



NATS/CAA regulatory appeal  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London  
E14 4QZ  
United Kingdom

17 January 2020

Sent by Email Only

FAO: Ms Judith Ross

Dear Sir, Madam,

**Referral from the Civil Aviation Authority ("CAA") to the Competition and Markets Authority ("CMA"): NATS En-route Limited ("NERL") Price Determination – Third Party Representations**

**I. Introduction**

1. The International Air Transport Association ("IATA") is the trade association for the world's airlines and currently represents more than 290 separate airlines, the collective flights of which constitute around 82% of all air traffic. IATA's global mission and aims are enshrined within in its Articles of Association. Chief amongst our stated aims is "[the promotion of] safe, reliable and secure air services for the benefits of the peoples of the world."
2. IATA welcomes the opportunity to engage with the CMA in this matter. As the world's leading association of aircraft operators, we are well placed to provide views on NERL's third reference period ("RP3") proposal and the CAA's subsequent referral of this matter to the CMA.
3. While the concerns of airspace users were briefly acknowledged by the CAA in its initial referral of this matter to the CMA and later in its response to NERL's Statement of Case ("SoC"), we submit that they were not fully explored nor given adequate credence. The representations made within this document expand on those concerns and are sent on behalf of IATA's diverse membership of airspace users<sup>1</sup>.
4. At the outset, IATA emphasises that both it, and its members, are appreciative of the work carried out by the CAA throughout the RP3 review process generally and that IATA's concerns are limited to the deployment of Space-Based Automatic Dependent Surveillance-Broadcast ("SB ADS-B").

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<sup>1</sup> Letters of support from a sample of IATA's members (Air Canada, KLM, Lufthansa Group, United Airlines, and Virgin Atlantic) are attached as Annexes 1-5.



5. IATA's position, as set out within these representations, may be summarised as follows:
- a. While recognising that SB ADS-B (or another iteration of it) may, in the future, play an integral role in the modernisation of commercial aviation, IATA is of the view that NERL prematurely imposes charges for services based on SB ADS-B that are not yet needed:
    - (i) If NERL were to truly believe that the North Atlantic ("NAT") airspace is currently unsafe (or not sufficiently safe), it has a positive duty to say so publicly, halt all operations in the NAT, and take responsibility of such failure. Otherwise, the NAT must be presumed to be safe to fly and NERL should refrain from arguing in favour of a specific technology provider, dealings with which arguably further NERL's own commercial agenda;
    - (ii) The current and near-future traffic demand does not necessitate a reduction in separation that would require the use of an enhanced surveillance system such as SB ADS-B, resulting in the associated data charges for oceanic flights being both disproportionate and unduly onerous to airspace users.
  - b. IATA maintains that:
    - (i) The proposed SB ADS-B charges for transatlantic routes are not consistent with the requirements of cost-relatedness, cost-effectiveness and non-excessiveness as set out in Section III of International Civil Aviation Organization ("ICAO") Doc. 9082<sup>2</sup>;
    - (ii) The benefits of SB ADS-B data services have been overstated by NERL and/or have not yet been conclusively proven. In several key respects the assertions of NERL are open to challenge and can be shown to be based largely on questionable presumptions. Notably, IATA is of the view that the operational improvements alleged by NERL would not be realised until in particular: (i) the NAT airspace reaches a point of saturation, wherein the volume of air traffic would require aircraft to be separated at reduced minima in order to accommodate the demand; and (ii) SB ADS-B includes improved and standardised communication/voice capabilities between pilots and air traffic controllers; and
    - (iii) Alternatives to Aireon's SB ADS-B data services exist but have not been given the benefit of a fair assessment by NERL in devising its business plan for RP3.
  - c. IATA has some real concerns about the significant inter-relationships between several key stakeholders in this matter. NERL's sister company, NSL, is a shareholder in the Aireon joint venture and NERL is proposing to source the SB ADS-B surveillance services that are the subject to the proposed data charges from Aireon. IATA is of the view that these inter-company dealings affect the terms on which SB ADS-B services are supplied to, and charged to, NERL and its users. IATA is in particular concerned by the 12-year duration of the contract entered by Aireon and NERL<sup>3</sup> and NERL's failure to conduct a transparent, competitive procurement process for the selection of the service and/or provider at issue.
  - d. The public interest assessment presented by NERL is skewed and does not give adequate weight to all relevant factors that impact upon the public interest.
6. IATA submits that the final decisions of both NERL and the CAA in respect of the oceanic service and associated price controls operate against the public interest and potentially offend the prohibitions of (i) agreements between undertakings, or concerted practices which restrict, prevent or otherwise distort competition, and (ii) abuse of dominant market position.

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<sup>2</sup> Annex 6: ICAO Doc. 9082.

<sup>3</sup> "NATS signs agreement with Aireon LLC", NATS press release, 28 February 2014, available at <https://www.nats.aero/newsbrief/nats-signs-agreement-aireon-llc/>



7. The CMA is respectfully asked to pursue the following course of action:

- Refund the users who paid the revised oceanic charges;
- Assess competing technologies and suppliers including a full cost-benefit analysis (in consultation with airspace users) comparing the available options before implementing a new service or changes to an existing service and imposing any related charge;
- Apply the cost-relatedness, cost-effectiveness and non-excessiveness provisions of ICAO Doc. 9082 when considering and justifying new or revised charges for air navigation services; and
- Provide full and accurate details regarding all related party transactions when proposing new and revised air navigation charges.

8. In the alternative, were the CMA to conclude that NERL's decision and/or the CAA's proposed modifications in respect of the oceanic services and associated price controls are in the public interest, IATA submits that: (i) the decision to impose SB ADS-B related charges should still be postponed, until the point at which delivery of SB ADS-B is proven conclusively to deliver the high rate of benefits anticipated by NERL within its SoC, and (ii) the CMA shall design appropriate behavioural remedies (such as price caps or restrictions on the use of long-term contracts) to address IATA's concerns as set out in these representations.

## **II. NERL's proposal to introduce SB ADS-B and the associated data charges**

### **a. Data charges associated with the introduction of SB ADS-B**

#### **i. The amounts at issue**

9. The proposed SB ADS-B charge would increase the charges for transatlantic routes by about 60%<sup>4</sup>. Airspace users have been informed that the SB ADS-B data charge applicable as of 1 January 2020 amounts to £31.64 per flight<sup>5</sup>.
10. The CAA supports NERL's proposals to introduce SB ADS-B service on the basis that it expects that "its introduction should result in a net benefit for airspace users."<sup>6</sup> The CAA however proposed to apply a 5% efficiency target to the data charges.
11. IATA is concerned that the CAA appears to have been so readily dismissive of the dramatic increase of charges for transatlantic routes that would be implemented as a result of NERL's utilisation of SB ADS-B. This is even more concerning given that until the oceanic communication capabilities are enhanced, and the NAT airspace reaches a point of saturation wherein the volume of air traffic would require aircraft to be separated at reduced minima (in order to accommodate the demand), the only material consequence of the introduction of SB ADS-B for NERL's users flying over the NAT airspace will be the added costs<sup>7</sup>.

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<sup>4</sup> CAA's Reference to the CMA of the NERL RP3 price controls, CAP 1857, para. F18.

<sup>5</sup> Annex 7: Note for Airlines – Planned changes for Shanwick Route Charging from 1 January 2020.

<sup>6</sup> CAA's response to NERL's SoC, CAP 1870, para. 8.1.

<sup>7</sup> IATA notes in this regard that air transportation invariably involves high volumes of passengers being served at prices which in real terms generate very low profitability per passenger. It is an industry where small profit margins are prevalent and where changes in costs can swing a flight from profit to loss.



12. The table below provides an overview of the total costs to airspace users resulting from the imposition of the revised oceanic charges in the RP3 period<sup>8</sup>:

	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
<b>NAT Traffic Forecast</b>	528,000	539,000	552,000	565,000	576,000
<b>UK NATS (GBP)</b>	£16,705,920.00	£17,053,960.00	£17,465,280.00	£17,876,600.00	£18,224,640.00
<b>(USD)</b>	\$21,717,696.00	\$22,170,148.00	\$22,704,864.00	\$23,239,580.00	\$23,692,032.00

13. From NAV CANADA's consultation process on analogous charges IATA also understands that there is a locked-in percentage increase of approximately 3% per annum within Aireon's data services agreements. As illustrated in the tables below, this percentage increase, coupled with forecasted air traffic growth and taking into account that the service life of Aireon's payloads on Iridium satellites is expected to end in 2030, will result in airspace users being forced to pay considerable further costs each year:

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<sup>8</sup> NAT Traffic Forecast: see RP3 CAA Decision Document, CAP 1830, Table 11.1.



	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Totals
NAT Traffic Forecast	528,000	539,000	552,000	565,000	576,000	586,944	598,096	609,460	621,039	632,839	644,863	
Assuming increase of 1.9% after RP3					1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	
<b>UK NATS (GBP)</b>	£16,705,920.00	£17,053,960.00	£17,465,280.00	£17,876,600.00	£18,224,640.00	£18,570,908.16	£18,923,755.42	£19,283,306.77	£19,649,689.60	£20,023,033.70	£20,403,471.34	<b>£204,180,564.98</b>
(USD)	\$21,717,696.00	\$22,170,148.00	\$22,704,864.00	\$23,239,580.00	\$23,692,032.00	\$24,142,180.61	\$24,600,882.04	\$25,068,298.80	\$25,544,596.48	\$26,029,943.81	\$26,524,512.74	<b>\$265,434,734.47</b>

With yearly increase	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Totals
<b>UK NATS (GBP)</b>	£16,705,920.00	£17,565,578.80	£17,989,238.40	£18,412,898.00	£18,771,379.20	£19,128,035.40	£19,491,468.08	£19,861,805.97	£20,239,180.28	£20,623,724.71	£21,015,575.48	<b>£209,804,804.33</b>
(USD)	\$21,717,696.00	\$22,835,252.44	\$23,386,009.92	\$23,936,767.40	\$24,402,792.96	\$24,866,446.03	\$25,338,908.50	\$25,820,347.76	\$26,310,934.37	\$26,810,842.12	\$27,320,248.12	<b>\$272,746,245.62</b>



## ii. Breach of the requirement of cost-relatedness

14. The cost-relatedness principle lies at the root of ICAO Doc. 9082<sup>9</sup>. It requires that ANSPs charges in general do not generate revenues in excess of the financial requirements that are reasonably prudent to discharge the ANSP's mandate to provide civil air navigation services.
15. Aireon's pricing structure for SB ADS-B data is tiered. Aireon distinguishes between areas where SB ADS-B will provide:
  - "Sole source surveillance: where no surveillance currently exists;
  - Augmented surveillance: filling gaps in or providing an additional layer for existing ADS-B or radar surveillance systems; and
  - Contingency surveillance: cost-effective back-up to ground systems."<sup>10</sup>
16. The SB ADS-B charges at issue are based on Aireon's charges that are not related to the costs of providing SB ADS-B based services. As indicated in the Euroconsult's Independent Assessment of Aireon L.L.C. and Iridium Communications, Inc. (the "Euroconsult report"), Aireon's pricing model is dramatically different depending on (i) where the service is provided (about \$40 per flight hour for NAT flights compared to about \$1.00-3.00 per flight hour for domestic flights), and (ii) Aireon's market position in a given airspace.
17. The Euroconsult report also tells us that oceanic traffic (in fact, NAT traffic) cross-subsidises Aireon's operations in the rest of the world by paying Aireon's fixed costs: "since Aireon's marginal cost to serve additional customers is close to zero, a tiered pricing structure to capture incremental revenue may increase monetization of a sunk cost."<sup>11</sup> The oceanic traffic therefore allows Aireon to market SB ADS-B at lower prices in markets where competition (e.g., radar, ground-based ADS-B, etc.) exists.
18. Aireon's negligible variable costs per additional customer allows a positive contribution margin to Aireon's profits, even at the price of \$1.00-3.00 per flight hour. The fact that Aireon's pricing is expected to generate positive annual returns from 2021<sup>12</sup> indicates that the oceanic traffic will not only cover Aireon's fixed costs but also contribute positively to Aireon's returns.
19. IATA submits that NERL's incentives to advance the interests of the Aireon joint venture have been prioritised over its obligations to serve the interests of its users in accepting these non-arms-length pricing arrangements. Conflicts of interest are identifiable on many levels:
  - NERL's sister company has financial interests in Aireon, which owns the technology at issue.
  - NERL played a significant role in promoting the development of the ICAO proposed reduced separation standards for the NAT, in a manner that would be compatible with Aireon's SB ADS-B technology. In June 2014, the ICAO Separation and Airspace Safety Panel was first tasked by the Air Navigation Conference to develop a proposal for the introduction of SB ADS-B separation minima. At that time, NERL had already entered into a 12-year agreement with Aireon for the provision of SB ADS-B data services<sup>13</sup>.

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<sup>9</sup> Annex 6: ICAO Doc. 9082.

<sup>10</sup> Annex 8: Aireon Space-Based ADS-B Deployment Update, 21 April 2016.

<sup>11</sup> Annex 9: Extracts of Euroconsult report, p. 12.

<sup>12</sup> Annex 9: Extracts of Euroconsult report, p. 14.

<sup>13</sup> "NATS signs agreement with Aireon LLC", NATS press release, 28 February 2004, available at <https://www.nats.aero/newsbrief/nats-signs-agreement-aireon-llc/>



- NERL determined that it would implement Aireon SB ADS-B based services over the NAT airspace without having conducted a proper competitive procurement process.
- NERL will now impose additional charges on the users of these airspaces, by passing through Aireon's discriminatory and non-cost-based prices.

20. Accepting and passing through to users the oceanic airspace SB ADS-B service pricing of Aireon, which is dramatically higher than its pricing for effectively the same functional services in other airspaces, contravenes the cost-relatedness charging principle set out in ICAO Doc. 9082<sup>14</sup>, which also in turn requires that the charges for each service should reflect its own costs (no cross-subsidisation). NERL should have assessed the true costs of Aireon's services and concluded that Aireon's unreasonably high charges would have resulted in excessive returns for Aireon and its shareholders. As an ANSP that is under the obligation to provide its services at cost-related charge levels, NERL should not have accepted Aireon's pricing terms for sole source surveillance oceanic airspace; by doing so, NERL ensures excessive profits to Aireon and its shareholders (including NSL, NERL's sister company) and thus fails to comply with the cost-relatedness principle.

#### **b. Justification for SB ADS-B**

##### **i. Safety case**

21. NERL claims, but does not aptly demonstrate, that there is a safety necessity of introducing SB ADS-B surveillance over the NAT. If NERL were to truly believe that the NAT airspace is currently unsafe (or not sufficiently safe), then it has a positive duty to say so publicly, halt all operations in the NAT, and take responsibility of such failure. Otherwise, the NAT must be presumed to be safe to fly.
22. Air traffic control services are provided by radar or procedural control. Radar control is based on radar-displayed position information. Procedural control consists of: (i) the application of required separation minima, which are in turn based on (ii) flight plan information provided by the aircraft, (iii) the flight plan clearance assigned to an aircraft to fly a predetermined route, and (iv) the monitoring for conformance through the receipt of position information from the aircraft.
23. Aircraft operating in the same airspace are kept at specific distances from each other, in order to ensure the level of risk for collision is maintained at an acceptably safe level. Such separation can be applied by any of the following methods:
- Horizontally:
    - By spacing aircraft behind each other at a specified distance by time or mileage (longitudinal separation).
    - By spacing aircraft side by side at a specified mileage distance from each other (lateral separation).
  - Vertically, by requiring aircraft to operate at different altitudes.
24. Current separations requirements in the NAT region are in accordance with the Procedures for Air Navigation Services – Air Traffic Management (ICAO Doc. 4444) and Application of Separation Minima – North Atlantic (NAT Doc. 008) publications. Aircraft are separated:
- Horizontally:

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<sup>14</sup> Annex 6: ICAO Doc. 9082, Subsection III.3.ii).



- Longitudinal separation: By a standard time interval between aircraft following the same track with assigned speeds, at distances of ten minutes or reduced to 30 nautical miles for PBCS operations.
  - Lateral separation: Depending on the equipment and certification of aircraft, between approximately 60 nautical miles or one degree of latitude; or between aircraft certified for PBCS operations, 25 nautical miles.
  - Vertically, by 1000 feet between flight levels 29,000 and 41,000 inclusive for RVSM certified aircraft.
25. Improved surveillance in oceanic airspace can be done through two mechanisms:
- SB ADS-B reports; or
  - Increased rate of Automatic Dependent Surveillance-Contract (ADS-C) reports ("enhanced ADS-C").
26. Both methods may be used to provide:
- Reduced separation standards in oceanic airspace;
  - Improved accommodation of altitude, speed and route change requests;
  - Improved situational awareness for controllers; and
  - Better conflict detection and resolution.
27. ANSP air traffic control systems relying on one of these methods would receive updated surveillance reports at a rate that would support the application of reduced separation minima in oceanic airspace. These reports would assist controllers who manage traffic in oceanic airspace.
28. ICAO proposed reduced separation standards for the NAT are as follows: 19 nautical miles lateral and 17 nautical miles longitudinal for aircraft using SB ADS-B, and 23 nautical miles lateral and 20 nautical miles longitudinal for enhanced ADS-C<sup>15</sup>. The differences in separation requirements could be important, and may potentially justify the implementation of SB ADS-B, if and when traffic density in the NAT airspace becomes constrained by application of current minimum separation requirements. However, according to IATA estimates, it is unlikely that traffic density in the NAT will require the separation levels afforded by the proposed SB ADS-B separation standards until at least 2025-2028.
29. Just as any other ANSP, NERL responds to unsustainable increased demand by introducing delays (not by lowering safety standards). Rather than claiming that SB ADS-B technology was required for safety reasons (quod non), NERL could have argued that the introduction of Aireon's technology was required due to the increased demand and resulting delays.

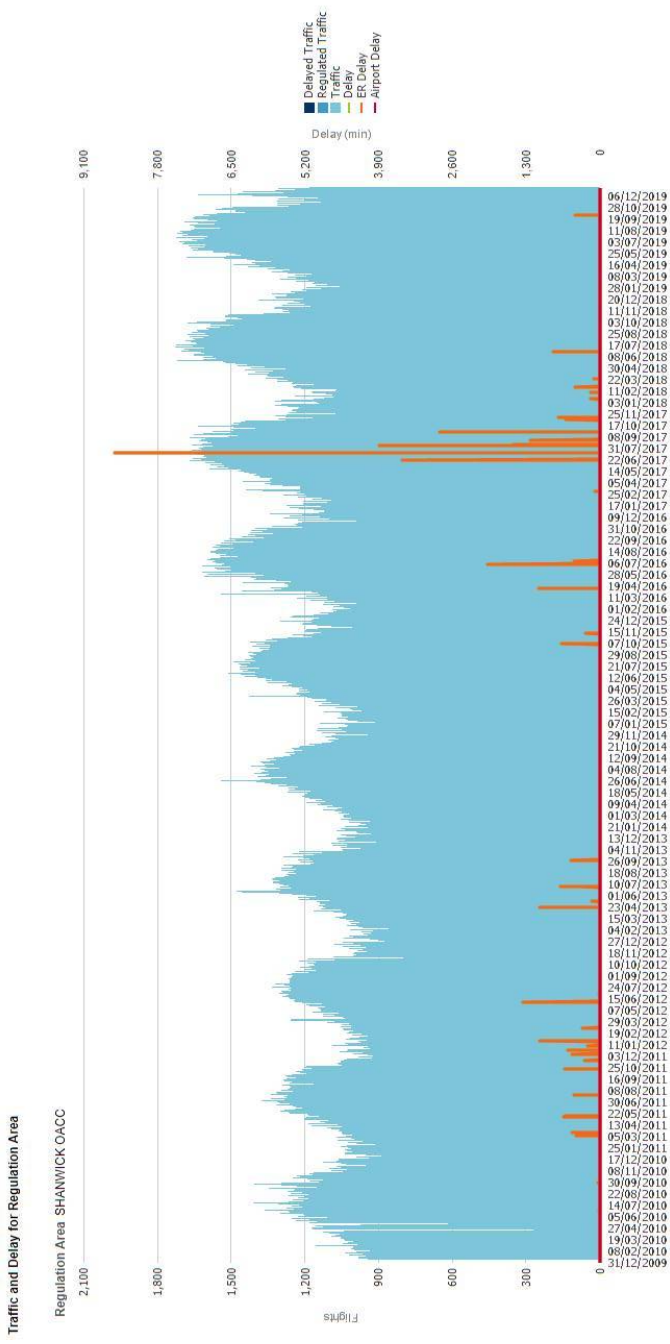
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<sup>15</sup> Annex 10: GAO report "FAA's Analysis of Costs and Benefits Drove Its Plans to Improve Surveillance in U.S. Oceanic Airspace" (GAO-19-532), July 2019, p. 11.





30. Yet, except for sporadic episodes unrelated to capacity constraints, there have been no significant air traffic delays in the last ten years in the NAT. This illustrates that the current traffic demand simply does not necessitate a reduction in separation that would require the use of an enhanced surveillance such as SB ADS-B (or an increase in the usage of an alternative technology such as ADS-C):



Source: The Network Manager Interactive Reporting (NMIR) Traffic and Delays (2009-2019) by the European Organisation for the Safety of Air Navigation (Eurocontrol) (2019)

31. Furthermore, the beneficial impact of SB ADS-B surveillance data is very limited given that Aireon's SB ADS-B data services are not coupled with improved communication capabilities.
32. The presence of SB ADS-B will let an air traffic control officer visualise the traffic on screen. That does not necessarily mean an increase in safety.
33. In use since the 1960s all over the world, radar screens and related technology have not prevented loss of separation to occur.
34. Yet, since 1927 (the first transatlantic flight), not a single mid-air collision has occurred in the NAT, despite the absence of radar surveillance coverage. Indeed, even without radar coverage or voice connectivity, the NAT was consistently much safer than any other airspace (despite the huge number of movements per year).
35. In contrast, at the global level, there have been several mid-air collisions reported while under radar coverage.
36. IATA is of the view that at such high cruise speeds voice communication is the most effective way to instruct a pilot to execute a diversion and avoid a collision<sup>16</sup>.

<sup>16</sup> Interestingly, Aireon's competitors are currently investing in SB ADS-B solutions that are expected to result in improved communication capacity. For an example, see "Singapore takes next steps towards implementing the world's first space-based



37. SB ADS-B (without added voice communication) will even likely increase the risks associated with air travel by decreasing the separation, without at the same time increasing the capability to manage (through appropriate means, such as voice communications) the increased airspace demand. With this in mind, SB ADS-B becomes a possible solution for a problem that currently does not exist. The reduced separation is simply being forced onto the airline community in response to an artificial need, and to the benefit of a select group of ANSPs and their co-owned commercial venture, Aireon.

**ii. Efficiency case**

38. NERL claims that the introduction of SB ADS-B will “deliver benefits in terms of fuel efficiency and service quality. It will lead to an increase in costs to customers, but the financial benefits are expected to be between two and four times higher than the additional costs”<sup>17</sup>.

39. IATA finds it inappropriate for NERL to suggest that airlines will receive benefits of that alleged, but unproven, magnitude. An operator’s cost is based on a number of factors, not necessarily known to NERL.

40. Moreover, there is no solid evidence of shorter oceanic entry to oceanic exit times. Until there is sufficient data that would support operational/behavioural changes, airlines will not be reducing planned fuel loads.

41. It is noteworthy in this regard that the efficiency claims made by NERL are based on its own estimates rather than validation by airlines or independent third parties and that Aireon’s SB ADS-B service is still within its trial phase.

42. NERL’s business case suffers from another substantial shortcoming. NERL assessed the alleged benefits of Aireon’s data service against the costs resulting from the imposition of that service (for which NERL had signed up as early as 2014, i.e., at a time when, e.g., Iridium had not even completed assembly and testing of its first NEXT satellites<sup>18</sup> or completed the first successful integration of the Aireon payload on an Iridium NEXT satellite<sup>19</sup>), but nothing indicates that NERL did the same exercise with regard to other technologies and/or providers.

43. In contrast, the U.S. Federal Aviation Administration (the “FAA”) prepared a detailed business case analysis, which estimated the “costs to the agency and aircraft operators, identified safety benefits from enhanced surveillance, and identified and calculated the value of operational efficiency benefits from using reduced minimum separation standards enabled by Enhanced ADS-C and space based ADS-B.”<sup>20</sup>

44. Significantly the FAA assessment concluded that:

- Enhanced ADS-C reporting would be highly cost-effective, with the operational benefits to airspace users exceeding the costs by 2 to 1;

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VHF communications”, GOMspace press release, 6 February 2018, available at <https://gomspace.com/news/singapore-takes-next-step-towards-implementation.aspx>

<sup>17</sup> NERL’s SoC, para. 481.

<sup>18</sup> “First Iridium NEXT satellites declared ready for shipment and launch date announced”, Aireon press release, 14 June 2016, available at <https://aireon.com/2016/06/14/first-iridium-next-satellites-declared-ready-for-shipment-and-launch-date-announced/>

<sup>19</sup> “Aireon ADS-B payloads installed on first Iridium NEXT satellites”, Aireon press release, 1 June 2015, available at <https://aireon.com/2015/06/01/aireon%e2%84%a0-ads-b-payloads-installed-on-first-iridium-next-satellites/>

<sup>20</sup> Annex 10: GAO report “FAA’s Analysis of Costs and Benefits Drove Its Plans to Improve Surveillance in U.S. Oceanic Airspace” (GAO-19-532), July 2019, p. 14.



- SB ADS-B based services would be extremely cost-ineffective, with the costs outweighing the benefits to airspace users by 6 to 1<sup>21</sup>.

45. IATA submits that the benefits of SB ADS-B data services have been overstated by NERL and/or have not yet been conclusively proven. The introduction of Aireon's SB ADS-B in fact results from the commercial agenda of NERL and other ANSPs and will translate into airspace users (and passengers) prematurely paying for Aireon's expensive service whereas it is not required at this stage.

### III. UK NATS' relationship with Aireon and relevant contractual terms

46. NERL has been provided with a monopoly in the provision of air navigation services, and the pricing of such services. IATA is of the view that UK NATS and its subsidiaries engaged in anti-competitive practices and abuse of dominant position by entering into the long-term, exclusive, non-arms-length contracts between NERL and Aireon, and between NSL's joint venture and Iridium. IATA also submits that a 12-year contract allows NERL and Aireon to abuse their dominant position and engage in anti-competitive practices by charging excessive inter-company prices and recouping them through the proposed oceanic charges. The 12-year contract also disincentives innovation and precludes NERL's users from benefiting from global innovation competition.

47. IATA fully appreciates that there are inescapable privacy limitations on the scope of information which can be readily shared due to contractual confidentiality obligations between NATS and Aireon. However, IATA contends that relevant contractual terms should be more fully and widely disseminated to interested third parties, given the widespread ramifications of the proposed changes to oceanic surveillance and navigation and NERL's decision to impose the proposed charges.

#### a. UK NAT's relationship with Aireon

48. Substantial cross-investments exist between Aireon and some of the relevant ANSPs with whom it is contracting. Aireon is a joint venture formed by Iridium and five ANSPs, including UK NATS, NAV CANADA, ENAV (Italy), IAA (Ireland), and Naviair (Denmark). Payment of the first tranche of NAV CANADA's investment into Aireon was made in 2012 and the four other ANSPs were added as shareholders between 2013 and 2018.

49. In 2014, UK NATS signed a 12-year contract with Aireon to deploy SB ADS-B. In its press release, Aireon stated:

"NATS, the U.K.'s privatised provider of air traffic control services, has signed a 12-year agreement with Aireon to deploy space-based ADS-B. NATS is a charter ANSP of Aireon, working closely with NAV CANADA [...] on the technical and operational development of space-based ADS-B services."<sup>22</sup>

50. As noted by the CAA, there are significant inter-relationships between several key parties in this matter:

"NATS Holdings Ltd is... the parent company of both:

- NERL (the economically regulated monopoly provider of UK and Oceanic en route ATS), subject to price control regulation and this reference; and
- NSL (the unregulated provider of terminal ANS, engineering, consultancy training and information services)."<sup>23</sup>

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<sup>21</sup> Annex 10: GAO report "FAA's Analysis of Costs and Benefits Drove Its Plans to Improve Surveillance in U.S. Oceanic Airspace" (GAO-19-532), July 2019, p. 18.

<sup>22</sup> See Aireon's milestone timeline, Q2 2014, available at: <https://aireon.com/timeline/>

<sup>23</sup> CAA's Reference to the CMA of the NERL RP3 price controls, CAP 1857, para. F12.



51. Notably, NSL has a 10% shareholding in Aireon. NERL maintains that this investment was made to drive the development of SB ADS-B technology and to have a say in the direction of that business<sup>24</sup>. Aireon's press release quoted above indicates that UK NATS in fact already had a say "on the technical and operational development of space-based ADS-B services" back in 2014, i.e., much before its investment into Aireon or the start of the consultation process for RP3.
52. It is, in IATA's view, unrealistic to think of this close relationship between the parties as not impacting upon either the case presented by NERL nor the level of resistance expressed towards the proposals made by the CAA.

**b. Length of contract**

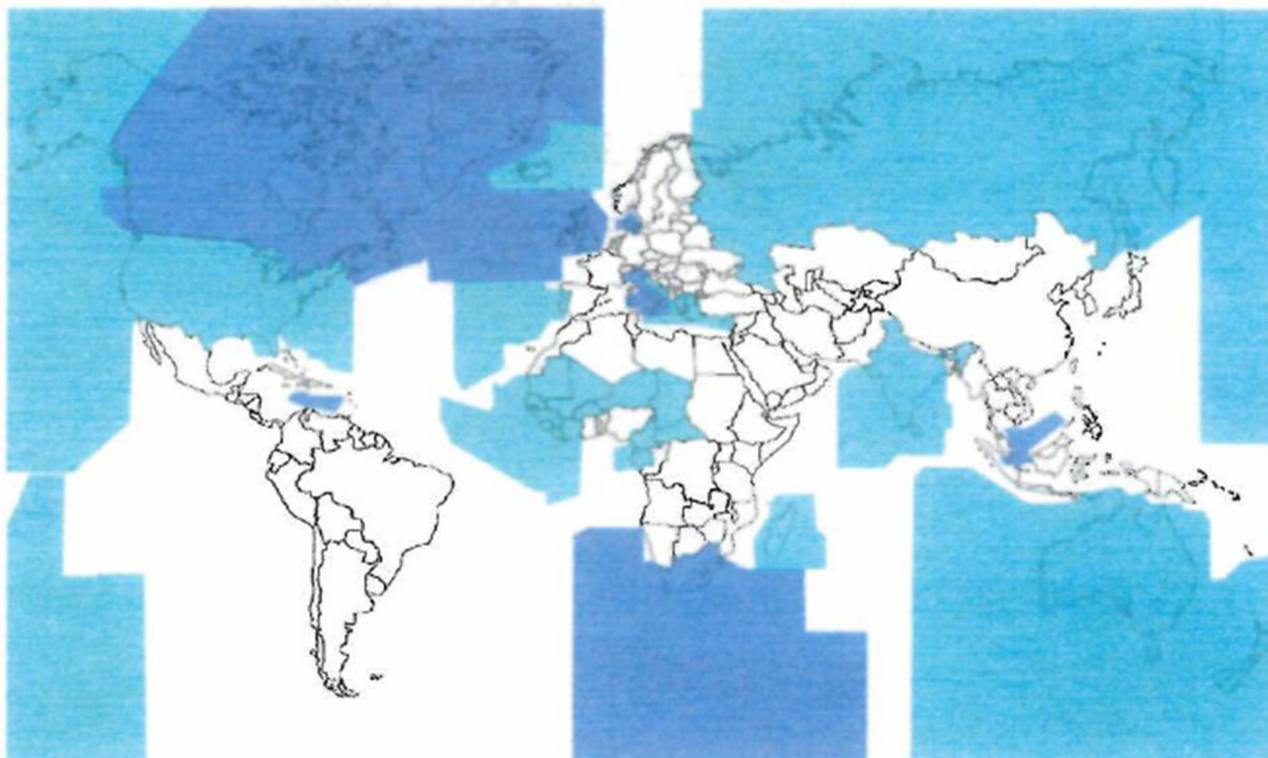
53. Aireon has signed contracts for the provision of SB ADS-B data services with various ANSPs. Lengthy contracts appear to be Aireon's preferred practice. NERL and NAV CANADA have, for instance, entered into 12-year agreements, which obligate the ANSPs to source SB ADS-B data services exclusively from Aireon.
54. The 12-year duration of the data services contract between Aireon and NERL is excessively long for the following reasons:
  - Aireon does not need to make any customer-specific investment that would require this length of supply contract to recoup;
  - The market for surveillance technologies is dynamic and SB ADS-B is a nascent technology. It can be expected that the technology may have limitations or inefficiencies, and that new providers of the same or similar technologies, or new competing technologies, may enter the market in the foreseeable future and may be able to deliver similar or better services at lower or similar prices, to the ultimate benefit of airspace users and passengers; and
  - A 12-year contract does not provide Aireon or NERL with incentives to reduce costs or innovate and precludes NERL's users from benefitting from global competition innovation.
55. By entering into a long-term contract in such a fast-changing market, NERL failed to ensure that the services it procures, and the costs which it passes on to its users, will be the most cost-effective available in the market throughout the duration of the locked-in contract period. It appears that NERL has very little, if any, flexibility (or, in fact, incentive, as a shareholder<sup>25</sup>) to switch to other, more cost-effective, technologies or suppliers until the end of the 12-year contract it has entered into with Aireon. This is contrary to the ICAO requirement to ensure that air navigation charges are cost-effective.
56. The possible cumulative effect of several long-term, exclusive agreements is well illustrated on the map below, which represents the "air traffic control areas under Aireon customer agreements", as there were mapped out in June 2016 (since then, Aireon has entered into several other agreements with ANSPs)<sup>26</sup>:

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<sup>24</sup> NERL Reply (Redacted), 30 December 2019, para. 288.

<sup>25</sup> In its Reply dated 30 December 2019, NERL stresses that at the time that the prices were agreed with Aireon, NSL, and therefore UK NATS, did not have any stake in the outcome of these negotiations. IATA note however that at the time of the consultation process for RP3, NERL could have approached Aireon to re-negotiate some contractual terms considering its users' concerns. There is no solid evidence that NERL has done so.

<sup>26</sup> Annex 9: Extracts of Euroconsult report, p. 10.

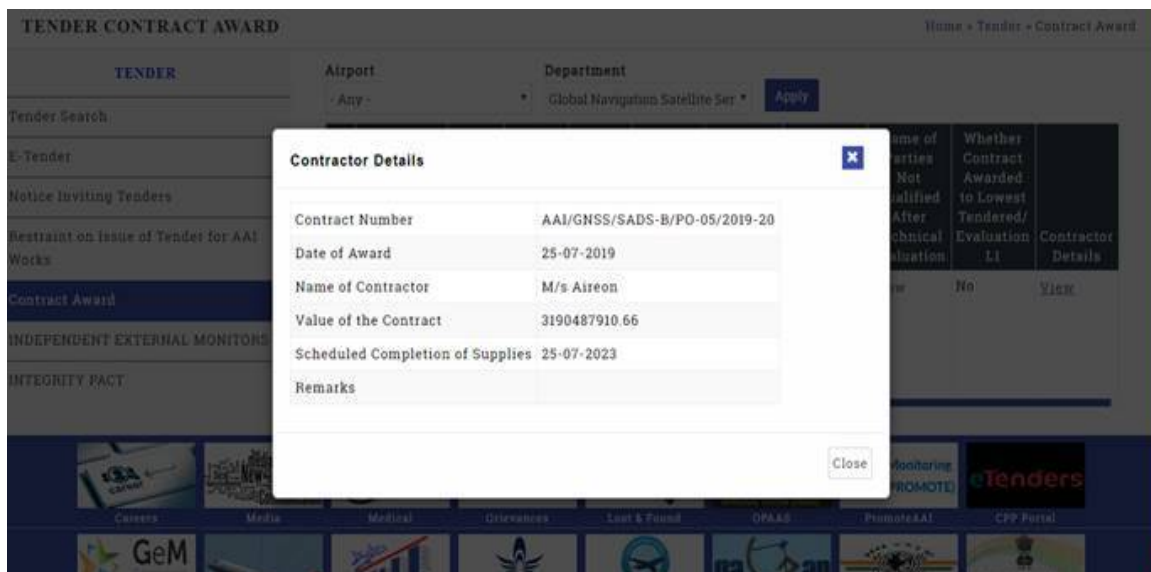


57. If all the ANSPs responsible for the coloured airspaces were to be locked-in into long-term, exclusive agreements with Aireon, the incentives for competing providers of SB ADS-B data services or providers of competing technologies to innovate and invest into their technologies and services would be reduced since the commercial opportunities to recoup their investments would be limited. This would ultimately discourage market entry and result in higher prices for airspace users and passengers.
58. IATA notes in this regard that Airports Authority of India (which is not a shareholder of Aireon) entered into a four-year (3+1) agreement with Aireon after conducting a competitive procurement process<sup>27</sup>:

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<sup>27</sup> Source: [https://www.aai.aero/en/tender/contract-award?field\\_airport\\_tid=All&field\\_department\\_tid=1095](https://www.aai.aero/en/tender/contract-award?field_airport_tid=All&field_department_tid=1095)





Source: [https://www.aai.aero/en/tender/contractaward?field\\_airport\\_tid=All&field\\_department\\_tid=1095](https://www.aai.aero/en/tender/contractaward?field_airport_tid=All&field_department_tid=1095)

59. IATA understands that the primary reason for Airports Authority of India to sign for a 3+1-year contract with Aireon was the expected competition in the provision of SB ADS-B services in the near future. This illustrates that any ANSP with an inherently significant interest in achieving a balanced and cost-effective deal with Aireon is able to negotiate terms that would preserve the incentives of actual and/or potential competitors to enter into relevant markets, to the ultimate benefit of airspace users and passengers.

**c. Failure to conduct a transparent, competitive procurement process**

60. Section III of ICAO Doc. 9082 expressly requires that “[c]harging systems should take into account the cost of providing air navigation services and the effectiveness of the services rendered.”<sup>28</sup>

61. This provision requires consideration of both effectiveness of the services being provided and the costs of providing them. This in turn requires consideration of the technology and suppliers chosen to deliver the services and the benefits to users from such services, relative to other options for the provision of air navigation services.

62. The 2015 OECD Recommendation on Public Procurement is also an obligation of the United Kingdom. It defines procurement as the “process of identifying what is needed; determining who the best person or organisation is to supply this need; and ensuring what is needed is delivered to the right place, at the right time, for the best price and that all this is done in a fair and open manner.”<sup>29</sup> Its primary objective is “delivering goods and services necessary to accomplish government mission in a timely, economical and efficient manner.”<sup>30</sup> These objectives are reflected in both UK domestic law by The Public Contracts Regulations 2015 that require procurement processes to be open, transparent and conducted by way of a competitive procedure, and in EU law by the Public Procurement Directives which stipulate that contracts should be awarded fairly, without discrimination and through a process in which all bidders are treated equally.

<sup>28</sup> Annex 6: ICAO Doc. 9082, Subsection III.6.vi).

<sup>29</sup> Annex 11: 2015 OECD Recommendation of the Council on Public Procurement, section I.

<sup>30</sup> Annex 11: 2015 OECD Recommendation of the Council on Public Procurement, section I.



63. NERL accomplishes a government mission under the Transport Act 2000 and is subject to the obligations of the United Kingdom to adhere to the OECD Recommendation on Public Procurement and to the framework of The Public Contracts Regulations 2015.
64. Airlines have no choice but to pay the charges implemented by NERL. The international obligations imposed on the United Kingdom and, by statute, on NERL, dictate that competitive proposals or quotes should have been used to determine the crucial technology and supplier choices for a core component of NERL's air navigation services mandate. Yet, it appears that NERL committed itself to Aireon and its SB ADS-B technology without assessing the alternative possibility of, for example, increased rate of ADS-C reports.
65. NERL's failure to do so is illustrated by the different approach that has been followed by the FAA. It conducted a formal evaluation of enhanced ADS-C and SB ADS-B and published its findings in July 2019. The assessment included an extensive review of documentary materials related to enhanced oceanic surveillance and interviews with the Air Traffic Organisation and air traffic controllers who manage U.S. oceanic airspace. It surveyed representatives of 11 U.S. and foreign passenger airlines and 3 U.S. cargo airlines. It also interviewed other aviation stakeholders, including trade associations, unions representing pilots, and foreign air navigation service providers that manage airspace adjacent to U.S. oceanic airspace<sup>31</sup>.
66. As indicated above, with regard to the cost-effectiveness of competing surveillance technology options, the FAA assessment concluded that:
  - Enhanced ADS-C reporting would be highly cost-effective, with the operational benefits to airspace users exceeding the costs by 2 to 1;
  - SB ADS-B based services would be extremely cost-ineffective, with the costs outweighing the benefits to airspace users by 6 to 1<sup>32</sup>.
67. With regard to technical capabilities and functionalities, the FAA found that enhanced ADS-C and SB ADS-B relay position data at different time intervals to air traffic control, but that SB ADS-B lacked the capability to provide the other significant aspects of service.
68. On this basis, the FAA chose to use enhanced ADS-C<sup>33</sup>, at least in the short to medium term.<sup>34</sup> It concluded it would be premature to mandate the use of SB ADS-B, which was found to be significantly more costly than enhanced ADS-C and its benefits would not justify these costs.
69. NERL also does not appear to have assessed alternative potential providers of SB ADS-B services. Instead, it prematurely selected Aireon.

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<sup>31</sup> Annex 10: GAO report "FAA's Analysis of Costs and Benefits Drove Its Plans to Improve Surveillance in U.S. Oceanic Airspace" (GAO-19-532), July 2019, section "Why GAO Did This Study".

<sup>32</sup> Annex 10: GAO report "FAA's Analysis of Costs and Benefits Drove Its Plans to Improve Surveillance in U.S. Oceanic Airspace" (GAO-19-532), July 2019, p. 18.

<sup>33</sup> For more information, see : <https://www.inmarsat.com/blog/whats-the-big-deal-about-the-faas-commitment-to-use-ads-c/>

<sup>34</sup> This also indicates that NERL's claim that it would face considerable difficulties if the navigation and surveillance technologies employed across airspaces were not unified is untenable. The FAA rejected the use of SB ADS-B at this stage without referring to the ensuing technical difficulties for, e.g., NAV CANADA.



70. Aireon's SB ADS-B service is not unique. SB ADS-B is a technology that has been developed by other companies as well<sup>35</sup>. Aerial & Maritime<sup>36</sup> and Spire<sup>37</sup>, for instance, are preparing to provide SB ADS-B services.
71. NERL selected its SB ADS-B service provider, at a time when there was no certainty as to whether Aireon would deliver as promised (in fact, the trial period is ongoing, and IATA does not have performance data yet) and alternative providers of SB ADS-B data services could have been considered.
72. NERL prematurely rejected all alternative solutions and/or competing technologies and is now focusing on helping Aireon to flourish, to the exclusion of competitors and the detriment of users. By not conducting formal assessments of competing providers and/or services before engaging a high-cost supplier, NERL failed to take the necessary steps to ensure that the services it procures, and the resulting costs which it proposes to pass on to users in the revised oceanic charges, comply with the ICAO Doc. 9082 cost-effectiveness requirement.

#### **d. Excessive charges**

73. IATA is of the view that the CAA has underestimated a key element in considering the increased charges, i.e., the revised oceanic charges include a substantial profit component that would accrue to the benefits of Aireon's shareholders, including NERL's sister company.
74. Section III of ICAO Doc. 9082 explicitly requires that the capital and operating expenditures underlying air navigation charges not be excessive:

"The costs to be taken into account should be those assessed in relation to the facilities and services, including satellite services, provided for and implemented under the ICAO Regional Air Navigation Plan(s), supplemented where necessary pursuant to recommendations made by the relevant ICAO Regional Air Navigation Meeting, as approved by the Council. Any other facilities and services [...] should be excluded, as should the costs of [...] any excessive construction, operation or maintenance expenditures."<sup>38</sup>

75. IATA is of the view that the embedded conflicts of interest and opportunities to obtain supra-competitive profit margins result in expenditures by NERL which are excessive and are therefore contrary to the ICAO requirement.
76. Section I of ICAO Doc. 9082 stipulates that: "When considering the commercialization or privatization of [...] ANSPs, States should bear in mind that they are ultimately responsible for safety, security and economic oversight of these entities."<sup>39</sup>
77. Subsections I.12 to I.15 of ICAO Doc. 9082 elaborate on these economic oversight responsibilities, which include preventing anti-competitive behavior by ANSPs:

"The main purpose of economic oversight should be to achieve a balance between the interests of [...] ANSPs [...] and those public policy objectives that include, but are not limited to, the following:

- i) **Minimize the risk of [...] ANSPs engaging in anti-competitive practices or abusing any dominant position** they may have."<sup>40</sup>

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<sup>35</sup> For further details, see, e.g., Annex 12: Aerial Maritime Presentation "Space based ADS B using NANOSATS".

<sup>36</sup> For more information, see: <http://aerial-maritime.com/GB/Aerial.aspx>

<sup>37</sup> For more information, see: <https://www.spire.com/en/solutions/aviation-ads-b-data>

<sup>38</sup> Annex 6: ICAO Doc. 9082, Subsection III.3.ii).

<sup>39</sup> Annex 6: ICAO Doc. 9082, Subsection I.6.

<sup>40</sup> Annex 6: ICAO Doc. 9082, Subsection I.13, our emphasis.





78. Subsection I.13.i of ICAO Doc. 9082, reproduced above, is an obligation of the United Kingdom; the statutory powers of the CMA are one of the core mechanisms through which the United Kingdom may comply with this obligation. The CMA can and should exercise this oversight by considering whether NERL is engaging in anti-competitive pricing when applying the requirement that construction, operation or maintenance costs not be excessive. This is particularly the case as the unfortunate commercial reality of the inflated charges which Aireon is seeking to pass through ANSPs (NERL in this case), some of which being its shareholders, is that they will have an inevitable knock-on effect on passengers. As airlines are forced to make proportionate adjustments where possible to off-set their invariably greater operating costs, it is unavoidable that some of those heightened charges will be reflected in the price of travel borne by passengers. This element should of course also form part of a public interest assessment of NERL's proposals.
79. The anti-competitive practices and abuse of dominant position engaged in by NERL include the long-term, exclusive, non-arms-length contracts between NERL and Aireon, and between UK NATS's joint venture and Iridium.
80. With respect to NERL's contract with Aireon, the following points are of particular significance:
  - NERL's sister company is a shareholder in Aireon.
  - The 12-year contract to purchase surveillance data services exclusively from Aireon contains prices and other terms that were established on a non-arms-length basis, in the absence of any transparent, competitive procurement process. This effectively allows now vertically integrated parties to set an inter-company price above the competitive level, to the detriment of air traffic navigation users who cannot obtain these necessary services from other sources.
  - The exclusivity provisions in the contract effectively foreclose any current or future competitors of Aireon from being able to compete to supply surveillance technologies or services in the NAT airspace.
81. The 12-year contract allows NERL and Aireon to abuse their dominant position and engage in anti-competitive practices by charging excessive inter-company prices and recouping them through the revised oceanic charges.
82. Less is known about the contractual relationships between Aireon and Iridium.<sup>41</sup> However, the terms of the related party arrangements established by Iridium when it formed the joint venture appear highly favourable to Iridium, as evidenced by public comments of Iridium senior executives:
  - "We own a piece of a company that has a yearly revenue potential really of more than \$0.5 billion a year and without lots and lots of cost. It's a high margin business that we own a nice piece of. [Aireon] is going to get to cash flow positive pretty quickly and, therefore, start throwing off dividends down few years from now, which could potentially be quite substantial, which is why I think the current investors are enthusiastic about it" (Matt Desch, CEO, 31 July 2018).<sup>42</sup>
  - "They'll pay us \$120 million for half of our interest and what we'll be left with is 22% of a company that is exclusively going after \$750 million per year TAM. As Matt said, they're very profitable. So, that's how we

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<sup>41</sup> Little is also known about the relationships between Aireon and its other shareholders. IATA notes that during the consultation on the Danish RP3 draft performance plan and on 2018 RP2 actual performance, Naviair, the Danish ANSP, mentioned a loan to Aireon carrying 11% interest. This unusually high interest is being paid by ANSPs using Aireon's services and then charged to the airlines.

<sup>42</sup> Annex 13: Iridium's Q2 2018 Earnings call transcript, 31 July 2018, p. 15.



think about it in terms of bringing value to Iridium. [...] There's a lot of value flow into Iridium from Aireon for a very long time to come" (Tom Fitzpatrick, CFO, 31 July 2018).<sup>43</sup>

- "I would characterize Aireon as being very--there is a tension, right, among the equity investors in Aireon excluding Iridium. They're happy to bridge whatever Aireon's operational needs are, including the contractual minimums on the hosting. There happens to be financing, it's expensive financing that's available that is a substitute for that bridge that gets Iridium additional payments over above our contractual minimums. Aireon is expected to close in that financing in the fourth quarter, but there is a tension and the expense of that facility as it's currently contemplated is acceptable to the investors, and as long as that stays that ways they will close it. But there is not a kind of a desperate need on the part of Aireon for this financing because look at the equity investors in Aireon. They are very well heeled" (Tom Fitzpatrick, CFO, 25 October 2018).<sup>44</sup>
- "And by the way, a great relationship, too. I have to say, we really got a home run here in terms of building a strong team of both users, customers and relationships here for the long-term which I think is really healthy for Aireon and that's why we're able to make these kinds of decisions together about going forward on financing. It looks like that's what's going to be that will provide us additional hosting fees. That's great, that will help our leverage to pay down debt" (Matt Desch, CEO, 25 October 2018).<sup>45</sup>
- "Yes and it's backed up by a very healthy set of investors who basically signed up to say that no matter what would happened that we would get those payments going forward" (Matt Desch, CEO, 25 October 2018).<sup>46</sup>

83. Iridium's highly favourable arrangements with Aireon translate into "costs" for Aireon. And Aireon's highly favourable pricing translate into "costs" for NERL. The result is the revised oceanic charges that constitute a 60% price increase for NERL's users.

84. In light of the foregoing, and despite the CAA's proposal to apply a 5% efficiency target to the data charges, NERL's proposal to levy revised oceanic charges that recover Aireon's and Iridium's non-market-based prices and profits is inconsistent with the ICAO requirement that precludes charges for excessive costs.

85. NERL appears to argue that the charges are not excessive as:

- (i) "Aireon charges for its [SB] ADS-B data on the basis of global tariffs that have been applied consistently for the last four years since it commenced trading, which predates [UK NATS'] investment"<sup>47</sup>; and
- (ii) "NERL carried out due diligence to assess the reasonableness of the Aireon prices by commissioning an independent review by Euroconsult"<sup>48</sup>.

86. This position is unsustainable and open to challenge on a number of grounds.

87. First, NERL's assertion regarding Aireon's consistent application of global tariffs is factually incorrect.

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<sup>43</sup> Annex 13: Iridium's Q2 2018 Earnings call transcript, 31 July 2018, p. 15.

<sup>44</sup> Annex 14: Iridium's Q3 2018 Earnings call transcript, 25 October 2018, p. 15.

<sup>45</sup> Annex 14: Iridium's Q3 2018 Earnings call transcript, 25 October 2018, p. 15.

<sup>46</sup> Annex 14: Iridium's Q3 2018 Earnings call transcript, 25 October 2018, p. 15.

<sup>47</sup> NERL Reply (Redacted), 30 December 2019, para. 278.

<sup>48</sup> NERL Reply (Redacted), 30 December 2019, para. 278.



88. The negotiations between Aireon and Isavia, the ANSP for Iceland (Isavia is not a shareholder of Aireon), confirm Euroconsult's statement that "[l]ower prices may also be necessary for some ANSPs [...] to become subscribers at all."<sup>49</sup> Isavia undertook a detailed analysis and negotiation with Aireon.
89. IATA understands that Aireon initially proposed a rate of USD \$45 per flight hour for the area north 70°N. In response to Isavia's resistance to sign at such pricing, Aireon then proposed a rate of USD \$20 per flight hour. However, Isavia refused to agree to such a price and decided that it would conduct a cost-benefit analysis for SB ADS-B north of 70°N in 2021: **"Costs and benefits of satellite-based ADS-B to the north of 70 degrees are unclear and it was agreed that further work in that area should be postponed.** Focus should be on the southern area. PMN expects there will be competition in the provision of ADS-B satellites in the future"<sup>50</sup>.
90. For the area between 61°N and 70°N, which already benefits from ground-based ADS-B, Isavia and Aireon agreed on a price of USD \$5 per flight hour. However, Isavia indicated that no charge would be implemented until the system is fully certified for usage.
91. Second, NERL omits to disclose that both NAV CANADA and UK NATS, which again are both shareholders of Aireon, worked with the consulting firm Euroconsult to produce the report. The report also indicated that Iridium, another shareholder of Aireon's, is one of Euroconsult's major clients, including in respect of the NEXT satellites to be used by Aireon. The report is not an independent assessment.
92. Further, the Euroconsult report does not reflect an international consensus around the benefits of SB ADS-B or any meaningful assessment of the costs and benefits of alternatives to Aireon's technology, even as of 2016 when the report was prepared.
93. The Euroconsult report does not demonstrate that Aireon's prices to NERL and its profits are not excessive. Nevertheless, the report confirms that Aireon is pricing well above cost using a price discrimination strategy targeted at what it can get customers to bear, and that it anticipated very high internal rates of return of 20-24% per year for 13 years, after paying the fees charged by Iridium and having granted to its shareholders, during the pre-operational period, rates of return on the invested capital between 16.6% and 37%.
94. IATA posits that the promising rates of return announced by Euroconsult may have contributed to (or even triggered) NSL's decision to invest in Aireon.

#### IV. The Public Interest

95. IATA submits that the final decisions of both NERL and the CAA in respect of the oceanic service and associated price controls operate against the public interest and potentially offend the prohibitions of (i) agreements between undertakings, or concerted practices which restrict, prevent or otherwise distort competition, and (ii) abuse of dominant market position.
96. The CMA is respectfully asked to pursue the following course of action:
  - Refund the users who paid the revised oceanic charges;
  - Assess competing technologies and suppliers including a full cost-benefit analysis (in consultation with airspace users) comparing the available options before implementing a new service or changes to an existing service and imposing any related charge;

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<sup>49</sup> Annex 9: Extracts of Euroconsult report, p. 12.

<sup>50</sup> Annex 15: Isavia, Space Based ADS-B report, p. 7, our emphasis.



- Apply the cost-relatedness, cost-effectiveness and non-excessiveness provisions of ICAO Doc. 9082 when considering and justifying new or revised charges for air navigation services; and
  - Provide full and accurate details regarding all related party transactions when proposing new and revised air navigation charges.
97. In the alternative, were the CMA to conclude that NERL's decision and/or the CAA's proposed modifications in respect of the oceanic services and associated price controls are in the public interest, IATA submits that: (i) the decision to impose SB ADS-B related charges should still be postponed, until the point at which delivery of SB ADS-B is proven conclusively to deliver the high rate of benefits anticipated by NERL within its SoC, and (ii) the CMA shall design appropriate behavioural remedies (such as price caps or restrictions on the use of long-term contracts) to address IATA's concerns as set out in these representations.
98. The concept of public interest is not defined in the Transport Act 2000. It is commonly accepted that it must be assessed upon the facts of each matter. IATA is of the view that, in the present case, the concept of public interest encompasses the CMA's duty to promote competition for the benefit of consumers, as well as the duties applicable to the CAA's regulation of NERL under s.12(8) Transport Act 2000:
- (a) To maintain a high standard of safety in the provision of air traffic services (the Safety Duty). The Safety Duty takes priority over the remaining Duties.
  - (b) To further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them. These interests are limited to the range, availability, continuity, cost and quality of air traffic services (the Customer Interest Duty).
  - (c) To promote efficiency and economy on the part of NERL (the Efficiency Duty).
  - (d) To secure that NERL will not find it unduly difficult to finance activities authorised by our Licence (the Financeability Duty).
  - (e) To take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State (the International Obligations Duty).
  - (f) To take account of any guidance on environmental objectives given to the CAA by the Secretary of State (the Environmental Duty).
99. For the reasons set out in these submissions, IATA believes that the implementation of Aireon's SB ADS-B data services and associated charges is not in the public interest:
- NERL failed to demonstrate that it could not maintain a high standard of safety without recourse to Aireon's data services.
  - The implementation of Aireon's SB ADS-B data services and the proposed charges runs against the Customer Interest Duty and the International Obligations Duty.
  - UK NATS and its subsidiaries engaged in anti-competitive practices and abuse of dominant position by entering into long-term, exclusive, non-arms-length contracts, which allowed NERL and Aireon to engage in anti-competitive pricing.
  - The 12-year contract between NERL and Aireon was agreed without due consideration being given to alternative technologies or service providers.
  - This agreement also disincentives innovation and precludes NERL's users from benefiting from global innovation competition.



## **V. Conclusion**

100. As set out more fully above, IATA has a number of concerns with the proposals put forward by the CAA and NERL for RP3 pertaining to the introduction of SB ADS-B and the proposed oceanic charges. We are of course willing to provide elaboration or clarification as the CMA may deem necessary as part of its consideration of these representations.

101. IATA looks forward to exploring the points raised within these representations further at the forthcoming third-party hearing before the CMA on 27 January 2020.

Thank you in advance for considering these submissions.

Yours faithfully,

**International Air Transport Association (IATA)**

Enc. List of annexes



## **List of Annexes:**

Annex 1: Letter from Air Canada

Annex 2: Letter from KLM

Annex 3: Letter from Lufthansa Group

Annex 4: Letter from United Airlines

Annex 5: Letter from Virgin Atlantic

Annex 6: ICAO's Policies on Charges for Airports and Air Navigation Services (ICAO Doc. 9082), 9th edition, 2012

Annex 7: Note for Airlines – Planned changes for Shanwick Route Charging from 1 January 2020

Annex 8: Aireon Space-Based ADS-B Deployment Update, 21 April 2016

Annex 9: Extracts of Euroconsult's Independent Assessment of Aireon L.L.C. and Iridium Communications, Inc., Final report to NATS UK, 30 September 2016

Annex 10: GAO report "FAA's Analysis of Costs and Benefits Drove Its Plans to Improve Surveillance in U.S. Oceanic Airspace" (GAO-19-532), July 2019

Annex 11: 2015 OECD Recommendation of the Council on Public Procurement

Annex 12: Aerial Maritime Presentation "Space based ADS B using NANOSATS"

Annex 13: Iridium's Q2 2018 Earnings call transcript, 31 July 2018

Annex 14: Iridium's Q3 2018 Earnings call transcript, 25 October 2018

Annex 15: Isavia, Space Based ADS-B report