NATS (En Route) plc [NERL] Price Determination

Submission by Prospect to
the Competition and Markets Authority

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Introduction

In November 2019, the Civil Aviation Authority for the UK issued publication CAP 1857 outlining the reasons for its referral of the price controls of NATS (En Route) plc (NERL) to the Competitions and Markets Authority (CMA).

In that document, the CAA sets out the reasons it believes that its demands on NERL are in the public interest, and would continue to allow NERL to provide a high level of service. It also states that safety is an overriding priority in the regulation of NERL and that it believes that nothing in its proposals compromises safety.

In this third party submission, Prospect[1] explains why the proposals:

1. are not in the public interest;
2. would put NERL’s high level of service at risk; and,
3. could compromise the safety of the entire aviation network and thus the flying public in the coming years.

Prospect is a key stakeholder in the operation of NERL and the wider UK Air Traffic Management (ATM) System. With over 2100 members in the Air Traffic Control Officers’ Branch, 820 members in the Air Traffic System Specialists Branch, and over 250 ATC workers in other branches – including the CAA - we represent virtually the entire workforce of professionals involved in UK ATM. Prospect has a good working relationship with NATS and we operate a ‘Working Together’ approach focused on problem-solving in our day-to-day work. For well over a decade, this has allowed NATS and NERL to modernise and to achieve the outstanding results it has when it comes to aviation safety and the provision of services to air traffic in the UK.

Overview

As key stakeholders in the operation of NERL and the wider UK air traffic management (ATM) industry we take a keen interest in the RP3 settlement, as we have done for all regulatory control periods since NATS was privatised. It is of utmost concern and importance to our members and the travelling public that NERL is afforded the resources it needs both to fulfil its licence obligations and to be able to invest and deliver the ATM infrastructure that the UK so needs.

We have contributed comprehensively to the RP3 consultation process, including bilateral meetings with the CAA, formal submissions to written consultations and as observers at the customer consultation process.

On the basis of this involvement, we endorse NERL’s rejection of the CAA’s final proposals, and support NERL’s appeal.

For the last few years, Prospect has argued that the CAA’s dual role - as both market and safety regulator – presents a conflict of interest. In relation to RP3, we believe that the CAA has given insufficient priority to safety. We question whether the safety regulator, SARG,[2] has had the opportunity properly to scrutinise and risk-assess the CAA’s position.

The CAA has based several of its judgments on history - specifically trends in NERL’s performance – which it has extrapolated to generate targets rather than basing forecasts on empirical evidence and known conditions. Many of the obvious cost savings have already been realised: for example, Centre consolidation and closure of the DB pension scheme.

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[1] Prospect is the UK trade union representing Air Traffic Controllers (ATCOs), Air Traffic Systems Specialists and other specialists including planners, analysts and human factors workers within Air Traffic Management across the vast majority of UK Air Navigation Service Providers.

[2] https://www.caa.co.uk/Consumers/Guide-to-aviation/Aviation-safety/

Paradoxically, the CAA neglects recent history – failing to acknowledge or even to understand that the RP2 settlement has had a detrimental impact on ATM over the last five years and the effects are continuing into RP3.

The CAA gives too much credence to the airline's input. It is inevitable that airlines will want the service to be as good as possible and as cheap as possible – ideally free. While we acknowledge the CAA's duty to protect the consumer interest - and while this obviously includes the cost of the service – it surely includes other benefits such as punctuality, service continuity and, of course, safety.

The fact is that ATM is a small component of ticket prices (approx 5%) and there is little incentive for the airlines to pass on further savings to the travelling public. The airlines' demands for lower charges during RP2 were accepted by the CAA and the European Commission and this had a significant impact on NERL's service performance [see Project Oberon, paragraphs 4.12, 4.41, 5.33 and particularly 6.1].[3]

RP2 had a marked effect on the labour market for air traffic controllers in particular. Redundancies in NERL and the effective cessation of volume Ab-Initio ATCO training turned off the supply tap and, when traffic started to grow beyond forecasts, the shortages became acute. This, together with increasing cost pressures during RP2, had an effect on service provision because it changed the industrial relations environment – affecting staff morale and helping to generate a competitive labour market. Within NERL, this was most keenly felt in 2016 - see *Staffing* below.

We urge the CMA to avoid the simplistic equation of air traffic service provision with other regulated industries in the UK such as the public utilities, eg water. First, NERL as a business faces risks which are very different to other regulated industries. Second, ATM is a safety-critical industry where safety is *the* absolute priority; safety is why NERL exists. The increasing cost pressures exerted on NERL - those we deem unjustified, unsupported by evidence and/or relying on dubious motives - have the real potential to affect the safe provision of air traffic services to the flying public. Safety is considered by the CAA to be central to the industry's very being, of course, but there lies complacency. It cannot be taken for granted that an over-austere regulatory environment in RP3 will not compromise safety.

Safety

Safety is the great untested assumption of the CAA plan. Given that the safety of the travelling public – and, indeed, the general public if we include those on the ground under flight paths[4] - is paramount, it is odd that there is actually very little mention of it by the CAA, neither in terms of economic regulation nor any public submission from SARG.

The CAA simply assumes that NERL will ensure the continuation of a safe service and that this will come at no cost. While Prospect has every confidence that NERL would take all necessary steps to ensure a safe service – and our members would certainly make their own operational decisions as licence holders – the consequence of protecting safety while reducing costs and delivering the change programme is likely to be a significant curtailment of service delivery. A more rounded approach must be taken, allowing NERL to be safe while delivering the outputs in the plan.

When NERL put its plan together, it will have fully priced the cost of safety while delivering all of the wider aspects of the plan. The CAA's approach - to arbitrarily cut various funding streams - has not been safety risk-assessed; nor have the safety dependencies of other provisions in the plan been examined. For example, if airspace modernisation is pushed back due to a lack of resources arising from a reduction in opex, would the risk to safety be

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3 http://publicapps.caa.co.uk/docs/33/20170516_Oberon_Report_non_confidential_Redacted.pdf

4 we note that the CAA's economic remit is to represent the consumer interest, not that of the wider public

increased as a result of higher volumes of traffic in outdated airspace? If not, that is likely to be a result of additional delay. If the technology improvement programme is pushed back due to the arbitrary reduction in capex, and the old legacy systems subsequently fail, would the travelling public be at greater risk? The lack of any safety risk assessment suggests a very narrow approach to NERL's finances and performance, rather than supporting it to fulfil its wider licence obligations.

The fact that NERL achieved safety targets previously, despite higher traffic, should not be used by the CAA to justify its assertion that NERL can repeat the feat in RP3. That is not good safety management; it is not a scientific approach to safety regulation in a safety-critical environment. [5] There is no evidence that the CAA has modelled the impact on safety if NERL diverts resources to other areas due to cost pressures.

It is essential that the demands on cost reduction in opex / capex / other (as explored in later chapters) do not have an unforeseen impact on safety. In safety-critical industries, care must be taken to ensure that conflicts of interest are addressed, that corners are not cut and that safety is not taken for granted, all within the proper constraints of an economically regulated environment. Lessons must be learned following the Boeing 737 Max incidents for example. Although the technical reasons that caused these two crashes are now understood,[6] the systemic cause is widely suspected to have come from within Boeing management itself, where the need to respond to cost pressures and competition from the Airbus Neo aircraft strongly influenced decision-making. Whether through a flagrant disregard for safety or through unconscious decisions, a culture developed which resulted in the loss of life of hundreds of people, with an entire fleet of aircraft grounded for at least a year.[7] It is all too easy to disregard these sorts of assertions as 'scare-mongering', however a mere 18 months ago, it would have been inconceivable to imagine the world's largest commercial aircraft producer facing such an existential crisis.

This – just over a year before the first Boeing crash - now seems rather prophetic:

> The risk is that airline safety performance is now so good that national aviation authorities may be expected by cash-strapped governments to harvest the "safety dividend" by cutting oversight costs. There are those in the industry who warn that the move towards 'performance-based regulation' policies in some of the more mature aviation nations is being used to make the industry more self-regulating, enabling a reduction in independent oversight and regulatory enforcement. Complacency resulting from success might allow hard-won lessons to be sidestepped and, if that were to happen, the standards the industry enjoys today might be sacrificed.[8]

Also this from Australian School of Business in 2014:

> We cannot afford to take the safety of flying for granted. Accidents still do happen, and passenger safety is still not guaranteed even if there have been no recent crashes. Indeed, a long period without a serious incident can increase the risk of safety buffers being eroded by cost-cutting and complacency.[9]

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[5] CAP 1830 (3.42)

[6] https://www.bbc.co.uk/news/resources/idt-sh/boeing_two_deadly_crashes

[7] https://www.nytimes.com/2019/10/02/business/boeing-737-max-crashes.html

[8] https://www.flightglobal.com/analysis/analysis-opportunities-and-challenges-for-aviation-in-2018/126431.article

[9] https://theconversation.com/were-flying-into-an-aviation-skills-crisis-with-safety-under-the-radar-27064

Opex

Operational expenditure in NERL accounts for approximately 70% of its revenue. And NERL's staff costs amount to 54% of its opex.

By its very nature the provision of air traffic service requires dedicated, highly-trained professional people to deliver the required levels of safety and service, whether this is within the operation directly, or maintaining and developing the infrastructure.

It takes several years to train an air traffic controller in what is recognised as one of the most pressurised vocations in the world. It is critical that resources are sufficient to provide for both operational delivery and change programmes - be they technology or airspace. Workforce planning was a weakness in RP2 - NERL was forced to cut operational staffing, in part through a redundancy programme, with a negative impact on service delivery. Prospect warned of the consequences at the time.

It is important that this mistake is not repeated in RP3. There is a very fine balance between traffic levels and the resources required to manage that traffic. If NERL is forced to divert resources from the operation into projects, or vice versa, service delivery will be hit or the change programme will be delayed. That will have an immediate and noticeable effect on passengers, airlines and airports.

We broadly support the proposals for opex levels in NERL's revised business plan (RBP). The CAA based its proposals on the Steer/Helios report, which adopts a crude approach to staff costs and which we believe fails to take into account the staffing input actually required to deliver the wider RP3 plan.

It cannot be overstated just how transformational the RP3 outputs will be for NERL. It seeks to tackle three large challenges all at the same time and a consultant using broad assumptions and looking top-down, cannot be expected to grasp the full scale and complexity of the task. It is difficult enough for the CAA to understand this. Delivering the day-to-day service is a challenge in itself, given the mistakes made in RP2 which compromised NERL's operational resilience. This, coupled with what is largest airspace modernisation program in recent times, as well as a programme to replace the entire backbone of NERL's platforms, will require proper resources. NERL needs some wriggle-room to enable it to deal with unforeseen (but inevitable) bumps in the road. Failing to provide some contingency puts the delivery of the RP3 objectives at risk. The resources required cannot be just turned on and off and they are not freely available in the labour market or from agencies. Failure to deliver RP3 is not just a commercial risk, it will have ramifications for the travelling public for years to come – including curtailing the benefits envisaged from the third runway at Heathrow.

Building on the issues of workforce planning and resilience: it is important to consider the age profile of our members. NERL is approaching a significant retirement bulge, and this is accelerating as an increasing proportion of staff choose to retire earlier than was assumed in RP2. This trend is due to various factors - including changes in pension legislation, the ever-increasing workload (with fewer staff currently) and the need to retrain on new technologies. When considering their future, members look at their prospects over the next few years and see more complex work with more arduous unsociable shifts and many, on balance, choose to retire.

The resilience problems and these demographic trends have caused a welcome step-up in NATS' training programme. It is important that this is not put at risk by restraints in opex. Any reduction in the training program for new controllers will increase the problem – if the staffing shortfall deepens, NERL will face a vicious circle – inadequate operational staffing will encourage early retirement as controllers in their 50s opt out of more frequent, more difficult, high intensity and unsociable shiftwork. A perfect storm that would prevent us realising the benefits of airspace modernisation and systems upgrades.

Lessons need to be learned from the consequences of the decisions made in RP2. In the aftermath of the financial crisis and a downturn in traffic, NERL - driven by the CAA supporting the airlines' clamour for cost reductions - made the naïve and very short-sighted decision to reduce the number of operational controllers through a voluntary redundancy program, and to effectively stop the recruitment and training of new controllers.

The latest Eurocontrol Performance Review states:

> With the focus mainly on cost savings over the past years, it is evident that the European ANS system benefited from the reduced traffic levels following the economic crisis in 2008. However, with traffic and delay growing again since 2013, shortcomings in proactive capacity planning and deployment are becoming more and more apparent in some areas. The doubling of en-route ATFM delay in 2018 and the negative outlook for 2019 not only detracts from the substantial cost-efficiency improvements over the past years but also underlines the importance of having a balanced approach in performance management.[10]

It is a statement of the obvious, but it needs to be repeated: training controllers and other technical staff is expensive, time-consuming and a highly-skilled business in itself: much operational training is 'on the job' and is delivered by valid and experienced operational staff. The lead times are significant and short-term decision-making based on weak workforce planning nearly always ends up with the business being unable to cope with the demand when the boom returns. This is exactly where NERL is today, and the levels of opex needed to recover are a direct result of having to compensate for poor strategic planning in RP2. In fact, the CAA acknowledges this, (see footnote 3). Although the voluntary redundancy program was a NERL initiative, it was set within the context of the RP2 framework, and the CAA has some responsibility for the decisions NERL felt compelled to make.

We acknowledge that the CAA has made a favourable adjustment to the plan for opex in years 1-3 of RP3. However, the reduction in years 4 and 5 will be particularly challenging and is critically dependent on there being no delay in the change programmes and on their seamless introduction. That would be a first for any infrastructure project of this scale.

Capex

Again, our concerns here stem from a lack of science and rigour in the CAA's assumptions behind its plans for capital expenditure. The CAA's default position is to prefer Steer/Helios over the evidence and expertise within NATS. The reality is, if NERL ends up making super-profits in RP3, that will immediately be visible and there will be an opportunity for the regulator to claw this back in future. To ignore NATS' assessment of the resources required in order to deliver the plan is to put its entire delivery at risk.

The CAA acknowledges that the funding reflects the important upgrade of technology systems and airspace modernisation and then proceeds to cut £48m out of it.[11] It justifies this on the basis of a lack of confidence in the cost efficiency of NERL's proposed programme as a whole. There is no evidence given as to how this figure was arrived at or what risks it presents to NERL's capital programme. The CAA states that it requires more transparency from NERL and we entirely understand the need for transparency and consultation.[12] However, if this is the reason behind what appears to be an arbitrary £48m reduction in capex then it calls the legitimacy of the CAA's approach into question.

It goes without saying that most airlines would prefer the CAA to impose the more onerous funding stream of £579m for capex during RP3,[13] but it is essential that we remember the same airlines' hunger for price reductions in RP2 led one of them to file a complaint with the CAA about NERL's lack of resilience because of staffing problems on an approach

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[10] https://www.eurocontrol.int/sites/default/files/2019-06/prr-2018.pdf

[11] CAP 1830 (5.91)

[12] CAP 1830 (5.99)

[13] CAP 1830 (5.93)

sector.[14] The CAA concluded that reduced staffing as a result of its own regulatory regime was, at least in-part, to blame.[15]

By way of improving capex transparency, the CAA has approved a funding stream during RP3 where the NATS Service and Investment Plan (SIP) will update stakeholders on its actions. The CAA then goes on to acknowledge that there has been an improvement since the perceived under-performance of the SIP process during RP2, and that it will be further strengthened during RP3.[16]

Nonetheless, the CAA states that airspace users and other stakeholders say that there isn't 'an appropriate degree of comfort' in the plans for RP3. It is the role of the regulator - the CAA - to define what might be an appropriate degree of comfort. Another example of hearsay rather than an evidence-based approach to economic regulation? The reality is that the airlines will never be 'comfortable' until flying through the airspace is free of charge. Why would the process established in RP2, with the acknowledged improvements confirmed by the CAA, not continue into RP3?

Additionally, there is a proposal for a £36m (capped) penalty and we would ask why?[17] The CAA proposes an improved SIP process - including an appeal - as well as acknowledging improvements in RP2, and then proceeds to impose a potential £36m fine on top. There needs to be time to let this new process embed. But, more importantly…

We have grave concerns about incentivising and penalising performance in this manner in a safety-critical industry.

This is based on our understanding of the factors behind the Boeing 737 Max crisis and the wrong behaviours stemming from displaced priorities in pursuit of financial incentives: conscious or unconscious.

There are also unintended consequences in any reduction to the proposed capex program. Should this not be funded as set out in the NERL RBP, then additional costs in the form of redundancy payments are likely to be incurred due to staff not being able to be deployed to programmes curtailed due to lack of funding. Large and/or complex technology programmes are prone to delays as can be seen by examples across different industries (Met Police, NHS, HS2 etc).

In CAP 1857 (page 11) the CAA expresses dismay over non-delivery of LAMP2[18] targets and this seems to be another justification for capex cuts in RP3. But the failings of LAMP2 were outside of NERL's control. Using this as a stick with which to beat NERL is unjustified.

Pensions

Prospect and NERL have taken several steps over many years to address the pension cost issue. This is in the context of the protections of the scheme being enacted to facilitate the privatisation of NATS. Partly because of this history, those legacy costs are declining. Fewer than 50% of NERL staff are now in the Defined Benefit (DB) scheme and this will continue to fall. In the unlikely event of a surplus in the next valuation, it would be beneficial

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[14] Airspace controlled by an approach controller who directs aircraft from 'stacks' (holding patterns usually 7000' feet and above) on to final approach at airports where they are lined-up (sequenced) to land.

[15] https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=8004, CAP 1578 (6.1)

[16] CAP 1830 (5.99 and onwards)

[17] CAP 1830 (5.108 and onwards)

[18] LAMP (London Airspace Management Programme) is a proposed redesign and overhaul of the extremely congested airspace over London. Many of the proposals were abandoned during RP2 for various reasons, not the least of which the proposals themselves were practically unachievable given the disagreements between stakeholders, compounded by the lack of any enforcement powers – either for NERL or imposed by the CAA or the DfT.

to agree its use to ensure the most efficient funding of the scheme in the future. A surplus should not be used to generate a windfall for customers or shareholders.

It is important to recognise that, as part of the arrangements for the closure of the DB scheme in 2009, a Defined Contributions (DC) scheme of sufficient quality had to be set-up - hence the 9/18 scheme. It was important to do this to ensure industrial harmony, so as not to distort the labour market and to ensure continued staff retention (those training costs, remember?!) We do not agree with the CAA and its consultants that NATS' DC scheme is over-generous. It is a good scheme, but it is part of a remuneration package which has evolved in the context of privatisation, labour shortages, increasing competition and a need to ensure service continuity. Pension provision is a very emotive subject for our members and there would be significant risks in not understanding or even ignoring this. The CAA on other occasions appears to understand the significance of the industrial environment within NERL, see *Staff* below.

We note, in passing, that when the CAA closed its DB scheme and replaced it with a DC scheme with 6/12 contribution rates, it increased the rates of pay for DC members by 5.26% - a pay premium which recognises the lesser value of its DC scheme. If NERL was compelled to follow the lead of the CAA in this respect, it would be simply moving a pensions contribution premium across to basic pay costs.

The CAA's approach to pension cost - particularly when it comes to the surplus and reduction in line with efficiency assumptions – is, at best, very odd. There is no indication or, indeed, any material evidence to suggest that the DB pension scheme will be in surplus by the dates indicated by the CAA. Originally, the CAA's assumptions appeared to be extremely optimistic. Although this has been modified in CAP1830, the CAA remains wedded to the notion that any surplus should be 'returned' to customers. In the current climate and funding situation this seems like the lowest of priorities and mere fantasy. The CAA should be ensuring that a stable funding system is in place without unnecessary interference to ensure that the scheme is properly resourced, and in the long term this will provide the most efficient approach.

Having tacitly admitted that the scheme is unlikely to be in surplus, the CAA then decides to apply a reduction in the allowances for pension costs simply linked to its general opex efficiency assumptions.[19]

There is also an interesting legal point which requires interpretation in light of the SES EU Performance Scheme regulation,[20] which only allows 'unforeseen' costs to be passed through. If the CAA's assumptions for efficiency gains are wrong (and it is our position that they are), then there is a risk that NERL will have to cover the resulting additional pension costs. These could be argued as 'foreseen' and may therefore be barred from pass-through. If this is the case, NERL would have to divert money away from other areas to cover its pension obligations, curtailing investment elsewhere. This certainly would not be in the public interest.

The CAA has a questionable track record when it comes to interpretation of the SES regulation with respect to pension funding, and their original proposals in RP2 for an asymmetric pass-through were ultimately deemed unlawful.[21]

Incentives

Prospect is generally opposed to the incentive structure in the performance scheme, but we recognise that this is not the forum for that debate. Neverthless, we believe that the CAA's

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[19] CAP 1830 (5.53, 5.64)

[20] https://ec.europa.eu/transport/modes/air/single_european_sky/ses-performance_en

[21] NERL Statement of case to CMA, 28th Nov 2019 para 348

approach to incentives has been simply to extrapolate trends from RP2 without any real evidence that the targets are appropriate.

We welcome the reduction in the bonus / penalty levels - from the point of view of operational staff, performance in capacity and 3di[22] is of the lowest priority. In fact, performance targets that become too challenging or indeed impossible to achieve (as is likely with the 3di targets) are likely to be counterproductive, as our members will just write them off and cease to consider them.

The proposal for a 4% reduction of KEA[23] over the last two years of RP3 is based on the Network Manager's forecast of improvements stemming from the roll-out of Free Route Airspace[24] over the start of RP3. But this ignores the impact of the forecast increase in traffic towards the end of RP3.

The proposals on 3di are arbitrary and don't take into account the wider challenges. Providing the optimal route to aircraft is part of the DNA of a controller, but as airspace becomes more complex and there are more aircraft in it, this becomes increasingly difficult.

Cost of capital

The CAA's approach to the cost of capital fails to take into account the risks faced by NERL. Although on the face of it there are protections in place, decisions by the CAA in other areas of the plan have introduced pressures on the allowable returns which put the whole package under great pressure. By looking across regulated industries as a whole, we don't think the CAA have fully considered that NERL has distinctive and real risks that set it apart from other regulated infrastructure companies. NERL is very much exposed to the wider economy and to the traffic levels governed by the economic cycle, notwithstanding the traffic risk sharing mechanism. For example, in times of economic uncertainty people will curtail flying therefore materially reducing the available income for NERL, but people always need water and electricity.

We note that the CAA itself acknowledges that "NERL has only some of the characteristics of a typical network utility. It has an obligation to supply and, in practical if not legal terms, exclusive rights to provide services over a network under licence. Its monopoly power is therefore relatively strong for en route services. However, it has certain characteristics which make it far less like a water, gas or electricity network company. For example: it is relatively labour intensive; its asset base consists primarily of systems and equipment rather than built infrastructure. The average economic lives of its assets are therefore significantly lower than most utilities; and it is subject to changing technology and possibly changing institutional arrangements – subject to strong direction from the EU".[25]

This then ought to be reflected in the "beta" adjustment to the rate of return – NERL initially called for an "asset beta" of 0.61, but CAA are setting it at 0.46. For comparison, gas sector asset betas have been set by regulators at 0.40, but telecoms at 0.73.[26]

Financeability is not our field of expertise. Suffice to say that the NATS PPP was established with Prospect's support on the basis that it would be a not-for-profit company. We feared that the profit motive risked the promotion of behaviours that would be

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[22] CAP 1830 (Executive Summary, para 34)

[23] Cap 1830 (Executive Summary. para 33)

[24] Free Route Airspace is a new approach to flying where aircraft do not use the traditional 'roads in the sky' that were determined in the 1950s (not always the most direct routes but are currently the main determining factor in the areas of sky within which controllers control aircraft), but would fly as direct a route from A to B as is physically possible.

[25] https://publicapps.caa.co.uk/docs/33/CAP1467%20DEC16.pdf

[26] (as summarised here: https://www.ukrn.org.uk/wp-content/uploads/2018/11/2018-UKRN-Annual-WACC-Summary-Update-v2.pdf)

unwelcome in a safety-critical operation. But we are where we are; and our fear now is that halving the rate of return, together with an incentive scheme which is almost designed to deliver penalties will have a material impact on investment decisions and the financing of the company. Cost pressures will undoubtedly follow as shareholders seek to shore up their dividends by insisting NERL cut costs in other areas.

Staff

Finally, the CAA plan does not properly consider the impact of its proposals on staff; nor does the CAA reflect on the input of staff representatives in its consultation responses.

The model industrial relations between Prospect and NERL has developed and become embedded over many years and, although there have been occasions where this relationship has been difficult (as would be expected in any employer-union relationship), there has been no industrial action within NERL for almost 40 years.

In fact, the CAA recognises how important good industrial relations are within NERL as is evidenced in Project Oberon[27] and even says that it believes that NERL should have taken due account of the impact that the cost reductions and voluntary redundancies would have had on industrial relations during RP2. And yet, we see absolutely no evidence that it has learned from history during preparations for RP3, whilst simultaneously proposing a swathe of cuts that is so huge that for the first time ever, NERL believes it may end up in breach of its licence.

It is highly likely that the CAA's plan will result in serious social consequences. Undue price and cost controls during RP3 and a decreased regulatory return will inevitably mean pressure on staffing numbers and terms and conditions of employment. Notwithstanding the wisdom of this approach in the current labour market for ATM professionals, it would put years of industrial harmony at huge risk.

Conclusion

For Prospect, it is clear that the RP3 plan as set-out by the CAA is impossible to achieve. The consequences, some of which cannot be predicted, will be far-reaching. The CAA is asking for too much to be delivered whilst taking away the tools with which to deliver it.

We have barely left RP2 and NERL is still recovering from having 'switched off' the training of controllers some years ago after a large number of voluntary redundancies, all against the backdrop of the CAA's regulatory decisions for 2015-2019. Why now should the CAA take away the financial resources necessary to complete the massive modernisation programme that our airspace system so badly needs?

The reasons why we believe the CAA proposals are unachievable are detailed in this document. But the issues here are not simply regulatory and technical in nature. Safety is the primary element that is missing from the CAA's equation. The travelling public will relate to that frustrating message from the cockpit announcing a delay due to air traffic control. But they will not necessarily understand that the delay is usually the result of a safety measure in the face of capacity challenges. The CAA's proposals will make these announcements a feature of more and more flights, every day of the year. The RP3 settlement is an opportunity to get this right and, quite simply, to learn from the regulatory mismanagement of the last five years during RP2.

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[27] CAP 1578 (5.29)

The UK ATM network requires the correct level of investment to ensure that:

1. the needs of the traveling public are prioritised as traffic levels increase;

2. an ATM service regarded as one of the best in the world by local and international pilots is permitted to continue and thrive; and, most importantly,

3. safety is properly funded so as to remain the number one priority.

As the experts who are at the frontline of ensuring that millions of citizens across the UK and beyond are able to travel safely to their destinations, and as representatives of professionals across the ATM industry, we ask the CMA to take this opportunity to learn from the mistakes of RP2 and to get this right before it goes badly wrong.