
**COMPLAINT TO THE REGULATORY COMMITTEE IN TERMS OF
SECTION 13 OF THE AIR TRAFFIC AND NAVIGATION SERVICES
COMPANY ACT 45 OF 1993**

Dear Sirs and/or Mesdames,

1. **THE APPLICANT**

The applicant is the Aviation Watch Action Committee (“AWC”) a voluntary association established as a consequence of the ATNS user presentation held at Thunder City, Cape Town International Airport on 15 March 2005, care of Smith Tabata Buchanan Boyes, 8th Floor, 5 St Georges Street.

We are a group of users of the services provided for in the above Act. We have attached a list (schedule “A”) of the various entities and persons who are party to this submission and who we will refer to hereunder as our members.

2. **LOCUS STANDI**

Each of our members has a direct interest in the manner in which the Air Traffic and Navigation Services Company Ltd (“the Company”)

conducts its affairs both in respect of the provision of services and also in respect of the levying of charges and all have been materially and adversely affected by the substance of the decision (“the decision”) dealt with in this memorandum and the manner in which it was taken. The adverse effect on individual members is set out in schedule “B” hereto.

3. **THE RELIEF SOUGHT**

A moratorium on the implementation of Air Traffic Service Charges published in Gen N.2982 in Government Gazette 27145 of 31 December 2004 pending:

- a) the provision to the applicant of the minutes of programmes of alleged consultation with the users reflected on schedule “C” hereto;
- b) an opportunity for the applicant to make full representations to the Company regarding the proposed service charges;
- c) consultation between the applicant and the Company in regard to applicants counterproposals.

4. **PARTIES WITH AN INTEREST IN THE RELIEF SOUGHT**

- a) The Company.
- b) The Minister of Transport.
- c) Airports Company South Africa (ACSA).

5. **SUMMARY OF GROUNDS OF COMPLAINT**

5.1 On 31 December 2004 the Company published a General Notice in the Government Gazette to the effect that certain air traffic charges would come into operation on 1 April 2005.

It was incorrectly alleged therein that the publication followed “after consultation with the users concerned.”

5.2 In fact no consultation with most representatives of General Aviation (“GA”) had taken place prior to the publication. The omission to consult with our members, in particular, was significant in that a good number of them previously constituted the PAC Action Group which represented GA in the Cape in relation to Peak Approach Charges proposed by the Company during 2001. Had the Company seen fit to consult with our members the issues enunciated hereunder would have emerged.

- 5.3 The applicants are aggrieved by the failure of the Company to comply with the provisions of section 5(2)(b) of the Act in that the proposed air traffic service charges will unduly discriminate against our members viz. GA users or categories of users of air navigation infrastructure and traffic services for the reasons set out below.
- 5.4 Furthermore the proposed charges are fundamentally illegal and unconstitutional, in that the utilisation of assets formerly owned by the State as well as responsibility for the maintenance of air navigation infrastructure and the provision of air traffic services and air navigation services, formerly provided by the State, must be effected in the public interest and not merely in the interest of airlines; who have submitted a memorandum which, in the absence of applicant's counterproposal, has enjoyed significant attention.
- 5.5 The GA sector provides a number of services which benefit the public interest. These will be drastically curtailed by the economies arising from the proposed tariffs. Costs of services may constrain some present users to operate outside of navigation infrastructure or air traffic services (they will drop

below the radar screen), with serious consequences for public safety. We contend that the Committee could not rationally perform its functions in terms of section 11(7) of the Act, (so as to promote reasonable interests and needs of GA) if the inevitable economic consequence will be to either drive GA's out of the air or incline them to operate unsafely.

6. **THE SUBSTANCE OF OUR SUBMISSION TO BE AMPLIFIED IN DUE COURSE**

The main thrust of our argument rests on basically three tenets namely the right to not be discriminated against, the right to be consulted with, and the right to practise our professions within a reasonable cost structure.

7. **THE RIGHT NOT TO BE DISCRIMINATED AGAINST**

The main criteria used to establish a sliding scale of cost allocation is the square root of aircraft mass which clearly introduces a discriminatory element in the application of the new cost structure viz. the percentage that ATNS fees constitute of the overall cost of the flight. Even though a concession is made to aircraft less than 5 000kg (using a divisor of 10 000 as opposed to 100 although this is largely

offset by not using the square root of the weight and a higher constant) the effect of this arbitrary mathematical manipulation is that it discriminates substantially against aircraft in the sub 5 000kg category. In fact, the larger the aircraft, the smaller its ATNS fees become as a percentage of its total operating costs. This has the effect of pushing a GA aircraft's cost per passenger mile up to a level where it can never compete for a right of existence.

8. **THE RIGHTS TO CONSULTATION**

ATNS has stated that “substantial consultation with interested parties took place” before implementation; yet the implemented outcome came as a total surprise to the Cape user group. The fact that the Cape user group was actively involved in the 2001 peak approach charges issue (Then called “PAC Action Group”) should have firmly established it as a group to be consulted with. The “consultations” of those involved were also not aligned with our interests. (Nor is the applicant aware of the content of those consultations.) We know that the Aero Club of SA was involved in the initial consultation with ATNS on 18 October 2004 which led to current proposed structure. Yet we were not informed about the agenda or the outcome which heavily favour aircraft below 1200 kg and airliners. In fact, it was indicated that the Regulating Committee has not received any submission from GA. This very issue of not consulting

effectively with all parties forms an important part of our submission. Section 3 of the Promotion of Administrative Justice Act 3 of 2000 also places into legislation strict guidelines with which ATNS did not comply in this matter. The attached Memorandum sets out comments / objections of GA users that would have been voiced earlier if consultation had taken place. This Memorandum has been compiled during the past week as a result of feedback by the applicant's members.

9. **THE RIGHT TO PRACTISE OUR PROFESSION**

The excessive new ATNS fees have the effect that a large number of user groups will simply not be able to afford to fly any more. This will have a disastrous effect on demand within the industry with associated job losses. The irony is that this will have the domino effect of increasing costs to the airlines since the total user base has shrunk and thus the revenue base. Other increased costs to the airlines would include instituting their own *ab initio* training programs since the flying schools currently providing their pilots would have disappeared.

The new tariff structure has the effect of increasing the fees of an average GA aircraft (BE 55 flying 100 hrs per annum) by approximately 1000% Example: FACT-FAGG approx 1hr flying time. (current fees:

$R2440/100 = R24.40/hr$ (proposed fees w.e.f. 1/04/2005 = R362.54)

therefore % increase = $(362.54 - 24.40)/24.40 \times 100 = 1385\%$.

10. **CONCLUSION**

We conclude that the use of aircraft mass (as opposed to passenger miles or fuel levies for instance) is arbitrary and irrational and has the effect of substantial change to existing cost structures with the almost certain demise of certain sub-sectors of the GA community of South Africa.