

NATS (En Route) plc SIP: Review of SIP Process

Independent Reviewer Report

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27 January 2019

NOTE

This document has been produced for the CAA in connection with Condition 10 to the NATS (En Route) [NERL] Licence and is based on ongoing observations and research by the CAA Independent Reviewer Grant Bremer.

This report summarises the author's findings and opinions as at 27 January 2019.

Background

Condition 10(3) of the NATS (En Route) plc [NERL] Air Traffic Services Licence dated 29 June 2016 requires NERL to prepare a Service and Investment Plan (SIP) that refers to the most recent business plan and the related airspace and technology programmes each year. Condition 10 (3a) then requires NERL to provide an SIP that, by reference to the most recent business plan and technology and airspace plans, updates NERL's investment plans, delivery against programme milestones and any material change in NERL's expectations regarding the level and quality of the provided services, the means by which the services will be provided, and the likely implications for user charges beyond the period of the current performance plan.

There is general agreement that the current SIP process works reasonably well and NERL compares very favourably to other ANSPs. However, all stakeholders, including key Customers, the CAA and NERL, also agree that the process is not perfect and does have some flaws and limitations in the process that could be better. As a result, the CAA commissioned this short review into how the SIP process might be improved.

Current Process

The current SIP process builds on the agreed Regulatory Period (RP) Business Plan, with NERL developing an investment plan that will deliver the required changes, in both technology and airspace, throughout the RP. The NERL Licence requires regular updates to the investment plan that includes consultation with customers. The NERL Licence Condition 10¹ specifies:

3. *Every year the Licensee shall submit:*
 - (a) *not later than 31 December in each year, a service and investment plan fulfilling the requirements of Paragraph 11 of this Condition;*
 - (b) *with effect from 1 January 2017, not later than 30 June in each year, an interim service and investment plan fulfilling the requirements of Paragraph 11 of this Condition;*

Additionally:

11. *Each service and investment plan shall provide (by reference to the most recent business plan and the technology and airspace programmes provided under Paragraphs 5 and 7) an update of:*
 - (a) *the Licensee's investment plans, including its technology and airspace programmes;*
 - (b) *the Licensee's delivery against the programme milestones provided;*
 - (c) *material changes in the Licensee's expectations as to the level and quality of the services it will provide, the means by which the services will be provided, and the likely implications for charges to Users beyond the expiry of the period for which charges are for the time being set pursuant to the Charge Control Conditions. Service and investment plans shall include such information as is reasonably necessary to achieve this including, but not limited to, material changes in the Licensee's expectations as to its operating practices and resources.*

1. NERL Licence 29 Jun 16, Condition 10, Clause 3, 11 & 14.

Finally:

14. The form, scope and level of detail of the plans referred to in this Condition shall be as reasonably approved by the CAA and shall take into account the views of Users consulted in accordance with Condition 16.

These Licence conditions mean that NERL must develop and publish a SIP each year and update that SIP at the half-year point. In both instances NERL are required to consult the Users i.e. airlines.

In practice, this process has seen a draft SIP shared with Users in October/November, followed by a face to face consultation event, sometimes supplemented with Webex events and bilateral meetings with individual customers. The intent of these events is to explain the SIP, and changes from the previous iteration, and update Users on programme delivery, costs and risks as well as discuss changes to the programme. Users are invited to comment on the draft SIP before NERL finalises and submits the SIP for CAA consideration and approval as per Licence Condition 10, Clause 14 noted above. This process is then repeated in May/June with an Interim SIP being submitted by 30 June. The format of NERL's SIP has evolved in line with customer feedback and Independent Reviewer recommendations. Originally it was in the form of a large slide pack, and has changed to sometimes include a report, but in its latest form consists of a formal document supplemented by a slide pack. On occasions during RP2 NERL has also conducted "Deep Dive" briefing sessions on particular aspects of the SIP.

After submission of the SIP to CAA there is an independent review completed to provide CAA with a view of the accuracy of the report. The independent review also provides commentary on the wider aspects of the SIP, such as risk/programme management, to support the accuracy conclusions but does not provide any analysis of the technical content of the SIP.

The CAA subsequently accepts, rejects or provides a qualified acceptance of the SIP based on the "form, scope and level of detail of the plans" as detailed above.

Issues with Current Process

There is general agreement that the current SIP process works reasonably well and NERL compares very favourably to other ANSPs. However, all stakeholders, including key Customers, the CAA and NERL, also agree that the process is not perfect and does have some flaws and limitations that could be improved. In 2017 NERL commissioned an independent study² of User consultation, or stakeholder engagement, that concluded that there were "differing perceptions of the objectives of the SIP consultation process.....from the objective to inform customers about decisions to the objective of joint decision-making"; that "the SIP information lacked digestibility despite being highly competent, detailed and timely"; and that "There was a general appreciation among participants that NATS tried to take customers' preferences into account wherever possible. However, there was also a perception that how NATS responded to the input of different customers was not always transparent". The findings of this report align very well with the findings of this review.

During the research for this review, and based on the previous years' experience of the SIP

2. NATS' Approach Towards Stakeholder Engagement, Centre for Analysis of Risk and Regulation, October 2017.

process, the following findings are noteworthy:

1. Baseline SIP: The Business Plan for RP2 was agreed between CAA and NERL in good time and reflected in the UK's National Performance Plan. While this provided an agreed baseline and cost envelope it lacked detail in terms of activity, proposed benefits and individual programme costs. As a result, the subsequent Investment Programme was not widely agreed or understood and there was a divergence of understanding across the stakeholder community of the anticipated work programme and associated costs. This divergence of understanding has contributed to many of the subsequent issues with the SIP during RP2;
2. In Year Process: The current process of bi-annual meetings means that there are intervals between formal engagement between NERL and Users. This means that there can be major changes to the programme that Users are unaware of and by the time they become aware, the changes and impact to the wider programme are already established. While NERL provides detailed explanations of these changes this can still effectively present users with a *fait accompli* when the SIP process consultation begins. In some cases, NERL has then presented "the best solution" having completed its analysis prior to its consultation with but without prior debate with the User community. In these circumstances, there can be a lack of transparency for the User community during any NERL internal debate on possible changes;
3. RP2 Re-plan: The cost envelope for the RP2 investment programme in the UK's National Performance Plan was c£620m (outturn prices). In the early part of RP2, a revised programme was agreed which accelerated deployment of SESAR and recognised the need to delay low level airspace changes until RP3. Following a detailed review in SIP17 the projected cost of the programme was identified to be in the region of £750m - £780m. This significant change was not socialised before the start of the formal SIP process and while NERL put significant effort into providing details for these changes during the SIP process, many Users remain unclear on exactly what drove the scale of the change;
4. Consultation: The NERL Licence is silent on what "consultation" actually means, and there is a wide variation of opinion on what the practical steps in this area should/could be. Generally, and in this context, "consultation" should mean that stakeholders are engaged for their views and advice ahead of any key decisions or changes by NERL in relation to outcomes and the benefits and costs associated with these decisions. NERL should also be clearer on how the output of the consultation impacts its future planning. Whilst stakeholders are engaged, albeit with varying levels and timings, it is hard to be clear on what actual impact their views have on NERL's decision-making. For NERL's part the gaps in the SIP consultation cycle often means silence, although of course during those gaps NERL are moving forward with delivery of the SIP. If there are major changes or materialisation of risks, as we saw in 2018, NERL tends to work the problems internally before sharing with Users. By the time NERL has taken any possible options/changes through its internal governance and then shares with the Users it is seen, once again, as a *fait accompli*

and when options are presented as “best” the inevitable question is: “best for who?”. For the Users part, consultation is sporadic at best. There is a core of Users that regularly support NERL and the SIP process. However, outside this core group the majority of Users do not engage, especially for face to face events or “Deep Dives”. User engagement through remote access such as Webex is considerably better particularly when there has been good connectivity from the event location, although these events can be limited by poor connectivity from the NERL event location;

5. SIP Submission Format: NERL’s SIP documents and slide packs, while providing significant detail, have frequently lacked a consistent approach and nomenclature. Additionally, the mixed use of slide packs and written reports makes it harder and more time consuming for Users than is acceptable. While NERL’s inclusion of the “tube map” was intended to be helpful, it is often confusing since it does not relate directly to SIP delivery milestones. Whereas earlier reports were harder to access and to track changes between the iterations of the SIP, Interim SIP 17 & 18 reports have been reasonably clear. Overall the combination of the use of a slide deck, coupled with the “tube map”, and inconsistent nomenclature has made the evolution of NERL’s SIP submissions hard to follow;
6. Accountability: A priority for the CAA has been to ensure NERL’s accountability in terms of its Licence to the CAA, airlines and wider stakeholders. The NERL Licence, Condition 10 (noted above) constrains CAA’s opportunities to control how NERL manages its SIP delivery since it only provides the CAA with the opportunity to accept or reject the submitted SIP based on the “form, scope and level of detail”. This decision takes into account the written submission by NERL, outputs of the consultation and a report from the Independent Reviewer. In practice, this process provides NERL with a strong signal on whether it can have a reasonable expectation of receiving remuneration for its investment programme subject to the detailed consultant studies of the efficiency of this programme that the CAA typically conducts as part of its regular Reference Period reviews and whether the CAA is likely to allow capitalisation at the end of the Reference Period. NERL has stated that it pays close attention to the CAA’s views of the SIP in order to minimise the risk that investment may not be remunerated. Therefore, it is fair to say that NERL is accountable in what might be termed “soft accountability”. In the final analysis, NERL is able to invest or not as it sees fit as a business, which of course offers NERL the independence that it requires to operate as an independent service provider, but it also means that there is no “hard accountability” placed on NERL’s decisions;
7. Independent Reviewer: The current role of the Independent Reviewer is to “review the accuracy of the Licensee’s reporting”. Whilst the IR reports do comment on the wider programme management elements, this is an advisory aspect of the IR reports and the CAA may wish to consider whether it would require a wider review in the future.

NERL has recognised the need for change and has consulted customers on proposed changes to the SIP process during the RP3 consultation and during the SIP19 Deep Dive. The principles for the

proposed changes are:

1. Key level zero milestones or other milestone to be tracked under this process agreed each year with Customers at annual full SIP meeting. This does not remove requirement for overall SIP reporting of total Capex plan;
2. Following that NERL will track the milestones and if there are changes use the following principles for engagement with Customers:
 1. Safety: Advise customers and CAA if immediate change required;
 2. Small: Change to implementation plan or not affecting “key milestones” - Update at next SIP;
 3. Medium: Change to key milestones (10% cost increase if it cannot be saved across the remaining portfolio, 3 months change to key milestone or 10% benefits (scale or timescale)
 1. update at ad-hoc meeting/WebEx seeking customer feedback on options – noting that it may need to be a quick turn around from customers to avoid delaying programme;
 4. Large: Material and fundamental change to key milestones/projects if they are stopped, significantly changed in scope/benefits/delivery or external factors are inhibiting delivery.
 1. Face to face update with customers with formal options review – before decision made by NERL;
 2. Any proposed re-purposing of investment funds to be included in options review before any decisions;
 3. Hold Ad-Hoc meeting not just at SIP cycle.
3. Escalation: If NERL options/proposals not broadly agreed with customers:
 1. Stage 1: NERL + Customer SIP Taskforce to investigate recommendations & options
 2. Stage 2: Escalate to Senior Stakeholders [CAA; DfT (if related to airspace); Other senior stakeholders (e.g. airports) dependent on subject; Airline CEO/COO/Director level]
Note: Airspace related changes could potentially use AMS/FAS senior governance structure but it should be noted that this process is related solely to NERL investment and FAS governance includes other stakeholders such as GA and Local Community representatives so may not be appropriate.
4. Wider Plan, Opex Flexibility & Contingency:
 1. Wider Plan: Bespoke engagement or SIP deep dive;
 2. Opex Flexibility Fund:
 1. Proposals (business case) submitted to SIP or Ad-Hoc meeting/WebEx requesting customer response within 1 month;
 2. Criteria for use of fund to be clearly stated;
 3. Contingency – report via normal SIP process provided use is within limits of contingency fund.

5. SIP format: NERL proposes a workshop with customers in Spring 2019 to review proposed SIP format for RP3.

At the conclusion of the SIP19 discussion it is understood that *“customers and IATA said they were supportive of the concept and intent of the proposals which were fine, subject to some refinement and improvement for suggestions made during the meeting and with a particular focus on the proposed escalation path mechanism”*.

These proposed changes demonstrate a will to change and increase NERL’s accountability particularly through the proposed escalation path mechanism which address the primary concern of customers. However, the proposals do not offer any insight into how escalated issues would be resolved. Would it be by consensus, direction or some other mechanism? If the proposal is to have real teeth then this final aspect needs clarification and agreement.

Proposed Changes

Noting the widespread feedback in this review that NERL’s customer consultation on its investments plans compare very favourably in the ANSP industry, and that the SIP process works but has limitations, any changes must be carefully considered to ensure that there are no unintended consequences.

In order to improve accountability, and to tackle many of the issues noted above, it is recommended that:

1. Baseline: A **baseline SIP** for RP3 should be published following completion of all stages of the price control process. This should include descriptions of the plan costs and planned benefits including benefits realisation from RP2 as appropriate. Milestones should be agreed and then referred to consistently through the SIP process;
2. Future: During RP2 it has been clear that some SIP programmes would extend beyond the end of RP2 and into RP3. This is likely to be the case for the RP3/RP4 boundary and it would be helpful if NERL could **share the intended RP4 elements of any RP3 SIP plans** on a “without commitment” basis. As the investment plans for RP4 are developed at high level, these wider plans should also be shared with customers to the extent possible in SIP meetings before commencement of the RP4 consultation process, and again recognising that RP4 would be “without commitment” at this stage;
3. Reporting:
 1. NERL should use **consistent nomenclature** for programmes, projects and benefits throughout the SIP process. This will allow easy reference through the period and enable identification of slippage/early achievement as the delivery of the programme progresses;
 2. NERL should introduce **simple regular update reports on SIP delivery** to Users by providing a single page dashboard (possibly supplemented by second page of costs/risks etc) although the exact format should be agreed between NERL, CAA and Users. This is standard in major programme delivery and if completed at least quarterly, or possibly every other month,

would provide improved clarity on progress for customers;

4. Consultation: CAA should encourage **Users to be more engaged in the consultation** process. This might mean that CAA supports NERL's calling notices for consultation events by emailing/writing to the Users and stakeholders asking for their active participation in those events. This would help to make it clear how important the CAA believes the consultation process to be. Additionally:
 - a. NERL should consider appropriate use of face to face meetings and Webex or other electronic approaches (but with suitable connectivity to allow live stream/calls) in order to improve customer participation options;
 - b. The CAA should consider endorsing the proposed changes by NERL to the SIP process which were supported by customers in the SIP19 consultation;
5. Independent Reviewer Role: The current role of the IR to "review the accuracy of the Licensee's reporting". The CAA may wish to consider whether it would **require a wider review in the future** for example on management/deliverability and benefits management;
6. NERL Licence: The CAA should consider possible changes to the NERL Licence C10 to allow CAA to opine on the content of the SIP as well approving/not approving the "form, scope and level of detail" and provide increased **accountability by NERL** to the CAA for successful delivery of the SIP and the planned benefits. The escalation proposed by NERL will only work if CAA has more leverage, but without becoming the decision-maker, to be the final arbiter than is currently the case.

Conclusion

This review has shown that all stakeholders recognise the challenges associated with a substantial capital investment programme (SIP) in a complex, high technology environment with safety being a paramount factor. All recognise that NATS is one of the better ANSPs and nobody has opined that the current SIP process is failing. However, all stakeholders, including NERL, recognise that it could and should be better.

In pursuit of this aspiration, the recommended changes in this report are offered as a means to have an engaged debate with all stakeholders in order to drive the required changes to improve the process but without introducing any unintended consequences.

Safety is, and must remain, paramount. Improving NERL's accountability will help NERL provide the improved services for customers and gain increased support for the delivery of such a complex investment programme and the realisation of benefits for all.