



CAP2618: Setting Future Price Controls – review of approach

Submission by Prospect to the Civil Aviation Authority

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This document outlines our response to CAP2618, on behalf of Prospect's Air Traffic Control Officers (ATCOs') and Air Traffic System Specialists (ATSS) Branches. With 2000 members in the Air Traffic Control Officers' Branch, 800 members in the Air Traffic System Specialists Branch, and over 250 ATC workers in other branches – including the CAA - we effectively represent the entire workforce of professionals involved in UK ATM.

Comments in relation to paragraph 2.8

Prospect has been a stakeholder in the economic regulation of NERL for recent price controls including NR23 and reference periods under the European Commission regulations. We welcome this opportunity to provide feedback as part of this review. We wish to highlight four key themes that we will explore in our response:

- 1) the interdependencies of certain price control decisions and their impact on other areas within the same determination
- 2) the long-term impact that certain CAA decisions will have beyond that particular price control period
- 3) the long-term impact of NERL decisions in response to inevitable traffic boom-and-bust (-and boom, again) cycles including financial crashes, pandemics and other extreme events such as volcanoes; this is as a result of how the price control process may force NERL to make short-sighted decisions
- 4) the impact of CAA decisions on industrial relations

We have found these to be particular blind spots across several reference periods and the results of which are being most keenly felt this year and will be felt for the upcoming years of NR23; this review is quite timely.

There have been several “boom-and-bust” cycles stretching as far back as the preparations for RP2 which go back a decade or so now.

In 2019, looking back at RP2 and with the RP3 decision on the horizon, Prospect stated:

Despite our protestations, the drive to focus on cost above all else and the ensuing round of redundancies as RP2 commenced have resulted in an acute shortage of skilled staff in a number of areas. These staff - our members - now face daily challenges in resourcing and delivering capacity and a quality service to customers. The interventions by the CAA as set out in the draft performance plan risk exacerbating this.

The RP2 years proved challenging for NATS for a number of reasons. Staffing issues arose early on and were in part caused by a shortage of staff due to the VR programme, which in itself was a direct result of cost pressures for that reference period. There were various other difficulties at the time, including significant delays that resulted in Projects Oberon¹ and Palamon².

¹ <https://www.caa.co.uk/our-work/publications/documents/content/cap1578/>

²

<https://prospect.org.uk/news/nats-nerl-found-to-be-in-contravention-of-its-licence-over-staffing-by-the-cao>

As NERL currently finds itself in dire staffing straits in NR23 (which are to an extent as a result of the Covid-19 pandemic), there may well be interdependencies between NR23 decisions made by the CAA that will further exacerbate the current situation as time goes on.

Comments in relation to paragraph 2.18

Prospect asks the CAA to consider looking at interdependencies of its decision making and making an impact assessment when taking into account the various building blocks such as capex and opex expenditure, as well as safety and environmental elements. Consideration on how items like downward pressures on costs will have on delay must be looked at in-the-round (and ultimately, should form part of any consultation with the consumer, the travelling public and of course be presented in an easy-to-understand format, see later in this response). All elements should be impact assessed for their interdependencies and include:

- Safety
- Cost efficiency
- Capacity & delay
- Inflation & index linking
- Pensions
- Staff costs
- Overall opex
- Capex
- Industrial relations

Similarly, we would like the CAA to take a more considered review of the substantive outcomes of the reference periods and what impacts their decisions had, and ultimately whether lesson learning could be undertaken to better inform future price controls. Although this current exercise (CAP2618) is in effect a review of the processes in place, it isn't an automatic review of previous price controls on a consecutive basis, nor is it necessarily an attempt to ensure an automatic review takes place in future. In the absence of consistent reviews, there is little or no opportunity to look at what worked and what didn't, what approaches could be taken in the future and what should be avoided. It is insufficient to rely on the consultation process for an upcoming price control, and the responses received from stakeholders to inform wins and losses of the past. The pitfalls of the RP2 period and the ongoing lesson learning during NR23 are and will be good opportunities to do so.

The CAA must also consider engaging with NERL on, or providing NERL with the appropriate mechanisms to ward off reactionary decisions when inevitable downturns in traffic occur (global recessions, pandemics, volcanic events etc.). Reactionary decisions to such events *may* be understandable when looked at in a vacuum (and this was largely the case for the reconciliation review for 2020-2022 inclusive). However, the provision of en route traffic services must be treated like the national infrastructure that it is. Boom-and-bust cycles are a given, and so NERL must be encouraged to react to these cycles with a long-term vision of the future in mind, not simply to make short-term decisions that will permit it to lurch out of one immediate crisis into an upcoming one.

The CAA should also consider the impact of its price control decisions on industrial relations, and must include it in the above list for interdependencies. Prospect is proud to be the union

representing virtually all NERL controllers and engineers - a strong union working together in tandem with an engaged company can make for a successful ATM service provision, and there will be decisions made in a price control that will impact this. A clear example is the CAA's recent decision that NERL reduce the contribution rates for new entrants to the DC scheme. We have made it clear to the CAA in our submissions that this union has strong policies on a response that we will take should NERL make changes or attempt to make changes to that scheme (which have been ignored by the CAA in its Final Decision). Had there been proper engagement during the consultation process on the impact of decisions on industrial relations, a future crisis may well have been averted in 2023.

Comments in relation to paragraph 2.24

For the NR23 process in particular, the CAA may wish to consider how it engages with key stakeholders other than NERL throughout the process. For example, during any given consultation prior to the setting of a price control, and for the purposes of simplicity there are three main stages: initial, provisional and final. During each of these stages, stakeholders submit positions and comments which the CAA may or may not address in the documentation (CAP) they produce pertaining to the next stage of the process. The CAA may wish to consider whether improved mechanisms for consultation would be appropriate with those stakeholders who submit responses, over and above the sometimes inconsistent responses we might receive in the subsequent round. The method of feedback may be in the form of meetings or workshops which would allow for direct feedback on points raised in CAP responses, and would be mutually beneficial in improving understanding of aims or desires on both sides.

Comments in relation to paragraph 2.26

It has been the case that the consultation for a price control slips delaying the final determination which can have unforeseen consequences at levels the CAA may not be aware of, for example, the impact it might have on industrial relations (see response to paragraph 2.18). As an example, in the latter stages of the RP3 determination the deadlines had already significantly slipped (in addition to being exacerbated by the referral by NATS of the RP3 decision to the CMA). We urge the CAA to take a more realistic approach to its own timelines and capacities, especially given its acknowledgement of the clash between both Heathrow and NERL price controls.

Comments in relation to paragraph 2.29

In our response to the initial proposals for NR23, we stated:

In previous submissions we have offered our belief that the public at large would be prepared to pay slightly more for an improved and resilient service, and we are pleased to see that this now seems to be the accepted wisdom (CAP2394, page 11, paragraph 12). The public certainly would not want to see a worse or unreliable service in return for a tiny reduction in the cost of their flight (which would anyway be unlikely to translate into a cheaper ticket).³

Prospect welcomes the CAA proposing to improve its consultation with consumers, i.e. the travelling public. It has long been our position that the downward pressure on costs serves

³ <https://www.caa.co.uk/media/zbybds4j/prospect.pdf>

no one but the airlines. The airlines push for marginal cost gains and then complain when service delivery is impacted, all the while passing through little (if any, arguably) cost savings to the flying public which are negligible in any case. We encourage the CAA to be more frank with the consumer, and to assess their acceptance of the same. It is essential that information being shared is presented in an accessible way to the consumer, with it being made clear what are the overall cost savings per average ticket as a result of proposed price control determinations.

Comments in relation to paragraph 2.32

Consumer research for NERL price controls is lacking. The evidence of such consideration that has been given to the consumer in previous CAPs for price control consultations seems to be missing, and the consumer position seems only to exist through what the CAA says is the position of the consumer on its behalf (apparently a never-ending downward pressure on cost being front and centre). Prospect has posited the case for several years that the mindset of the consumer would be in support of fewer cuts to already marginal costs of flight tickets, out of what is already a small contribution from the average ticket that goes to pay for the air traffic services.

In attempting to improve and bolster consumer research, it is essential that clear information must be presented to the consumer to give them their voice in the price control consultations, and potentially the ability for the consumer to provide their input in choosing from two or more outcomes (similar to what was done for RP2). It is our firm position that the consumer will be willing to pay for what is often a few pence more per average ticket in order to ensure a resilient and on-time air traffic service, that is, should they have the correct and clear information available to them to aid them in that decision. Any information being presented must therefore break down the costs into a format that is easy to understand, i.e. the proposed cost reductions to the average price of a flight that will pay for the provision for air traffic services.

Comments in relation to paragraph 2.34

Prospect would like to point out some of the time and money that was wasted during the most recent external consultancy on behalf of the CAA into pay benchmarking within NERL. There were a number of oversights in the work produced, and some of the initiatives were eventually scrapped. The introduction of NERL staff pay being linked to average weekly earning indexes in a crude and cynical fashion was little more than a means-justifying-the-ends exercise. In addition, a focus should have been placed on analysis of truly comparable entities, i.e. other European ANSPs, instead of industries such as the storage sector. The CAA may wish to reconsider how it can make the process of tendering for external consultancies more transparent.

Comments in relation to paragraph 2.39

The traffic risk sharing mechanism (TRSM) is essential to the financeability of NERL and must continue as a point of principle. The recent actions taken as a result of covid (CAP 2597 and the spread of recovery over ten years), was of course exceptional. It was well consulted and made sense given the extenuating circumstances. Early clarity on this helped NERL with its refinancing and overall financeability. However, a conscious or unconscious evolution towards extending cost recovery as a result of TRSM to timeframes similar to that in place for the years 2020-2022 is not recommended. The introduction of the 10%

deadbands in the NR23 Final Decision should provide more financial certainty than the introduction of anything revolutionary.

In terms of the service quality question, our response is similar to that which is stated before in various guises - the interdependencies between targets for service quality (C2-4 metrics and 3Di) and impact on staffing, training, capex rollouts etc. are things that must be assessed in the round. Targets can and do drive the wrong behaviours as management focus on specific targets resulting in the overall operation having to take their eyes off a problem elsewhere.

With regards to the 3Di incentive itself as a metric, we believe it would be a good opportunity for the CAA to review its effectiveness and how future-proof it is, as we see limitations to how well it can be used moving forward. For one, as a signatory to Eurocontrol, the UK will be party to initiatives such as the All Together Now 2024⁴ summer preparedness plan. With an entire Network approach in mind, Eurocontrol is recommending, amongst various initiatives, that for en route service provision no deviation from the flight plan should occur. Conversely, the 3Di framework encourages fuel burn efficiencies through tactical elements including shorter routes when able. The reality is that both approaches are in direct contradiction and competition with each other.

Consideration must also be given to the aspirations that continued efficiency gains can and will be achieved within the 3Di framework (see also response to paragraph 2.45). The reality is that where efficiency has already been maximised as a consequence of the framework, further efficiency gains can no longer be made. As we have witnessed the maturing of the 3Di scheme over many years and its benefits, it's now time for the CAA (and NERL) to review what the merits are in continuing given these above issues, and instead approaching the environmental question with new perspectives.

Comments with regards to paragraph 2.45

As a general rule, you can't keep adding aircraft to the (UK) air traffic system and expect further improvements with regards to environmental impacts; capacity is quite simply a finite resource. Airspace changes will make way for marginal improvements, however, it will only be a dramatic overhaul of the route system that will provide significant results - this is unlikely ever to happen given the complexity of UK airspace. Therefore, due regard must be given to the limitations from an air traffic perspective.

⁴ <https://www.eurocontrol.int/all-together-now-2024>