

**PROPOSED ACQUISITION BY SERCO GROUP PLC OF NATIONAL AIR TRAFFIC SERVICES LIMITED**

**UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY PURSUANT TO SECTION 75G(1) OF THE FAIR TRADING ACT 1973**

Whereas Serco Group plc (“Serco”) proposes to acquire through its Subsidiary Nimbus Holdings Limited (“Nimbus”) a 46% shareholding in National Air Traffic Services Limited (“NATS”);

And whereas it appears to the Secretary of State that arrangements are in progress or in contemplation which, if carried into effect, will result in a merger situation qualifying for investigation (the “Merger”);

And whereas the Secretary of State has power under Section 75(1) of the Fair Trading Act 1973 (the “Act”) to refer the Merger to the Competition Commission;

And whereas the Director General of Fair Trading (the “Director”) has made a recommendation to the Secretary of State that the Merger should be so referred, and has given advice to the Secretary of State specifying particular effects adverse to the public interest which, in his opinion, the Merger may have or might be expected to have;

And whereas the Secretary of State considers the undertakings given below by Serco appropriate to remedy or prevent the effects of the Merger adverse to the public interest specified in the Director’s advice;

Now therefore Serco gives the following undertakings to the Secretary of State pursuant to section 75G of the Act:

**Provision of training services**

- 1 (1) For so long as Serco Controls NATS and for so long as Serco carries on the business of providing ATCO Training Services, Serco shall not in the absence of an objective justification refuse to make available upon reasonable notice and on fair and reasonable terms ATCO Training Services to Other ATC Service Providers or to individuals wishing to train to become ATCOs.
- (2) In particular, and without prejudice to paragraph (1) above, for so long as Serco Controls NATS and for so long as Serco carries on the business of providing ATCO Training Services, Serco shall not in the absence of objective justification:
  - (a) discriminate between members of the Serco Group and Other ATC Service Providers or individuals wishing to train to become ATCOs; or
  - (b) give preference to members of the Serco Group in respect of ATCO Training Services,

whether in relation to the prices charged or quoted or other terms or conditions applied or to be applied, services or support levels, standards of performance or otherwise.

### **Provision of information and compliance**

- 2 (1) Serco shall comply with such written directions as the Director may from time to time give to take such steps within its competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings. Serco shall promptly provide to the Director such information as he may reasonably require from time to time for the purpose of ascertaining that these undertakings are being or will be complied with.
- (2) Serco shall promptly provide to the Director such information as he may from time to time reasonably require for the purpose of performing any of his functions under section 75J of the Act.

### **Application to NATS**

- 3 (1) For so long as Serco Controls NATS, Serco shall use all reasonable endeavours to procure that NATS complies with these undertakings as if it had given them.
- (2) In addition, and without prejudice to paragraph (1) above, Serco shall procure that the Merger is not completed unless NATS has given an assurance to the Director the terms of which shall have been approved in writing by the Director such approval not to be unreasonably withheld or delayed, that it will comply with these undertakings as if it had given them.

*Not needed  
w/ NATS text.*

### **Subsidiaries**

- 4 Serco shall procure that each of its Subsidiaries from time to time complies with these undertakings as if it had given them.

### **Application to Nimbus**

- 5 In the event that Nimbus should cease to be a Subsidiary of Serco, Serco shall for so long as it Controls Nimbus use all reasonable endeavours to procure that Nimbus complies with these undertakings as if it had given them.

*Not needed  
w/ NATS text.*

### **Commencement**

- 6 With the exception of clause 3(2) above, which shall come into force on the date of acceptance of these undertakings by the Secretary of State, these undertakings shall come into force on completion of the Merger.

## Competition Legislation

7 These undertakings do not in any way preclude or restrict any action that may be taken:

- (a) by the Director under the Act or under the Competition Act 1998; or
- (b) by the CAA in the carrying out of its functions under sections 85 to 89 of the Transport Act 2000,

in respect of a matter relating to the breach or alleged breach of any of the undertakings or otherwise.

## Interpretation

8 (1) The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

(2) For the purpose of these undertakings:

“Aerodrome”, “Aerodrome Control Service” and “Approach Control Service” shall have the respective meanings given by article 129(1) of the Order;

“Aerodrome Control Rating”, “Approach Control Rating” and “Approach Radar Control Rating” shall have the respective meanings given by paragraph 2 of Schedule 9 to the Order;

“ATCO” means the holder of a licence granted under the Order to act as an air traffic controller or as a student air traffic controller which contains one or more of the following ratings:

- (i) an Aerodrome Control Rating;
- (ii) an Approach Control Rating; or
- (iii) an Approach Radar Control Rating;

“ATCO Training Services” means the provision of training courses to, and the setting and marking of examinations, tests and other related matters for, ATCOs or persons training to become ATCOs;

“CAA” means the Civil Aviation Authority;

“Control” is to be construed in accordance with section 65 of the Act and accordingly Serco is in particular to be treated as controlling NATS at any time when they would or could be treated as being under “common ownership or common control” within the meaning of section 65 of the Act ;

“the Order” means The Air Navigation Order 2000 (Statutory Instrument 2000/No. 1562);

“Other ATC Service Provider” means any company or undertaking, other than a member of the Serco Group, which from time to time supplies or proposes to supply an Aerodrome Control Service or an Approach Control Service and includes any Aerodrome which provides or intends to provide its own Aerodrome Control Service or Approach Control Service;

references to a member of the “Serco Group” means Serco, Nimbus, NATS or any of their respective Subsidiaries from time to time; and

“Subsidiary” has the meaning given by section 736(1) of the Companies Act 1985 (as amended).

For and on behalf of Serco:

Signed: \_\_\_\_\_ (director)  
\_\_\_\_\_  
(director/secretary)

Date: \_\_\_\_\_