

Notice to NATS (En Route) plc under section 22(11) of the Transport Act 2000

WHEREAS:

- a) NATS (En-Route) plc (“NERL”) is the holder of an Air Traffic Services Licence (“the Licence”) granted by the Secretary of State under section 6 of the Transport Act 2000 (“the Act”) on 28 March 2001.
- b) Condition 5 paragraph 3 of the Licence provides that NERL shall submit a Compliance Certificate in relation to financial resources (“the Financial Certificate”) to the CAA within four months of the end of NERL’s financial year, stating whether its directors have a reasonable expectation that it will have available to itself sufficient financial resources and facilities to enable it to carry on the Permitted Purpose (as defined in the Licence) activities in the Licence and to comply with its obligations under the Act and under the Licence for a period of two years from the date of the relevant Financial Certificate.
- c) Condition 5 paragraph 5 of the Licence provides that NERL shall submit a Compliance Certificate in relation to operational resources (“the Operational Certificate”) to the CAA within four months of the end of NERL’s financial year, stating whether its directors have a reasonable expectation that it will have sufficient operational resources available to itself, including management, personnel, fixed and moveable assets, rights, licences, consents and facilities to enable it to carry on the Permitted Purpose activities in the Licence and to comply with its obligations under the Act and under the Licence for a period of two years from the date of the relevant Operational Certificate.
- d) Condition 5 paragraph 7 of the Licence provides that NERL shall submit to the CAA a Compliance Certificate in relation to certain conditions of the Licence (“the Conditions Certificate”) within four months of the end of its financial year, stating whether its directors consider that, at the time of their approval of the Conditions Certificate, NERL is in compliance in all material respects with all of the obligations imposed on it by Condition 17 (Provision of information to the CAA for regulatory purposes), Condition 5 (Availability of resources and Financial Ring-Fencing).and Condition 9 (Prohibition of cross-subsidies).
- e) Condition 6 paragraph 4 provides that NERL shall prepare regulatory accounts in each regulatory year. Condition 6 paragraph 6(b) provides that NERL shall deliver to the CAA the regulatory accounts as soon as reasonably practicable, and in any event not later than seven months after the end of the regulatory year to which they relate.
- f) Condition 6 paragraph 7 of the Licence provides that NERL’s regulatory year shall run from 1 January to 31 December unless otherwise agreed with the CAA.
- g) NERL was therefore required to comply with the requirements referred to in paragraphs (b) to (e) above by 31 July 2020.
- h) On 6 May 2020, NERL informed the CAA that it would not be able to deliver its regulatory accounts required in Condition 6 paragraph 4 by 31 July 2020. NERL explained that this was because, as a result of the increased uncertainty with traffic forecasts and what the aviation industry would look like after the Covid-19 crisis, its Board would not be able to prepare its statutory accounts by 31 July 2020 and nor

would its Board be able to provide a specific date by which it expects to do so until this material uncertainty was resolved. For these reasons NERL's auditors confirmed that the audit of the regulatory accounts would have to be completed later in the year, at the same time as the statutory accounts.

- i) On 6 May 2020, NERL also informed the CAA that it would not be able to submit the Financial Certificate, Operational Certificate and the Conditions Certificate (altogether "the Condition 5 Certificates") by 31 July 2020. NERL explained that this was because the Financial Certificate could not be issued before the material uncertainty issue mentioned in paragraph h) was resolved, while the Operational Certificate and Conditions Certificate could not be issued independently of a Financial Certificate.
- j) NERL said that it would be able to deliver the regulatory accounts and submit the Condition 5 Certificates by 31 October 2020, subject to ongoing review and subject to Board approval of its statutory accounts on or before that date. NERL set out a revised timetable for their submission to us.
- k) NERL did not submit the Condition 5 Certificates, nor deliver regulatory accounts by 31 July 2020.
- l) On 19 August 2020, NERL informed the CAA that it had secured an additional bank facility on 6 August 2020, which should allow NERL to be confirmed as a going concern for at least 12 months in accordance with relevant accounting guidelines. It also informed us that this should allow NERL to publish its 2019/20 Annual Report and Accounts in October 2020, subject to Board approval. Following their publication, it would also be able to submit the Condition 5 Certificates and deliver its regulatory accounts by 31 October 2020. NERL has provided us with an updated timetable for their submission.

Notice is hereby given that:

- 1) The CAA is satisfied for the purposes of Section 20(1) of the Act that NERL is in contravention of the requirements of Condition 5 paragraphs 3, 5 and 7, and Condition 6 paragraph 4 of the Licence.
- 2) However, the CAA does not intend to make a final order in relation to those contraventions at this stage because, for the purpose of Section 21(2) of the Act:
 - a. the CAA is currently satisfied that:
 - i. the condition set out in Section 21(3)(a) applies, namely that NERL has agreed to take and is taking all the steps the CAA thinks appropriate to secure or facilitate compliance with the condition concerned. In this instance, the steps the CAA thinks appropriate are those set out in NERL's letter of 19 August 2020 referred to in paragraph (l) above for submitting the Condition 5 Certificates and delivering the regulatory accounts; and
 - ii. the condition set out in Section 21(3)(c) applies, namely that the contraventions will not adversely affect the interests referred to in subsection (5) of the persons referred to in subsection (4). That is, the CAA is satisfied that the contraventions referred to above will not adversely affect the interests regarding safety and/or the interests regarding the range, availability, continuity, cost and quality of air traffic services of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons

with rights in property carried in them. The CAA is satisfied that these interests and persons will not be adversely affected as we consider, in this instance, that the late publication of NERL's regulatory accounts and submission of the Condition 5 Certificates will not affect the safety, range, availability, continuity, cost and quality of the air traffic services NERL provides; and

- b. the CAA does not currently believe it would be appropriate to make a final order under Section 20(1) of the Act.
- 3) This notice is hereby served on NERL pursuant to Section 22(11) of the Act.
- 4) Pursuant to Section 22(11) the CAA will publish this Notice on its website at www.caa.co.uk being the manner it thinks appropriate for bringing the matters to which this notice relates to the attention of persons likely to be affected by them.



Matt Claydon
For the Civil Aviation Authority

28 September 2020