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Modification to the Air Traffic Services Licence for NATS En-Route Limited

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On 20 December 2002 the CAA published a decision which modified, on a conditional basis, Conditions 20 and 21 of the air traffic services licence held by NATS En-Route Limited (NERL). The effects of the modifications were:

- a) To amend the price cap for Eurocontrol Charges for the three year period from 2003 to 2005 so that charges would be subject to an RPI-2 limit in each year compared to the previous limits of RPI-4 in 2003 and RPI-5 in 2004 and 2005.
- b) To introduce a symmetrical volume term into the specification of the price cap so that above a floor, NERL would face 50%/50% sharing of both downside volume risks and upside volume opportunities with users. That is, if chargeable service units (CSUs) were to fall (or rise) by a certain amount compared to a benchmark level, prices would rise (or fall) sufficiently for NERL to lose (or gain) only 50% of the revenue that would have been lost (or gained) if no modification were made. In addition a "trigger floor" would be established at around 80% of NATS' current base case forecasts. If CSUs fell below this level, NERL's exposure would be reduced from 50% to 20%.

The full decision may be found on the CAA's website at www.caa.co.uk/erg/ergdocs/natspricedecember02.pdf. The modified Conditions 20 and 21 are attached to this Notice. The modifications took effect on 1 January 2003.

P K Taylor
NERL Licence Manager

PART III CONDITIONS RELATING TO CHARGE CONTROL**Condition 20: Charge Control Conditions: explanatory provisions and definitions
(Effective from 1 January 2003)****A Introduction**

- 1 This Part provides a descriptive summary of the provisions which follow in Part B of this Condition and Conditions 21 to 25. This Part is not intended to add to the provisions which follow, and for the purposes of interpretation it is the detailed provisions which should prevail.
- 2 The Charge Control Conditions relate to the following sets of revenue:
 - subject to certain exclusions, that part of the charges paid to Eurocontrol by users which is reimbursed to the United Kingdom and relates to services provided by the Licensee;
 - charges levied by the Licensee in respect of the Shanwick Oceanic Control Area (as described in Schedule 2);
 - charges for North Sea Helicopter Advisory Services and Terminal Approach Services.
- 3 The purpose of Condition 21 is to limit increases in average Controlled Eurocontrol Revenue in years three, four and five of the first five years of the Licence period as follows:
 - a) the maximum permitted Controlled Eurocontrol Revenue for any year is the maximum permitted Average Charge Per Service Unit multiplied by the number of Service Units attracting a Eurocontrol Charge in that year.
 - b) For the year starting on 1 January 2003; and if the CAA has published a statement in particular terms on or before 30 September 2003, for the years starting on 1 January 2004 and 1 January 2005; the maximum permitted Average Charge Per Service Unit for each year is:
 - i) a variable revenue element of the base charge per charged Service Unit which is fixed for 2003 and adjusted for subsequent years by the movement in the Retail Price Index less a factor (X); plus
 - ii) a fixed revenue element of the base charge per charged Service Unit which is fixed in 2003 prices for each relevant year and then converted to the appropriate price level for subsequent years by the movement in the retail price index; plus
 - iii) an additional element to the base charge where traffic is below a defined threshold;
 - iv) a correction factor (K) per charged Service Unit, to adjust the charge control to reflect the extent to which charges actually levied one year previously exceeded or fell short of the maximum permitted Average Charge Per Service Unit for that year (by reason, for example, of variances in the level of service units compared to what was forecast at the time when charges were set or charges being structured in that period otherwise than in the form of a single tariff, resulting in the average of the charges levied exceeding the maximum permitted); less
 - v) a service factor (S) per charged Service Unit, reflecting the extent of achievement by the Licensee of specified service levels which will be based on a measure of delay calculated in accordance with the formula set out in paragraph 5 of Condition 21.

The purpose of considering the base charge per charged service unit as set out in i), ii) and iii) above is to provide for a sharing of the traffic volume risk between the licensee and users generally and to allow for a higher allocation of that risk to users at very low traffic volumes.

- c) If the CAA has not published a statement in particular terms on or before 30 September 2003, the maximum permitted Average Charge Per Service Unit for the years starting on 1 January 2004 and 1 January 2005 is calculated on a basis which:
- i) does not provide for a sharing of the traffic volume risk between the Licensee and users;
 - ii) calculates the base charge for those years as if Condition 21 in effect on 30 September 2002 had been in effect throughout the two years;
 - iii) adjusts the maximum permitted Controlled Eurocontrol Revenue in the years starting on 1 January 2004 and 1 January 2005 based on the difference (whether positive or negative) between the actual Eurocontrol revenue in the year starting on 1 January 2003 and what the revenue in that year would have been if Condition 21 in effect on 30 September 2002 had been in effect in 2003;
 - iv) applies a service factor (*S*) as in subparagraph b) v) above.

4 The purpose of Condition 22 is to limit increases in average charges in the En route (Oceanic) Area as follows:

- a) the maximum permitted Oceanic Revenue for any Oceanic Relevant Year is the maximum permitted Average Charge Per Oceanic Flight multiplied by the number of Oceanic Flights attracting an Oceanic Charge in that year;
- b) the maximum permitted Average Charge Per Oceanic Flight for any Oceanic Relevant Year is:
 - i) a base charge per Oceanic Flight which is the figure for the previous year multiplied by the movement in the Retail Price Index less a factor (*Z*); plus
 - ii) a correction factor (*L*) per charged Oceanic Flight, to apply after the completion of the first three Relevant Years, to adjust the charge control to reflect the extent to which charges actually levied two years previously exceeded or fell short of the maximum permitted Average Charge Per Oceanic Flight for that year

calculated in accordance with the formula set out in paragraph 1 of Condition 22.

5 The purpose of Condition 23 is to limit increases in charges for North Sea Helicopter Advisory Services and Terminal Approach Services by requiring the Licensee in each case to demonstrate to the reasonable satisfaction of the CAA that the charges proposed, whether or not set by reference to a particular Relevant Year, have been set following appropriate consultation with users and other interested parties.

6 The Charge Control Conditions will be reviewed with effect from the end of the first five year period under the provisions of sections 11 to 19 of the Act.

7 The purposes of Conditions 24 and 25 are:

- a) to require the Licensee to give information to the CAA annually, or where any change in the Eurocontrol Charges or Oceanic Charges is proposed, as to its forecasts for the Average Charge Per Service Unit or Average Charge Per

- Oceanic Flight (as appropriate), together with specified information demonstrating the basis on which these forecasts were calculated;
- b) to require the Licensee to submit an annual statement to the CAA containing specified historical information to enable the CAA to monitor the Licensee's compliance with the Charge Control Conditions;
 - c) to make provision for the suspension or modification of all or part of the Charge Control Conditions in circumstances governed by national security directions or in certain other limited circumstances;
 - d) to make provision for the suspension or modification of the Charge Control Conditions relating to Oceanic Charges where this is demonstrated to the satisfaction of the CAA to be in the overall interests of users; and
 - e) to make provision for the adjustment of the Charge Control Conditions if necessary following a National Security Period.

B Definitions

8 In this Condition and in Conditions 21 to 25:

"Average Charge Per Service Unit"	means the Controlled Eurocontrol Revenue in the Relevant Year divided by the quantity of Service Units attracting a Eurocontrol Charge in that year.
"Average Charge Per Oceanic Flight"	means the Oceanic Revenue in the Oceanic Relevant Year divided by the number of Oceanic Flights attracting an Oceanic Charge in that year.
"Charge Control Conditions"	means Conditions 20 to 25 inclusive, as from time to time replaced in accordance therewith or pursuant to sections 11 to 19 of the Act.
"Controlled Eurocontrol Revenue"	means the revenue (measured on an accruals basis) derived beneficially by the Licensee from the Eurocontrol Charge.
"Eurocontrol"	means the European Organisation for the Safety of Air Navigation, founded by the 1960 Brussels Convention relating to Co-operation for the Safety of Air Navigation, or any successor body.
"Eurocontrol Business"	means the business of the Licensee consisting in the provision of services for which Eurocontrol Charges are paid.
"Eurocontrol Charge"	means a charge collected by the Central Route Charges Office of Eurocontrol on behalf of the United Kingdom and reimbursed to the UK Government or its nominees.
"Exceptional Circumstances"	means circumstances which are outside the Licensee's control and which: <ul style="list-style-type: none"> a) have had or will have a negative effect on its financial position; and b) that effect is such that the Licensee's ability to meet its current or future obligations under the Act or this Licence is, or is threatened to be, materially impaired.

“National Security Period”	means a period commencing on the date on which any direction issued by the Secretary of State under section 94 of the Act enters into effect and terminating on the date such direction, as varied, is revoked or expires.
“Oceanic Charge”	means a charge paid to the Licensee from the provision of services in the En Route (Oceanic) Area.
“Oceanic Flight”	means a flight in the En Route (Oceanic) Area in an Oceanic Relevant Year.
“Oceanic Relevant Year”	means a period of 12 months commencing on or after 1st April 2001. The first Oceanic Relevant Year (referred to in paragraph 2 of Condition 22) shall be the period commencing 1st April 2001.
“Oceanic Relevant Year t ”	means that Oceanic Relevant Year for the purposes of which any calculation falls to be made; “Oceanic Relevant Year $t - 1$ ” means the Oceanic Relevant Year preceding Oceanic Relevant Year t or, in respect of the period prior to 1st April 2001, the period of 12 months commencing on 1st April 2000; and similar expressions shall be construed accordingly.
“Oceanic Revenue”	means the revenue (measured on an accruals basis) derived beneficially by the Licensee from Oceanic Charges.
“Relevant Year”	means a calendar year commencing on or after 1st January 2001. The first Relevant Year (referred to in paragraph 2 of Condition 21) will be the calendar year commencing 1st January, 2001.
“Relevant Year t ”	means that Relevant Year for the purposes of which any calculation falls to be made; “Relevant Year $t - 1$ ” means the Relevant Year preceding Relevant Year t or, in respect of the period prior to 1st January 2001, the calendar year commencing on 1st January 2000; and similar expressions shall be construed accordingly.
“Service Unit”	means one unit for the purposes of the UK unit rate of charge as specified in accordance with the Eurocontrol Conditions of Application of the Route Charges System and Conditions of Payment version effective January 2000.

Condition 21: Control of Eurocontrol Charges (Effective from 1 January 2003)

- 1 Without prejudice to Condition 25 (Suspension and Modification of Charge Control Conditions) the Licensee shall use its best endeavours to ensure that in the period from 1 January 2003 until 31st December 2005 the Average Charge Per Service Unit shall not exceed the Maximum Permitted Average Charge Per Service Unit calculated in accordance with paragraphs 2 to 5 of this condition it being recognised that:
- a) in respect of any Relevant Year such calculation can only be made after such Relevant Year; and
 - b) the charge per service unit set for any Relevant Year will be based only on an estimate of Q_t for the Relevant Year; and
 - c) the Licensee shall not be in breach of this condition if it makes the estimate in b) on the basis of its best endeavours forecasts of Q_t for such Relevant Year.

Relevant Year 3

- 2 The Maximum Permitted Average Charge Per Service Unit shall be calculated as follows:

$$M_3 = VSC_3 + \frac{FSC_3}{Q_3} + LSC_3 - S_3$$

where:

M_3	means the Maximum Permitted Average Charge Per Service Unit in Relevant Year 3.
Q_3	means the quantity of Service Units attracting a Eurocontrol Charge in Relevant Year 3
VSC_3	Is the variable revenue element of the base Charge per Service Unit in Relevant Year 3 which will have the following value: $VSC_3 = \text{£}22.77$
FSC_3	Is the fixed revenue element of the base Charge per Service Unit in relevant year 3 which will have the following value: $FSC_3 = \text{£}217.2$ million
LSC_3	means the additional element to the base Charge per Service Unit where the quantity of Service Units attracting a Eurocontrol Charge in Relevant Year 3 is below a defined trigger. Where $Q_3 \geq Q_{\text{trigger}_3}$ $LSC_3 = 0$ Where $Q_3 < Q_{\text{trigger}_3}$ $LSC_3 = \frac{(Q_{\text{trigger}_3} - Q_3)VSC_3[0.6]}{Q_3}$
S_3	means the service factor (whether of a positive or negative value), as calculated in accordance with the formula at paragraph 5 of this Condition.

Q_{trigger_3}	<p>means the trigger value of the quantity of Service Units attracting a Eurocontrol Charge below which there is an additional element to the base Charge per Service Unit in Relevant Year 3 which will have the following value</p> <p>$Q_{\text{trigger}_3} = 7.629$ million</p>
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Relevant Years 4 and 5

3 If the CAA has published a statement on or before 30 September 2003 in the following terms:

“The CAA considers that the licensee has achieved the following objectives:

- a) to provide a robust financial structure for NERL;
- b) to place control of NERL with management and shareholders; and
- c) to demonstrate that equitable contributions have been made by NATS’ investors and shareholder.”

Then the Maximum Permitted Average Charge Per Service Unit shall be calculated as follows:

$$M_t = VSC_t + \frac{FSC_t}{Q_t} + LSC_t + K_t - S_t$$

where:

M_t	means the Maximum Permitted Average Charge Per Service Unit in Relevant Year t .
Q_t	means the quantity of Service Units attracting a Eurocontrol Charge in Relevant Year t .
VSC_t	<p>is the variable revenue element of the base Charge per Service Unit in Relevant Year t calculated in accordance with the following formulae:</p> <p>For Relevant Years four and five:</p> $VSC_t = VSC_{t-1} \left[1 + \frac{RPI_t - X_t}{100} \right]$ <p>and for the purposes of the calculation of VSC_{t-1} in relevant year four: $VSC_3 = £22.77$</p>
FSC_t	<p>is the fixed revenue element of the base Charge per Service Unit in relevant year t calculated in accordance with the following formulae:</p> $FSC_4 = £225.8\text{million} \left(1 + \frac{RPI_4}{100} \right)$ $FSC_5 = £229.9\text{million} \left(1 + \frac{RPI_4}{100} \right) \left(1 + \frac{RPI_5}{100} \right)$

<p>LSC_t</p>	<p>means the additional element to the base Charge per Service Unit where the quantity of Service Units attracting a Eurocontrol Charge in Relevant Year t is below a defined trigger.</p> <p>Where</p> $Q_t \geq Q_{trigger_t}$ $LSC_t = 0$ <p>Where $Q_t < Q_{trigger_t}$</p> $LSC_t = \frac{(Q_{trigger_t} - Q_t)VSC_t[0.6]}{Q_t}$	
<p>RPI_t</p>	<p>means the percentage change (whether of a positive or a negative value) in the Retail Price Index between the index published or determined with respect to August in Relevant Year $t - 1$ and the index published or determined with respect to August in Relevant Year $t - 2$.</p>	
<p>X_t</p>	<p>means a value to be set by the CAA in respect of each Relevant Year, which for the fourth and fifth year will have the following values:</p>	
	<p>Relevant Year 4:</p>	<p>2.0</p>
	<p>Relevant Year 5:</p>	<p>2.0</p>
<p>K_t</p>	<p>means the correction factor (whether of a positive or negative value) which is zero for relevant year 3 and which in subsequent years is calculated in accordance with the following formula:</p> $K_t = \frac{(Q_{t-1}M_{t-1}) - TR_{t-1}}{Q_t} \left[1 + \frac{I_t}{100} \right]$ <p>where:</p>	
	<p>M_{t-1}</p>	<p>means the Maximum Permitted Average Charge Per Service Unit in Relevant Year $t - 1$ under this charge condition or the charge condition which applied in relevant year $t - 1$.</p>
	<p>TR_{t-1}</p>	<p>means the total Controlled Eurocontrol Revenue in Relevant Year $t - 1$.</p>
	<p>Q_t</p>	<p>means the quantity of Service Units attracting a Eurocontrol Charge in Relevant Year t.</p>
	<p>I_t</p>	<p>means the average of the Treasury Bill Discount Rate (expressed as an annual percentage interest rate) published weekly by the Bank of England, during the 12 months from the 1st September in Relevant Year $t - 1$ where the value of $((Q_{t-1}M_{t-1}) - TR_{t-1})$ is positive, or 3 per cent per annum above this average rate where the value is negative.</p>

S_t	means the service factor (whether of a positive or negative value), as calculated in accordance with the formula at paragraph 5 of this Condition.	
$Q_{\text{trigger } t}$	means the trigger value of the quantity of Service Units attracting a Eurocontrol Charge below which there is an additional element to the base Charge per Service Unit. Which for the fourth and fifth Relevant Years shall have the following values:	
	Relevant Year 4	8.090 million
	Relevant Year 5	8.400 million

4 Where the CAA has not published a statement in the terms set out in paragraph 3 of this condition then the Maximum Permitted Average Charge Per Service Unit shall be calculated as follows:

$$M_t = SC_t + K_t - S_t$$

where:

M_t	means the Maximum Permitted Average Charge Per Service Unit in Relevant Year t .	
SC_t	is a base charge per Service Unit in Relevant Year t calculated in accordance with the following formula:	
	$SC_t = SC_{t-1} \left[1 + \frac{RPI_t - X_t}{100} \right]$ <p>Where</p> $SC_3 = \text{£}44.63$	
RPI_t	means the percentage change (whether of a positive or a negative value) in the Retail Price Index between the index published or determined with respect to August in Relevant Year $t - 1$ and the index published or determined with respect to August in Relevant Year $t - 2$.	
X_t	means a value set by the CAA in respect of the fourth and fifth Relevant Years which will have the following values:	
	Relevant Year 4:	5.0
	Relevant Year 5:	5.0
K_t	means the correction factor (whether of a positive or negative value) which is calculated in accordance with the following formula:	
	$K_4 = 0.5 \cdot \frac{(Q_3 \bar{M}_3) - TR_3}{Q_4} \left[1 + \frac{I_4}{100} \right]$ $K_5 = 0.5 \cdot \frac{(Q_3 \bar{M}_3) - TR_3}{Q_5} \left[1 + \frac{I_5}{100} \right] \left[1 + \frac{I_4}{100} \right]$ <p>where:</p>	

	\bar{M}_3	means the value of Maximum Permitted Average Charge Per Service Unit which would have applied for Relevant Year 3 under the conditions of the licence in force on 30 September 2002. $\bar{M}_3 = \text{£}44.56$
	TR_3	means the total Controlled Eurocontrol Revenue in Relevant Year 3.
	Q_3	means the quantity of Service Units attracting a Eurocontrol Charge in Relevant Year 3.
	I_t	means the average of the Treasury Bill Discount Rate (expressed as an annual percentage interest rate) published weekly by the Bank of England, during the 12 months from the 1st September in Relevant Year $t - 1$ where the value of $((Q_3\bar{M}_3) - TR_3)$ is positive, or 3 per cent per annum above this average rate where the value is negative.
S_t		means the service factor (whether of a positive or negative value), as calculated in accordance with the formula at paragraph 5 of this Condition.

Formula for S_t as used in paragraphs 2, 3 and 4

5 For the purpose of paragraph 1, the term S_t shall other than in the first two Relevant Years (when the value of S shall be zero) be calculated in accordance with the following formula:

$$S_t = F \cdot E_{t-2}$$

provided that S_t may not in any event exceed the following maximums (which, for the avoidance of doubt, will be subject, in the case of delays occurring in Relevant Years 4 and 5, to revision at the end of the first five Relevant Years under the provisions of sections 11 to 19 of the Act):

In respect of delays occurring in Relevant Year 1	£0.19
In respect of delays occurring in Relevant Year 2	£0.18
In respect of delays occurring in Relevant Year 3	£0.49
In respect of delays occurring in Relevant Year 4	£0.49
In respect of delays occurring in Relevant Year 5	£0.49

where:

F	means £0.27
E_t	means the difference in the average minutes of delay per flight in the Relevant Year when compared with the specified permitted levels and calculated as follows: $RD_t - PD_t$

and where:

RD_t	means the recorded average minutes of air traffic flow management delay per flight attributable to the Eurocontrol Business in relation to Relevant Year t , to be calculated by reliance on figures reported to the CAA by the Central Flow Management Unit of Eurocontrol and subject to adjustment in accordance with methods approved by the CAA.	
PD_t	means the permitted minutes of delay per flight attributable to the Eurocontrol Business in relation to Relevant Year t , as specified by the CAA, and which in respect of delays occurring in the first five Relevant Years shall be as follows:	
	Relevant Year 1	1.21 minutes
	Relevant Year 2	1.20 minutes
	Relevant Year 3	1.19 minutes
	Relevant Year 4	1.17 minutes
	Relevant Year 5	1.16 minutes