



A consultation on the CAA's process for developing economic regulation for Reference Period 2 under the Single European Sky

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This submission is provided on behalf of the NATS Trade Union Side (NTUS) who comprise the trade unions Prospect and PCS who represent the vast majority of staff working within NATS as ATCOs, engineers, scientists and support and management grades. We welcome the opportunity to respond as part of the consultation exercise and it is worthwhile noting that we also provided a detailed response to the public consultation taking place at a European level on the proposed regulatory approach for a revision of the SES performance scheme addressing RP2 and beyond.

Our response in relation to the CAA consultation will echo many of the points and issue that we have sought to raise at a European level.

Without rehearsing of the arguments and concerns that we have raised at a European level – as the social partners within NATS, we are deeply concerned as to the apparently increasingly strident announcements that we hear in relation to RP2 and its application. Further to that, we are deeply concerned that an overly ambitious or aggressive approach taken as part of RP2 will be damaging not only to NATS and our members but also to ATM service delivery and this is not in the interests of either other aviation stakeholders, the travelling public or the UK PLCs. During the CP3 consultation period we raised concerns that the UK would be the only ANSP in Europe that would be subject to economic performance regulatory pressures both at a national level through the CAA Economic Regulator and also at a European level through the PRB.

We are becoming increasingly concerned however – given the strident announcements made – that the UK Economic Regulator will simply be a transmission mechanism which is required to implement the pronouncements made at a European level.

The above concerns bring us neatly to the issue of RP2 consultation. NATS is the only ANSP in Europe which has been subject to economic and performance regulation for a number of years. As part of that process both Prospect and PCS have supported the principle of effective stakeholder engagement and consultation as we identified as part of the CP3 process. We believe that in order for economic and performance regulation to have the confidence of stakeholders, including airline customers and social partners that it must be open and transparent and set within a timescale where effective consultation can take place. In our submission to the PRB and reflecting our experience of performance and economic regulation within the UK, we emphasised that in terms of target setting that the principle of subsidiarity should underpin the process followed in order to properly take into account priorities of customers and the crucial need to take an informed view as to the effective trade offs which may be achieved in relation to target setting with regard to issues such as capacity, cost efficiency, delays and environmental impact. It is against that backdrop that we believe that member states should retain responsibility for consultation with their customers at a national level in order to determine the appropriate targets which are set.

We also set out that, given the vigorous performance and regulatory framework already in place in the UK, that this is all the more important and it would be perverse for the UK to be the subject of different and potentially contradictory demands with regard to performance and economic efficiency driven at a national and transnational level.

As the Economic Regulator is aware, the NTUS has been supportive of the concept of Total Economic Value. Implicit in this concept is the recognition that in an area as sophisticated and complex as ANSP service delivery that there are inevitable trade-offs to be made, for example in relation to capacity, service delivery, delays and cost. We believe that NATS has been at the forefront in Europe, if not worldwide, in relation to customer engagement and meaningful consultation on these issues. Over the past number of years the UK has made significant strides in relation to improving performance and service delivery as well as making efficiency savings. It would appear that these significant improvements in what is some of the most congested and complex airspace in the world are lost on the Commission and others and a cruder and less sophisticated approach is being advocated.

As we understand the approach to RP2, consultation could take place at a national level with key stakeholders and broad agreement be reached in relation to the balance between cost efficiency, service delivery, capacity, delays etc., only for such proposals to be overturned at a European level.

Prospect and PCS have consistently supported the 'bottom-up' approach taken by the UK Economic Regulator – we have deep reservations as to the 'top-down' approach being advocated by the PRB.

Transparency and accountability are axiomatic with the notion of effective performance and economic regulation. In that context it is most appropriate for consultation to take place with customers at a national level in order to determine the appropriate targets which are set. Our deep concern is that the 'top-down' approach being advocated will not be transparent in terms of reflecting the balance of customer demands nor accountable in terms of willing the ends as well as the means in any meaningful way.

In addition to the above we have a number of concerns which we hope will be addressed as part of the consultation process:-

1. As set out above we are concerned as to the apparent failure of the PRB to recognise the very significant improvements made by NATS in relation to economic and operational performance since the time of PPP. In contrast to many other ANSPs the quick wins both in relation to performance and efficiency have already been realised.
2. There is a clear failure to recognise the unique ownership structure of NATS within Europe. This is all the more disturbing where a process of liberalisation is being encouraged.
3. In line with the above there is an apparent lack of sophistication in terms of addressing issues such as cost of capital.
4. There is an apparent failure to recognise that there is not a 'level playing field' across Europe in relation to issues such as how pension costs are dealt with and accounted for. The accounting methods used by NATS ensure that such costs are readily identified, are open and transparent and it is clear as part of that process that there is no state subsidy. We question whether such arrangements are in place elsewhere in Europe.

Conclusion

Ensuring that NATS has financial stability and is able to sustain further improvements with regard to service delivery is in the UK national interest. As identified it is notable that the requirements under the UK Transport Act which requires the CAA to apply economic regulation in the manner it thinks best calculated to secure that licence holders such as NERL will not find it unduly difficult to finance the activities authorised under their Licence is a test which is notably absent from the EC Regulations. This is despite the fact, already identified, that the Commission is supporting an agenda of further liberalisation across Europe. In any assessment as part of RP2 we believe it is absolutely crucial that past performance should be taken into account when coming to an informed view and assessment of current performance.

In the UK NATS has been subject to economic and performance regulation for over a decade. Indeed since 2001 controllable operating costs in NATS have been reduced by over 30% in real terms. In this context, where stringent economic and performance regulation has been applied, the opportunities, for quick wins, are inevitably reduced. It is also axiomatic that in an organisation which has achieved significant efficiency savings and performance improvements that further improvements become increasingly challenging.

It is also important that in order to secure the future we must also understand our past. Against that backdrop it is important that PRBs should also take into account performance against previous targets and the reasons for any divergence – which, for example, may involve trade-offs between economic efficiency, capacity, demand, complexity and delays.

Improvements in the UK over the past number of years have been as a result of a combination of vigorous performance and economic regulation in tandem with effective customer engagement. Against that backdrop and in the context of an ANSP which has some of the most congested and complex airspace in Europe, if not the world, from a customer and provider perspective there are inevitably trade-offs to be achieved. It should be recognised in the UK context with regard to issues such as capacity and delays that stretching targets have been historically set and these have been incentivised as part of the UK regulated settlement. In relation to target setting a 'silo' mentality needs to be avoided. The provider and customers need to have an informed engagement with regard to priorities and this can only happen at a national level.

The NATS NTUS looks forward to entering into meaningful consultation with the CAA Economic Regulator. We do hope the issues we have raised do not appear unduly negative but they reflect a deep seated concern with regard to the impact of RP2 not only on our members but ATM service delivery for the UK. We look forward to working with you in seeking to develop an economic and performance regulatory process which will underpin and support safe, efficient and effective ATM system for the UK which we can all be proud of.

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