

Summary of responses to the call for evidence "NATS Government Share Ownership"

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1 Introduction

- 1.1 In June 2011, the Government published a call for evidence in relation to its proposal to sell all or part of its 49% shareholding in NATS (formerly National Air Traffic Services). The call for evidence invited responses about whether, given the control mechanisms in place the it needs to retain a shareholding to ensure that there is appropriate protection for
- o aviation safety
 - o security interests
 - o economic regulatory interests
 - o civil/military co-operation
 - o environmental interests
 - o supporting the Single European Sky programme.
- 1.2 The call for evidence was announced on 8 June 2011 in a Written Ministerial Statement and it ran for four weeks until 6 July 2011. The 30 persons in Appendix A were notified of its publication on the DfT website at <http://www.dft.gov.uk/consultations/dft-2011-15>
- 1.3 The 20 responses listed at Appendix B were received; 13 from those targeted and seven others. A further six were received after the end of the consultation period and are excluded from this analysis.
- 1.4 This report summarises the responses and is structured by reference to specific questions in the Call for Evidence document, which should be read alongside it. The questions are:
- Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that aviation safety is protected? Why? How much?
 - Do you agree that an appropriately qualified independent post holder would be a suitable appointee for chair of the Safety Review Committee?
 - Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that security interests are protected? Why? How much?
 - Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that economic regulatory interests, civil/military co-operation and environmental interests are protected? Why? How much?
 - Given the control mechanisms in place, does the Government need to retain a shareholding to support the Single European Sky programme? Why? How much?

- If you have evidence on any other issues which you believe to be a material consideration in determining the future level of the Government's shareholding in NATS, please include it in your response to us.
- 1.5 In this summary all percentages are of those who responded to the call for evidence as a whole, not those who responded to specific questions. This is because some of the numbers answering specific questions are too low to make percentages meaningful.
 - 1.6 This report does not summarise all of the comments made by respondents. Each comment was considered, whether or not it is mentioned in this report. Responses that did not correspond directly to the questions, taking a more general approach, have been considered in relation to the most appropriate questions, or in wider policy development.
 - 1.7 All responses have been anonymised. It would be cumbersome to reference all comments and invidious to reference only some. Therefore "person" and "people" in this summary refer to individuals, organizations, representative groups and combinations of them.
 - 1.8 The Government is considering whether to make any sale of its NATS shareholding. In the interests of transparency, this summary of responses is being published now.

2 Does the Government need to retain a shareholding to ensure that aviation safety is protected?

- 2.1 Thirteen people (65%) addressed this question and seven (35%) considered that the Government did need to retain a shareholding while six (30%) did not.
- 2.2 The people who responded that the Government **should** retain a shareholding made a number of points. One noted possible threats to NATS' safety culture which helps ensure that aviation safety is uppermost in minds at NATS, and cited a National Audit Office 2002 report¹ in this connection.
- 2.3 It was suggested that to maintain current high safety standards, any sale process should embed best practice corporate governance, using special share rights to require full compliance with the UK Corporate Governance Code, particularly with respect to the role and balance of independent Non-Executive Directors on the Board.
- 2.4 It was also suggested that: the sale of shares by the Government and The Airline Group could lead to shareholders taking a more commercial perspective and perhaps a less strategic approach; and that future reliance was assumed on regulatory powers that were cumbersome and defensive.
- 2.5 Those responding that the Government **need not** retain a shareholding noted: effective current UK aviation safety regulation; that NATS' safety management system is considered "best practice" and that the divestment of its shareholding in BAA by the UK Government has not led to any diminution of focus on aviation safety.
- 2.6 One person noted that the number of NATS attributable airprox² has fallen from 32 in 2002 to 6 in 2010, while risk-bearing airproxes fell from 8 to 0 over the same period, and while handling 2.1m flights in 2010.
- 2.7 Others noted that: existing regulatory processes and safeguards sufficed; the CAA's powers could be increased; private sector airlines and airports face and manage similar challenges to NATS effectively; the Government's divestment of its shareholding in BAA has not led to any diminution of focus on aviation safety; and that private sector delivery of services previously operated by the Government can lead to innovation which can deliver economic, operational and safety improvements.

¹ National Audit Office, "The Public Private Partnership for National Air Traffic Services Ltd", 24 July 2002, available at http://www.nao.org.uk/publications/0102/the_ppp_national_air_traffic.aspx

² Airproxes are situations where, in the pilot or controller's opinion, the distance between aircraft and their relative positions and speed have been such that the safety of the aircraft involved was or may have been compromised.

3 **Would an appropriately qualified independent post holder be a suitable appointee for Chair of the Safety Review Committee?**

- 3.1 Nine people (45%) addressed this question, of whom seven (35%) considered that an appropriately qualified independent post holder would be a suitable appointee for chair of the Safety Review Committee while one (5%) did not, and one (5%) was not sure.
- 3.2 Those responding that an appropriately qualified independent post holder **would** be a suitable appointee to chair the Safety Review Committee suggested that: a consultative process should assist in the selection; the Board could nominate an appointee; the Secretary of State could influence the selection; and the safety regulator should approve it.
- 3.3 The person responding that an appropriately qualified independent post holder **would not** be a suitable appointee for chair of the Safety Review Committee noted that the post holder needed to be appropriately qualified and also have good standing in and familiarity with NATS' safety critical business. They felt that the Government appointed Partnership Director function had stood the test of time and wished to see it continue
- 3.4 The person **unsure** whether an appropriately qualified independent post holder would be a suitable appointee for chair of the Safety Review Committee felt that it would depend on the relevant safety experience of the individual and where their interests lay.

4 Does the Government need to retain a shareholding to ensure that security interests are protected?

- 4.1 Ten people (50%) addressed this question and three (15%) thought that the Government did need to retain a shareholding for security reasons, while seven (35%) did not.
- 4.2 Those responding that the Government **should** retain a shareholding in order to protect security interests noted that the provisions safeguarding security in the Transport Act and the NERL Licence were largely defensive and cumbersome, and that a shareholding would be needed to maintain and exercise Special Share provisions in relation to security.
- 4.3 Those responding that the Government **need not** retain a shareholding in order to protect security interests noted that: security interests are better addressed by means such as incorporating safeguards into the Special Share, and that the Secretary of State's powers of direction in relation to national security under section 38 of the Transport Act 2000, along with the ability to revoke NERL's licence, should any new ownership raises issues of national security, provide sufficient protection.

5 Does the Government need to retain a shareholding to protect economic regulatory or environmental interests or civil/military co-operation?

- 5.1 Eleven people (55%) addressed this question and two (10%) considered that the Government did need to retain a shareholding to ensure that economic regulatory interests, civil/military co-operation and environmental interests are protected while eight (40%) did not and one (5%) had mixed views.
- 5.2 Of those responding that the Government *should* retain a shareholding to ensure that these three interests are protected; three (15%) cited civil/military co-operation, and one (5%) each cited economic regulatory or environmental interests. They suggested that: some stakeholders fail to understand unique aspects of ATM service delivery such as the long lead in times required; measures taken have gone beyond those required by the Regulator in CP3 and this might be threatened by the loss of Government shareholding; and, with no Government stake in NATS, civil/military interfaces will become more difficult.
- 5.3 Those responding that the Government *need not* retain a shareholding noted that there are provisions in place for dealing with these elements including safeguards in the Special Share. Some suggested specific improvements to current safeguards, including an obligation on NATS to cooperate with the Ministry of Defence (MoD) based on Condition 14 of NERL's air traffic services licence, a revised and updated Operating Protocol between NATS and the MoD and measures to prevent an entity acquiring a majority share in NATS and attaching high levels of debt to such ownership.

6 Does the Government need to retain a shareholding to support the Single European Sky programme?

- 6.1 Twelve people (60%) addressed this question and nine (45%) considered that the Government did need to retain a shareholding while three (15%) did not.
- 6.2 Those responding that the Government **should** retain a shareholding to support the Single European Sky programme cited reasons that: this would reflect Government commitment and presence in NATS governance; NATS being perceived as a predatory rather than a positive partner; and claims that efforts to assert influence in Europe had been negatively impacted upon because of the UK Government holding only a minority share within NATS.
- 6.3 Those responding that the Government **need not** retain a shareholding to support the Single European Sky programme cited reasons including that: entities with the status of private companies in the aviation industry have been able to influence the Single European Sky programme effectively; and CAA, NATS, the Department for Transport and the MoD had to date taken a partnership approach in the UK contribution to the delivery of the SES programme ensuring coordination through groups such as the Airspace Coordination Group and the European ATM Policy Committee.

7 Evidence on other issues material to determining the future level of the Government's shareholding in NATS

- 7.1 Seventeen people (85%) made further comments or suggestions. A specific level of reduced shareholding was suggested by seven people (35%), with two (10%) suggesting the 20-25% shareholding range and the other five (25%) no less than 25%.
- 7.2 Some suggested that the Government's decision on its shareholding should be conditional on there being at least a corresponding reduction in the Airline Group shareholding and the Strategic Partnership agreement replaced with more appropriate arrangements.
- 7.3 It was suggested that the rights and obligations of NERL as the licence holder were open to interpretation and could benefit from greater clarity to ensure that the UK is able to continue to meet its international obligations to provide and support air navigation services.
- 7.4 One person noted the call for evidence's emphasis on the need for continuing co-operation between NATS and the MoD, broadening this to a need for co-operation with all civil users of UK airspace, including general aviation operating outside controlled airspace.
- 7.5 It was noted that the Government's developing sustainable framework for UK aviation would have implications for the world within which NATS would need to operate.
- 7.6 Two people were concerned as to the call for evidence's duration, and the fact that it had not been targeted at other European governments and air traffic control operators.
- 7.7 It was suggested that a further 5% of shares should be allocated to staff, bringing the total to 10%, in the event of any restructuring of the company because of evidence that staff participation in ownership enhances business performance.
- 7.8 It was suggested that the Government should consider providing the NATS section of the Civil Aviation Authority Pension Scheme with additional funding and/or security to mitigate any weakening of the pension covenant.

Appendix A: List of those invited to respond

Table 1: List of Consultees	
Aer Lingus	Eurocontrol
Air Canada	The EU Commission
Air France	Flybe
The Airline Group	IATA
Aircraft Owners and Pilots Association	Government Partnership Directors Association
Airport Operators Association	Joint Trade Unions
American Airlines	KLM
BAA	Monarch
BATA	NATS
BMI - Lufthansa	Popular Flying Association
British Airways	Ryanair
British Business and General Aviation Association	Thomas Cook
CAA	Thomson Airways
Delta Airlines	United Airlines
Easyjet	Virgin Atlantic

Appendix B: List of those responding

Table 2: List of Respondees	
Invitees	Others
The Airline Group	Air Transport Association of America
BAA	Mr T M Blaiklock
BATA	Civil Aviation Authority Pension Scheme
British Airways	European Transport Workers Federation
British Business and General Aviation Association	SERCO
CAA	A NATS employee
Eurocontrol	Trustees of the NATS Employee Share Plan
Government Partnership Directors (2)	
IATA	
Joint Trade Unions	
NATS (Chair and Executive Team separately)	