



**UNITED KINGDOM
CIVIL AVIATION AUTHORITY**

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

On 19 March 2003 the CAA confirmed the statement made by it under Condition 21(3) of the air traffic services licence held by NATS En-Route Limited (NERL) Consequently the following modifications to Condition 21 (published on OR7 No.18 on 31 January 2003) were made unconditional:

- (a) the price cap for Eurocontrol Charges for the three year period from 2003 to 2005 is amended so that charges will 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) a symmetrical volume term is introduced into the specification of the price cap so that above a floor, NERL will face 50%/50% sharing of both downside volume risks and upside volume opportunities with users. That is, if chargeable service units (CSUs) fall (or rise) by a certain amount compared to a benchmark level, prices will 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 had been made. In addition a "trigger floor" is established at around 80% of NATS' current base case forecasts. If CSUs falls below this level, NERL's exposure will be reduced from 50% to 20%.

At the same time the CAA has modified Condition 5 of the Licence and the modified condition is attached. This brings together Conditions 5, 7 and 8 into a single condition and, in consequence, Conditions 7 and 8 in the licence will be annotated "Not Used" in order to retain existing condition numbering. The modifications took effect on 19 March 2003

The CAA's full decision may be found on the CAA's website at www.caa.co.uk under the Economic section.

P K Taylor
NERL Licence Manager

Condition 5: Availability Of Resources And Financial Ring-Fencing

1. The objectives of this Condition are to set out measures which, inter alia:-
 - (a) require the Licensee to act in a manner calculated to secure that it has available to it sufficient resources to perform its Licence obligations;
 - (b) limit the scope of activities which the Licensee undertakes which are outside the En route (UK) Business and the En route (Oceanic) Business;
 - (c) create an effective financial ring-fence around the En route (UK) Business and the En route (Oceanic) Business and promote transparency;
 - (d) require the Licensee to make the CAA aware of any material steps proposed to be taken under the Finance Documents;
 - (e) require the Licensee to notify the CAA on the occurrence of certain events which might prejudice the licensees' financial stability;
 - (f) require prior consultation with the CAA in relation to certain actions which might prejudice the Licensee's financial stability;
 - (g) control the disposal of relevant assets, and place certain restrictions on the ability of the Licensee to incur debt;
 - (h) require the ultimate holding company to undertake not to act, or cause any subsidiary to act, in such a way as to cause the Licensee to breach the Licence;
 - (i) prohibit the Licensee from entering into any agreement or arrangement with any affiliate or related undertaking except on an arm's length basis and on normal commercial terms unless otherwise permitted; and
 - (j) require the Licensee to use all reasonable endeavours to maintain at all times an investment grade issuer credit rating.

This paragraph 1 provides a descriptive summary of the provisions which follow in this Condition. This paragraph 1 is not intended to add to the provisions which follow, and for the purposes of interpretation it is the detailed provisions which prevail.

Availability of Resources

2. The Licensee shall at all times act in a manner calculated to secure that it has available to it sufficient resources including (without limitation) financial, management and staff resources, to enable it to comply with its obligations under the Act and this Licence.

3. The Licensee shall submit a certificate addressed to the CAA, approved by a resolution of the board of directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted no later than 30th June 2002 and within three months of the end of the Licensee's financial year in each subsequent year. Each certificate shall be in one of the following forms:
 - (a) "After making enquiries based on systems and processes established by the Licensee appropriate to the purpose, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, any amounts of principal and interest due under any loan facilities and any actual or contingent risks which could reasonably be material to their consideration, sufficient financial and other resources and financial and operational facilities to enable the Licensee to comply with its obligations under the Act and under its Licence to which the Licensee is aware or could reasonably be expected to make itself aware it is or will be subject for a period of two years from the date of this certificate."
 - (b) "After making enquiries based on systems and processes established by the Licensee appropriate to the purpose, the directors of the Licensee have a reasonable expectation, subject to what is said below, that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, any amounts of principal and interest due under any loan facilities, and any actual or contingent risks which could reasonably be material to their consideration, sufficient financial and other resources and financial and operational facilities to enable the Licensee to comply with its obligations under the Act and under its Licence to which the Licensee is aware or could reasonably be expected to make itself aware it is or will be subject for a period of two years from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to comply with its obligations under the Act and under such Licence for that period....."
 - (c) "In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient financial or other resources and financial and operational facilities to comply with its obligations under the Act and under its Licence to which the Licensee is aware or could reasonably be expected to make itself aware it is or will be subject for a period of two years from the date of this certificate."
4. The Licensee shall submit to the CAA with that certificate a statement of the factors which the directors of the Licensee have taken into account in giving that certificate.
5. The Licensee shall inform the CAA in writing immediately if the directors of the Licensee become aware of any circumstance which causes them no longer to have the reasonable expectation expressed in the then most recent certificate given under paragraph 3(a) or 3(b).

6. The Licensee shall obtain and submit to the CAA with each certificate provided for in paragraph 3 a report prepared by its Auditors stating whether or not the Auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it and, on the other hand, any information which they obtained during their audit of the relevant year end accounts of the Licensee.
- 7, The Licensee shall prepare successive dividend policy statements, each such policy statement to cover the three proceeding financial years of the Licensee (or such other period as the CAA may agree), and shall provide a copy of the first such dividend policy statement to the CAA as soon as practicable and, in any event, by no later than 30th September 2003 and thereafter subsequent dividend policy statements shall be submitted not less than three months prior to the commencement of the three financial years to which they relate. The purpose of each dividend policy statement shall be to describe the Licensee's policy in relation to the declaration and payment of dividends and other distributions (within the meaning of Section 263 of the Companies Act, 1985) in respect of each financial year of the Licensee to which such policy statement relates.
8. The directors of the Licensee shall not declare or recommend a dividend, nor shall the Licensee make any form of distribution (within the meaning of Section 263 of the Companies Act 1985) unless prior to the declaration, recommendation or making of the dividend or distribution (as the case may be) the Licensee shall have issued to the CAA a certificate complying with the following requirements:
 - (a) The certificate shall be in the following form:

“After making all due and careful enquiries, the directors of the Licensee are satisfied:

- i) that the Licensee is in compliance in all material respects with all obligations imposed on it by paragraphs 2 to 7, 9 to 13, 19, 21 and 22 of Condition 5 of its Licence;
- ii) that the making of a distribution of [amount] on [date] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the Licensee to be in breach to a material extent of any of these obligations in the future; and
- iii) that the making of a distribution of [amount] on [date] is consistent with the dividend policy statement provided to the CAA pursuant to Condition 5(7) of its Licence.”

- (b) The certificate shall be signed by a director of the Licensee and approved by a resolution of the board of directors of the Licensee passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.
- (c) Where the certificate has been issued within the period specified in sub-paragraph (b), the Licensee shall be under no obligation to issue a further certificate prior to payment of that dividend.

Restriction on Activity and Financial Ring-Fencing

- 9. Save as required under this Licence or as provided by paragraphs 11 and 12 below, neither the Licensee nor any related undertaking of the Licensee shall conduct any business or carry on any activity other than the En route (UK) Business and the En route (Oceanic) Business.
- 10. The Licensee shall not without the written consent of the CAA acquire shares in any undertaking except:
 - (a) in any body corporate which was a subsidiary of the Licensee prior to the date of this Licence coming into effect;
 - (b) in a body corporate which conducts business only for a Permitted Purpose; or
 - (c) acquired in order to avoid dilution of a shareholding in a body corporate in which the Licensee holds shares in conformity with this Licence.

If the Licensee does so acquire shares, it shall do so subject to the provisions of paragraph 2.

- 11. Nothing in paragraph 9 of this Condition shall prevent:
 - (a) any affiliate or related undertaking of the Licensee from conducting any businesses or carrying on any activity;
 - (b) the Licensee from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistent with the provisions of this Licence;
 - (c) the Licensee from performing the supervisory or management functions of a holding company in respect of any subsidiary; or
 - (d) the Licensee from carrying on any business or conducting any activity to which the CAA has given its consent in writing.
- 12. Nothing in paragraph 9 of this Condition shall prevent the Licensee conducting any business complying with the following limitations:
 - (a) the business consists of all or any of:

- i) the collection of route charges on behalf of other air traffic service providers pursuant to an international agreement;
 - ii) activities required by any contract with the CAA or with the Crown;
 - iii) transactions which the En route (UK) Business and the En route (Oceanic) Business make with each other;
 - iv) transactions with its affiliates which comply with paragraph 19; and
 - v) any other business the turnover of which when aggregated with that of any related undertaking of the Licensee does not in any financial year of the Licensee exceed three per cent of the aggregate turnover of the En route Businesses;
- (b) the aggregate amount of all investments by the Licensee in the businesses described in sub-paragraph 12(a)(v) above does not at any time exceed one per cent of the share of capital in issue, share premium and consolidated reserves of the Licensee as shown by its most recent audited historic cost financial statements then available.
13. The Licensee shall at all times maintain the highest standards of corporate governance and shall comply with the principles of good governance set out in Section 1 of the Code of Best Practice of the Financial Services Authority, (other than those principles set out in subsection (3) of Section 1(A) and subsections (1) and (2) of Section 1(C)) or any other renumbered principles having substantially similar effect to those principles.

Amendments to the Finance Documents

14. The Licensee shall:-
- (a) not amend, vary, supplement or modify or concur in the amendment, variation, supplementation or modification of any of the finance documents (whether in each case in the form of a written instrument, agreement or document or otherwise) (a "Variation") unless it has given prior written notice thereof to the CAA. The Licensee shall, as soon as reasonably practicable:
 - i) notify the CAA of the possibility of any such Variation;
 - ii) provide to the CAA a copy of any written instrument, agreement or document proposed to be executed to give effect to any such Variation; and

- iii) provide to the CAA a copy of any executed written instrument, agreement or document giving effect to any such Variation.

The provisions of this Condition 5(14)(a) shall not apply to any administrative or procedural Variation;

- (b) not seek any consent to a waiver or release of, or cancel, terminate, suspend or surrender, or seek any consents under any of, the finance documents (whether in each case in the form of a written instrument, agreement or document or otherwise) (a "Consent") unless it gives written notice thereof to the CAA simultaneously with seeking such Consent. The Licensee shall, as soon as reasonably practicable, provide to the CAA a copy of any executed written instrument, agreement or document giving effect to any such Consent. The provisions of this Condition 5(14)(b) shall not apply to any administrative or procedural Consent;
- (c) promptly notify the CAA in writing upon becoming aware of any default (howsoever described) under the finance documents other than:
 - i) any default of a technical, administrative or minor nature which is capable of remedy and which is either being remedied by the Licensee or in respect of which, whether or not capable of remedy, compliance has been waived under the finance documents; or
 - ii) any default in respect of which the CAA has received notice of a Variation under Condition 5(14)(a) or a Consent under 5(14)(b);
- (d) promptly notify the CAA in writing upon becoming aware of any event of default or trigger event (howsoever described) under the finance documents;
- (e) notify the CAA in writing at the same time as any party under the finance documents is notified, of the occurrence of any event of default in relation to third parties;
- (f) provide to the CAA at the time of providing them to any party under the finance documents:-
 - i) copies of any quarterly management reports furnished by it under the finance documents;
 - ii) copies of any final business plan delivered by it under the finance documents in respect of the proceeding financial year of the Licensee;
 - iii) copies of any certificates delivered by it under the finance documents confirming that the Licensee is in compliance

- with the financial ratios, if any, set out in the finance documents;
- iv) copies of any forecast (being the results of the running of any financial model by the Licensee) delivered to any party under the finance documents;
 - v) copies of any details delivered by it to any party under the finance documents setting out details of the occurrence of any event which would be reasonably likely to have a material adverse effect (however described in the finance documents);
 - vi) any information in addition to that referred to in paragraphs f(i) to (v), supplied by it to any party under the finance documents from time to time which information specifically identifies the possibility of either a material increase in the ratio of Net Debt: RAB (as 'Net Debt' and 'RAB' are defined in the finance documents) or in any similar net debt to regulatory asset base ratio in the credit rating; and
 - vii) following the occurrence of a trigger event (howsoever described in the finance documents) which is subsisting, all information given to any party to the finance documents under the requirements of the finance documents as a consequence of the occurrence of such trigger event, at the same time as it is given to such other party;
- (g) as soon as practicable after receipt of the same, provide to the CAA copies of any reports prepared under the finance documents by any technical advisers to the parties to the finance documents, on the Licensee and its business of which the Licensee receives a copy;
- (h) promptly notify the CAA if at any time the Licensee considers that there is likely to be an increase in the ratio of Net Debt: RAB (as 'Net Debt' and 'RAB' are defined in the finance documents) or in any similar net debt to regulatory asset base ratio contained in any finance document which is either:
- i) material; or
 - ii) likely to continue to have effect for a period of more than 6 months,

and if requested by the CAA consult with the CAA with respect thereto;

- (i) promptly notify the CAA if at any time the Licensee receives notice that a rating agency with which, at that time, it has a credit rating, is likely to or is considering reducing that rating and if requested by the CAA consult with the CAA with respect thereto;
- (j) consult with the CAA in relation to any proposed action by the Licensee which, in the reasonable opinion of the Licensee, is likely in any financial year to result in:
 - i) the capital expenditure of the Licensee exceeding by more than 10% the capital expenditure of the Licensee projected in the service and investment plan for such year required to be delivered by the Licensee to the CAA pursuant to Condition 10 of this Licence (the "Service and Investment Plan"); or
 - ii) the acquisition of assets (other than in the ordinary course of business) by the Licensee not provided for in the Service and Investment Plan where the consideration paid or payable, when aggregated with the consideration paid or payable for any other asset acquired or agreed to be acquired other than in the ordinary course of business in any period of twelve months, would be an amount in excess of 5% of the amount of the then current RAB as defined in the finance documents; or
 - iii) the Licensee incurring any new liabilities or refinancing existing liabilities, in respect of any indebtedness (being bank debt or any other form of debt including without limitation debt issued through the capital markets) which, when aggregated with the amount of any new liabilities or refinancing of existing liabilities in the immediately preceding period of twelve months would exceed £10,000,000; or
 - iv) the Licensee having to obtain a consent under its finance documents in relation to the entry into by the Licensee of any interest rate or currency swap, cap, ceiling collar, floor, spot or forward, or financial futures or commodity contract or option or any similar treasury transaction (the "Treasury Transaction") other than a Treasury Transaction entered into in the ordinary course of business and in accordance with its current prudent hedging strategy in relation to such Treasury Transactions or such other prudent hedging strategy as the Licensee may notify the CAA from time to time.

The Licensee shall participate in any consultation forum established for the purpose of paragraphs (h), (i) and (j) of this Condition with Members or staff of the CAA.

Disposal of Relevant Assets and Indebtedness

15. The Licensee shall not:
- (a) dispose of any interest which it holds in; or
 - (b) relinquish operational control which it has over

any relevant asset otherwise than in accordance with the following paragraphs 16 to 20 of this Condition.

16. Save as provided in paragraph 17, the Licensee shall give to the CAA not less than three months' prior written notice of its intention to dispose of or relinquish operational control over any relevant asset, and shall supply such further information as the CAA may reasonably request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions of which the Licensee is aware or could reasonably be expected to make itself aware in regard thereto of the person proposing to acquire such asset or operational control over such asset where that asset is to remain a relevant asset.
17. Notwithstanding paragraphs 15 and 16, the Licensee may dispose of or relinquish operational control over any relevant asset:
 - (a) where:
 - i) the CAA has issued directions for the purposes of paragraphs 16 to 20 containing a general consent (whether or not subject to conditions) to:
 - (aa) transactions of a specified description; or
 - (bb) the disposal of or relinquishment of operational control over relevant assets of a specified description; and
 - ii) the transaction or the relevant assets are of a description to which such directions apply and the disposal or relinquishment is in accordance with any conditions to which the consent is subject; or
 - (b) where the disposal or relinquishment of operational control in question is required by or under any enactment or subordinate legislation.
18. Notwithstanding paragraph 15, the Licensee may dispose of or relinquish operational control over any relevant asset as is specified in any notice given under paragraph 16 in circumstances where:
 - (a) the CAA confirms in writing that it consents to such disposal or relinquishment (such consent not to be unreasonably delayed, but which may be made subject to the acceptance by the Licensee or any third party in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished of such conditions as the CAA may reasonably specify); or

- (b) the CAA does not inform the Licensee in writing of any objection to such disposal or relinquishment of control within the notice period referred to in paragraph 16.

- 19. Without prejudice to paragraphs 15 to 18, the Licensee shall not without the written consent of the CAA (such consent not to be unreasonably delayed) after the disclosure of all facts of which the Licensee is aware and reasonably considers to be material:
 - (a) create any mortgage, charge, pledge, lien or other form of security or encumbrance of whatsoever form, undertake any indebtedness to any other person or enter into any liability in respect of any obligation of another person in any such case otherwise than:
 - (i) on an arm's length basis;
 - (ii) on normal commercial terms;
 - (iii) for a Permitted Purpose; and
 - (iv) if the transaction is within the ambit of paragraph 15, in accordance with paragraphs 17 and 18;

 - (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the Licensee otherwise than by way of:
 - (i) a dividend or other distribution out of distributable reserves;
 - (ii) repayment of capital;
 - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
 - (iv) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis and on normal commercial terms;
 - (v) repayment of or payment of interest on a loan not prohibited by sub-paragraph 0;
 - (vi) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received; or
 - (vii) an acquisition of shares in conformity with paragraph 10 made on an arm's length basis and on normal commercial terms;

- (c) enter (directly or indirectly) into any agreement or arrangement with any affiliate or related undertaking other than on an arms length basis, and on normal commercial terms;
- (d) enter into an agreement or incur a commitment incorporating a cross-default obligation; or
- (e) continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation subsisting at the date of the coming into effect of this Licence,

which in each case is material whether assessed alone or with any other such transactions as have occurred or are intended.

20. The provisions of sub-paragraphs 19(d) and (e) shall not prevent the Licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph 19(a).

Ultimate Holding Company Undertaking

21. The Licensee shall procure from each company or other person which is at any time an ultimate holding company of the Licensee a legally enforceable undertaking in favour of the Licensee in the form specified by the CAA that that ultimate holding company ("the Covenantor") will:
- (a) refrain from any action, and procure that every subsidiary of the Covenantor (other than the Licensee and its subsidiaries) will refrain from any action, which would then be likely to cause the Licensee to breach any of its obligations under the Act or this Licence;
 - (b) promptly upon request by the CAA (specifying the information required) provide to the CAA (with a copy to the Licensee) information of which they are aware and which the CAA reasonably considers necessary in order to enable the Licensee to comply with this Licence.

Such undertaking shall be obtained as soon as possible, and in any event prior to 30th June 2003, and thereafter within seven days of the company or other person in question becoming an ultimate holding company of the Licensee and shall remain in force for so long as the Licensee remains the holder of this Licence and the Covenantor remains an ultimate holding company of the Licensee.

22. The Licensee shall:
- (a) deliver to the CAA, within seven days of obtaining the undertaking required by paragraph 21, a copy of such undertaking;
 - (b) inform the CAA immediately in writing if the directors of the Licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached; and

- (c) comply with any direction from the CAA to enforce any such undertaking; and shall not, save with the consent in writing of the CAA, enter (directly or indirectly) into any agreement or arrangement with any affiliate or related undertaking of the Licensee where there is a breach of the Licensee's obligations under paragraph 22 of this Condition in respect of which the CAA has taken steps to issue an order for securing compliance under the Act by publishing a notice under Section 22 of the Act.

Credit rating of Licensee

23. The Licensee shall use all reasonable endeavours to ensure that the Licensee maintains at all times an investment grade issuer credit rating.

Interpretation

24. In this Condition:

“aggregate amount”

means, at any relevant time, the sum of

- (i) the value at which such investment was included in the audited historic cost balance sheet of the Licensee as at the latest accounting reference date to have occurred prior to the date of this Licence coming into effect (or, where the investment was not so included, zero),
- (ii) the aggregate gross amount of all expenditure (whether of a capital or revenue nature) howsoever incurred by the Licensee in respect of such investment in all completed accounting reference periods since such accounting reference date and
- (iii) all commitments and liabilities (whether actual or contingent) of the Licensee relating to such investment outstanding at the end of the most recently completed accounting reference period.

“cross-default obligation”

means a term of any agreement or arrangement whereby the Licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated or is capable of arising, increasing or accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the Licensee, unless:

- (i) that liability can arise only as the result of a default by a subsidiary of the Licensee, and

- (ii) the Licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors, and
- (iii) that subsidiary carries on business only for a Permitted Purpose.

“disposal” includes any sale, gift, lease, licence, loan, mortgage, charge or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party, and “dispose” shall be construed accordingly.

“finance documents” means any of the financing documents to which the Licensee is a party from time to time setting out the terms on which the Licensee’s senior debt is made available to the Licensee.

“indebtedness” means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith.

“investment grade credit rating” means:

- (i) an issuer rating of not less than BBB – by Standard & Poor’s Ratings Group or any of its subsidiaries or Fitch Inc or any of its subsidiaries or a corporate rating of not less than Baa3 by Moody’s Investors Service, Inc. or any of its subsidiaries or such higher rating as shall be specified by any of them from time to time as the lowest investment grade credit rating, or
- (ii) an equivalent rating from any other reputable credit rating agency which, in the opinion of the CAA, notified in writing to the Licensee, has comparable standing in the United Kingdom and the United States of America.

“investment” means any form of financial support or assistance given by or in respect of an obligation of the Licensee for the ancillary business whether on a temporary or permanent basis including (without limiting the generality of the foregoing) any commitment to provide any such support or assistance in the future.

“relevant asset” means any asset forming part of the system by which the Licensee provides air traffic services which it is required by this Licence to provide, including (without limitation) the Licensee’s air traffic control system, any control centre for use in conjunction therewith, any area control centres, communication, navigation and surveillance systems and parts thereof, and any legal or beneficial interest in land upon which any of the foregoing is situate.

“senior debt”

means at any time, indebtedness of the Licensee ranking at all times in priority to all its other indebtedness, (excepting indebtedness as would be preferred by operation of law in the event of the winding up of the Licensee).