify conditions in NERL's licence by notice under section 11(2) of the Act¹. The effect of the proposed modifications was:
- to move NERL's regulatory reporting generally from a financial year to a calendar year basis;
 - to harmonise more closely CAA and EC reporting requirements; and
 - to modify the list of Specified Services in Schedule 4 that NERL is required to make available under its licence.
- 1.3 The CAA invited representations on its proposals by Monday 15 December 2014. The CAA received no representations on its proposed modifications.

1 Available at:

http://www.caa.co.uk/docs/33/CAP1242_Proposal_to_modify_the_NATS_licence_reporting.pdf

Chapter 2

Assessment

Regulatory reporting

- 2.1 Currently, NERL's statutory and regulatory accounts are based on a year end of 31 March. For regulatory accounts this date is a condition of NERL's licence. NERL currently reports financial performance (including regulatory accounts) and provides related certificates to the CAA on the basis of a 31 March year end. NERL also produces its multi-year Business Plans and its annual Service and Investment Plan (SIP) on a financial year basis.
- 2.2 At the same time NERL is required by European legislation to provide an increasing amount of financial information to the European Commission on the basis of a 31 December year end for a substantial part of its business. The UK is also required to provide performance plans (as part of the UK/Ireland FAB performance plan) on the basis of a 31 December year end.
- 2.3 The current arrangements duplicate work and require figures covering different but overlapping time periods to be reconciled. To improve transparency, efficiency and ease of monitoring and enforcement the CAA sees considerable merit in aligning the reporting arrangements for UK and EC regulatory purposes. This would also help to reduce the reporting burden on NERL and so satisfy the new duty placed on the CAA through section 104 of the Civil Aviation Act 2012 not to maintain unnecessary burdens in its regulation of air traffic services under the Transport Act 2000.
- 2.4 The CAA understands that NERL has no present intention to modify its statutory reporting period for Companies Act purposes and therefore its financial year will continue to end on 31 March. Consequently, the CAA did not propose to change the periods of the availability of resources statement or the financial gearing reports that NERL produces under Condition 5 of its licence, both being linked to NERL's financial year. It proposed rather to modify paragraph 26(b)(i) of Condition 5 so that reports on gearing refer to the future period of 1 April 2015 to 31 March 2020; and to delete paragraph 27 as this relates to a 31 December 2011 deadline for a gearing estimate. For the purposes of gearing measurements, the value of the Regulatory Asset Base (RAB) will be based on its value as at 31

December each year rolled forward as appropriate to March and September. The CAA proposed to modify the definition of the 'Value of the RAB' in paragraph 29 of Condition 5 accordingly.

- 2.5 The effect of the change proposed is that the following documents produced under the licence would be moved from a financial to a calendar year basis with effect from 1 January 2015:
- The annual regulatory accounts (Condition 6);
 - The NERL Business Plan (Condition 10);
 - The annual SIP (Condition 10); and
 - The annual service standards statement (Condition 11).
- 2.6 As a consequence of these changes, the annual Business Plan Report (BPR) under Condition 10 would also be prepared by NERL on a calendar year basis with effect from 1 January 2016.
- 2.7 Transitional arrangements would be needed in order to minimise any unnecessary burdens on NERL of moving from a financial to a calendar year basis for reporting purposes.
- 2.8 Annual regulatory accounts would be produced by NERL for the financial year 2014/15. NERL would ask its auditors to verify the RAB at 31 December 2014 and regulatory accounts would then be produced for the calendar year 2015 and onwards. NERL had proposed that for reasons of cost, internal workload and to avoid disruption, the audit of the regulatory accounts should continue to be undertaken during the same period as the audit of the NATS group's and NERL's statutory financial accounts. This would mean that while future regulatory accounts would be based on a 31 December year end, the audit of the regulatory accounts would be completed and the regulatory accounts signed off by 31 July. The CAA considers that this will satisfy its requirements under Condition 6.
- 2.9 For the annual SIP the CAA considered several options:
- Option 1. Run on the current 2014 SIP for the period from 1 April 2015 to 31 December 2015 with the next SIP covering the calendar year 2016.
 - Option 2. NERL to consult users on and produce a new SIP for the nine month period from 1 April 2015 to 31 December 2015 with the following SIP covering the calendar year 2016.

- Option 3. NERL to consult users on and produce a new SIP for the period 1 January 2015 to 31 December 2015 recognising that this will overlap with the current 2014 SIP for the period 1 January 2015 to 31 March 2015.

- 2.10 The CAA was not attracted to Option 1 because it would give users less opportunity to comment on NERL's plans. The longer time period would also mean that NERL would not have a 2015 SIP that could be used as part of the annual plan required by EU legislation. Options 2 and 3 are broadly similar in effect although Option 3, as it is on a calendar year basis, is perhaps better aligned with EU legislation which requires an annual plan covering 12 months. The CAA's proposal was therefore based on Option 3. However, as a transitional arrangement to allow time for the necessary process of user consultation and review to take place, NERL should be required to submit the SIP in respect of the period beginning on 1 January 2015 by no later than 28 February 2015. Subsequent SIPs would be submitted no later than 31 December in respect of the period beginning on 1 January the following year.
- 2.11 Should NERL subsequently introduce a calendar year reporting period for its statutory accounts the CAA would be ready to propose consequential changes to the licence to reflect this.
- 2.12 As far as NERL's charges are concerned, the CAA consulted separately on moving charging periods for London Approach and Oceanic charges from a financial year to a calendar year basis from 1 January 2015.
- 2.13 The charging period for North Sea Helicopters is not specified in Condition 23 of NERL's licence. It would be for NERL to decide whether to align the charging period for North Sea Helicopters with other of its charges.
- 2.14 The CAA appreciates that the changes will impose some additional costs on NERL but considers that these costs are likely to be outweighed by the benefits to NERL and users of harmonising reporting and charging periods.

Reporting requirements

- 2.15 At the same time as aligning the reporting and charging periods, the CAA wished to take the opportunity first, to harmonise more closely CAA and EC reporting requirements and second, to streamline some of the reporting requirements in the licence.
- 2.16 Under Condition 10 of its licence NERL has to produce a 10 year

Business Plan every five years. The equivalent European requirement under the Common Requirements Regulation is a Business Plan covering a minimum of five years². Bearing in mind its duty to minimise regulatory burdens on NERL, the CAA proposed that in future NERL should be required to produce a Business Plan covering five years that is aligned with the Reference Periods for Performance Plans under Single European Sky legislation³. Accordingly the first five year Business Plan would cover the RP2 reference period from 2015-2019. The CAA would not, however, expect NERL to produce a fresh Business Plan for this period but would instead treat the RP2 Revised Business Plan (2015-2019) delivered by NERL on 18 October 2013 and published on the CAA website⁴ (as amended subsequently for the purpose of producing the UK's RP2 Performance Plan and any further changes made as a result of the European Commission's assessment) as meeting the new requirement.

2.17 Currently, under Condition 24 NERL has to provide each year a separate audited statement of information on the operation of the price control conditions. The CAA considers that such information should in future be provided in the Regulatory Accounts produced by NERL under Condition 6 so that all information on NERL's financial performance during a price control period is available in a single audited document. This would be achieved by:

- deleting paragraphs 7 to 9 from Condition 24; and
- supplementing the Regulatory Accounting Guidelines produced each year under Condition 6 to include information currently reported separately under paragraphs 7 to 9 of Condition 24.

2.18 The CAA proposed that the annual BPR should in future be produced on a calendar year basis. In order to meet EU reporting requirements placed on national supervisory authorities, the CAA would expect NERL to provide relevant and timely information to the CAA that will enable the CAA to report to the European Commission by 1 June on its monitoring of performance plans and targets. The licence obligation on NERL would be to produce a BPR by the end of July which would include audited financial information.

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- 2 Paragraph 2.2.1 of Annex1 to the Commission Implementing Regulation 1035/2011 of 17 October 2011 laying down common requirements for the provision of air navigation services.
- 3 Commission Implementing Regulation 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions.
- 4 <http://www.caa.co.uk/docs/5/20131018%20RP2%20Revised%20Business%20Plan%20-%20Updated%20for%20PRB%20targets%2018%20Oct%20-%20se....pdf>