



[REDACTED]
Competition & Markets Authority
The Cabot, 25 Cabot Square
London
UK



22nd January 2019

Re: NATS/CAA Regulatory Appeal

Dear [REDACTED]

Ryanair welcomes the opportunity to submit our representation on the NATS/CAA regulatory appeal. Ryanair is the largest airline in the UK by passengers flown and pays NATS, the UK monopoly air traffic control provider, on average £67 million per year.

Ryanair supports the CAA price determination for NATS, despite the CAA ignoring our request not to weaken their initial proposed targets during the RP3 consultation process (see attached letter dated 12 April 2019). NATS's rejection of the CAA plan is unjustified and unacceptable for the following reasons:

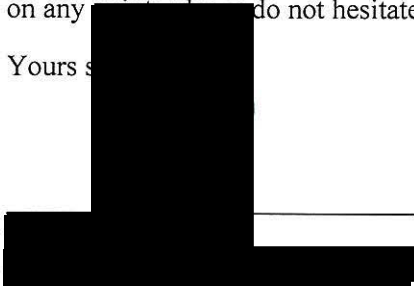
- The CAA is providing NATS over 94% (c. €3 billion) of the funding requested in its business plan.
- Of the c. €200 million the CAA has rejected, the cost of the capital (i.e. shareholder returns) is the largest part (c. £145 million). NATS has paid its shareholders almost £300 million in dividends over the past 5 years. For the year ending March 2019, NATS paid its shareholders a dividend of £59 million (+3.5% compared to 2018) following a year when ATC service levels collapsed in the UK and delays increased by 85%. NATS is obliged under the Transport Act 2000 and its Air Traffic Services Licence to ensure that the demand for air traffic services is met. It has failed to do so throughout RP2 and it would be unjust to reward NATS shareholders for these breaches and repeated underperformance. NATS's approach suggests that the risk of non-delivery of its business plan should be entirely borne by airlines, rather than NATS shareholders, and this is clearly unsatisfactory. NATS must now prioritise operational performance ahead of shareholder profits.
- There is no financial risk for NATS to comply with the plan given that NATS has a monopoly over the provision of en route air traffic services in the UK and benefits from Single European Sky (SES) legislation that includes sharing of financial risks between air navigation service providers and airlines. These mechanisms allow NATS to revise the performance plan and increase planned costs. It is noteworthy that NATS invoked this right during RP2 (2015-2019), when the CAA allowed NATS to increase its costs by 20% in 2018 and 2019, despite the fact that NATS performance during this period was demonstrably substandard. Furthermore, NATS's exceptionally high pension costs are inexplicably passed on to airlines.
- Ryanair fully supports airline involvement in the governance of NATS investments plans. In RP2, NATS failed to deliver on their planned investments and inexplicably delayed its UK airspace modernisation programme, despite having been allocated airline funding on the basis that these improvements would be made. Consequently, NATS failed to provide the airspace capacity required to meet traffic demand and passengers travelling in UK airspace, particularly in London, suffered unprecedented delays. Given this negative experience in RP2, NATS must

be held accountable for airspace modernisation and robust capex governance arrangements must be put in place for RP3. NATS airspace changes must be cost efficient, deliver tangible increases in capacity, and must be delivered on time. Ryanair fully supports the involvement of an independent reviewer as proposed by the CAA.

- NATS has historically outperformed its weak delay targets and rewarded itself excessive bonuses. This is unacceptable given that in 2019, Eurocontrol reported that NATS generated over 550,000 minutes of en route ATC delays and 1 million minutes of arrivals delays. Ryanair fully support the CAA proposed delay targets which are in line with Eurocontrol's proposals.

Given that Ryanair is one of the main parties affected by this appeal, we trust our comments will be taken on board when the CMA makes its final determination. If you require any further clarification on any point, do not hesitate to contact me.

Yours sincerely

A large black rectangular redaction box covers the signature and name of the sender. A thin horizontal line is visible just above the bottom edge of the redaction.

RYANAIR

12th April 2019

Dear [REDACTED]

Thank you for providing Ryanair the opportunity to comment on the UK Performance Plan draft for the Single European Sky Reference Period 3 (RP3).

We are encouraged by the CAA's first draft particularly given it is more ambitious than NATS initial proposal and because it takes a more realistic view of the cost of capital. However, we feel there is scope for greater ambition and we strongly urge the CAA not to weaken the proposed targets simply because NATS complain that they are too challenging. We see room for improvement in NATS cost efficiency target given the Performance Review Body's (PRB) advice to the European Commission and we expect more ambitious capacity and environmental targets resulting from UK airspace modernisation.

As the CAA highlight, "historically NERL has demonstrated strong performance and been able to achieve efficiencies while delivering a high level of service". Watering down the level of ambition at a time when further enhancements and modernisation of UK airspace is taking place would be a step back in the objective to improve the efficiency of the network.

We disagreed with the EU decision to approve unambitious European targets. This lack of ambition provides no incentive for improving the European airspace and will lead to a repeat or even worsen the situation suffered by European passengers last Summer. We firmly ask the CAA to keep building an efficient airspace by setting realistic and challenging targets.

We also strongly urge the CAA to avoid placing more risk on airline operations by challenging NATS to set more ambitious air traffic controller staffing levels. As per the CAA's Oberon report, NATS should plan its staffing requirements to meet demand at a more granular level. This is particularly critical in Stansted airspace where delays have been exponentially increasing since 2016 while NATS refuses to disclose the number of controllers validated for this airspace. NATS needs to deliver the required number of operational ATCOs in the right place at the right time with the right validations. Staffing cost reductions should be sought from non-operational staff and management positions.

Please find attached a detailed response regarding the CAA's first performance plan proposal.

Yours sincerely,

[REDACTED]

RYANAIR COMMENTS ON CAA DRAFT RP3 PERFORMANCE PLAN

SAFETY

We consider the target for the Effectiveness of Safety Management (EoSM) appropriate given the good safety performance of NATS during the last years. We encourage the CAA to closely monitor developments by EASA of the new EoSM calculation methodology as well as the questionnaire based on CANSO's Standard of Excellence. We note that EoSM targets have been set without finalising the development of the new questionnaire. Any changes in the level of scope should be reviewed carefully prior to adopting the targets.

ENVIRONMENT

The horizontal en-route flight efficiency target of actual flown trajectory (KEA) should be consulted before the final performance plan is approved so we can properly value the adequacy of the figures. We ask the CAA to look beyond the targets set by the Commission at European Level because we seem considerable room for further improvement at local level since the European target is near the minimum level of ambition suggested by the PRB experts in their proposals. The implementation of Free Route Airspace (FRA) and other SESAR funded projects means that NATS should achieve improved horizontal and vertical efficiency levels during RP3.

We agree that the 3DI indicator is suitable for measuring environmental efficiency of UK airspace, however, we think that more ambitious targets could be established. The current maturity of the indicator as well as FRA provisions and additional measures that should be put in place to tackle congestion of the airspace must lead to an increase in environmental efficiency.

In RP2, the 3DI target improved from 29.1 in 2015 to 27.1 in 2019 (6.8%) while the current proposal sets the improvement around 4.5% (2024 vs 2020). We propose to apply a ratio similar to RP2 and try to reach a value of 25.3 in 2024 instead of 25.6.

	Source	2018	2019	2020	2021	2022	2023	2024
3DI	CAA proposal	27.5	27.1	26.8	26.5	26.2	25.9	25.6
	RYR proposal	27.5	27.1	26.7	26.3	25.9	25.5	25.3

Referring to the incentive scheme, we suggest setting the bonus at 0.5% and penalization and 1%, more adequate to incentivise a good performance.

We support the CAA's proposal for exempted flights.

CAPACITY

With regards to the capacity target, we see room for reducing the target from 0.18 to 0.13 minutes delay per flight at least in the latter years of RP3 in line with EU-wide targets.

The capacity (delay) targets set by the European Commission for RP3 lack ambition and reward many ANSPs despite their poor performance in RP2. This, together with unrealistic cost-efficiency targets, gives monopoly service providers an opportunity to continue the status quo of high charges and low service levels.

NATS achieved 0.04 minutes per flight delays in 2015 and 0.11 in 2017 so the 0.18 target is easily achievable. We do not accept NATS claim that technology and airspace changes warrant weakening the targets from RP2 levels. On the contrary, the deployment of technology and airspace

RYANAIR COMMENTS ON CAA DRAFT RP3 PERFORMANCE PLAN

changes should deliver additional capacity. Airlines introduce new systems and aircraft with no impact to our customers and we expect the same from NATS given the tens of millions we pay every year. The table below sets out our proposal based on historical performance:

	Source	Actual	Targets						
		2018	2018	2019	2020	2021	2022	2023	2024
CAP C1	CAA	0.29	0.23	0.23	0.23	0.23	0.23	0.23	0.23
	RYR	0.29	0.23	0.23	0.23	0.22	0.21	0.20	0.18
CAP C2	CAA	0.21	0.18	0.18	0.18	0.18	0.18	0.18	0.18
	RYR	0.21	0.18	0.18	0.18	0.17	0.16	0.15	0.13

The CAA and NATS capacity proposal, together with the definition of a disproportionate incentive scheme places all the risk firmly on the airlines. This is unacceptable, the incentive scheme should encourage the monopoly service provider to deliver an efficient service. Failure to deliver the required service levels should result in appropriate compensation to airlines for the costs of the delays. The multiple incentive schemes of this proposal do not meet this requirement.

With regard to the C2 delay metric, we welcome the increase in penalty but find it is insufficient in the face of the current ATC crisis. Penalties are practically non-existent given the large deadband and the climb between the minimum and maximum penalty of 0.75%. for example:

- **Penalties would not be applied for last summer, the worst performance from NATS in RP2:** NATS generated 0.21 min/ft of delay and according to the incentive scheme, the penalization would be 0€. This is unacceptable.
- **Bonus easier to achieve:** NATS has been able to achieve values around 0.10 min/ft during RP1 and RP2. Thanks to the definition of the scheme, a bonus would be paid by airlines almost every year for merely delivering current levels of service without any additional improvement. This is unacceptable.

Our proposal aims to move part of the risk faced by airlines to the ANSP, slightly increasing the penalty and putting a more ambitious target, as can be seen in the table below:

	Parameters	CAA		RYR	
		Min	Max	Min	Max
C2 Incentive	Deadband	0.13	0.21	-0.05 (p.a.)	+0.05 (p.a.)
	Bonus	0%	0.50 %	0.00 %	0.25 %
	Penalty	0%	0.75 %	0.25 %	1.00 %

Additional indicators should incentivise operation efficiency and should not be seen as an easy way to achieve bonuses. For this reason, we propose to reduce the bonus for C3 from 1% to 0.5% to encourage greater efficiency.

We consider the asymmetry in the incentive scheme bonus/penalties should be the rule for the Capacity and Environmental areas.

RYANAIR COMMENTS ON CAA DRAFT RP3 PERFORMANCE PLAN

COST-EFFICIENCY

We fully support the rationale provided by CAA for greater ambition in the cost-efficiency targets, but just like Steer and Helios, we see room to get further achievements.

According to Academics Group Benchmarking Study on Efficiency published as support of PRB target proposal, NATS has room for an average reduction of 8% in costs (52.8M€) in en-route provision. On the contrary, NATS RP3 Business plan increases the cost by £70 M by the end of RP3. As such, we welcome the £71M reduction in operating cost proposed by the CAA but consider the target should be nearer a £ 90M reduction given the CAA tests against Steer/Helios' costs scenarios imply reductions up to £133 million.

Furthermore, we consider a cost reduction of 2.3% in RP3 lacks ambition given the trend over RP2 where NATS has enjoyed high returns as noted in its 2018 Annual Report:

"In the third calendar year of RP2, NERL achieved a pre-tax real return of 10.9% compared with the regulatory return of 5.8% assumed in the RP2 Performance Plan"

At the same time NATS was generating this excessive surplus, flight delays reached record levels. This situation cannot be repeated.

We are fully aware of the urgent need to modernise airspace and the associated costs and efforts involved. However, we cannot accept a level of ambition below the expectations of RP2 which have resulted in high delays for airlines and high profits for ANSPs. For these reasons we propose a DUC reduction of 4.5% instead of the 4.3%, aiming to achieve a DUC of 39.8 € in line with our conservative proposal for cost reductions above the CAA proposal.

TRAFFIC ASSUMPTIONS

We fully support the use of Eurocontrol STATFOR base forecast as described in RP3 regulation. The table below shows a comparison between STATFOR and NERL which highlights a difference of 2 decimal points in the Terminal Service Units (TSUs). This is not insignificant and creates discrepancies of over 500,000 TSUs in 2020 and over 2 million over the reference period.

	Source	2018	2019	2020	2021	2022	2023	2024	18/24
Overall UK FLT	STATFOR 18	2,553	2,605	2,649	2,693	2,735	2,772	2,809	1.6 %
	STATFOR 19	2,558	2,600	2,649	2,685	2,737	2,771	2,802	1.6 %
	NERL RP3 BP	2,533	2,546	2,597	2,653	2,713	2,769	2,802	1.7%
TSU	STATFOR 18	12,157	12,531	12,766	13,043	13,280	13,494	13,713	2.0%
	STATFOR 19	12,194	12,408	12,648	12,891	13,183	13,406	13,615	1.9%
	NERL RP3 BP	12,085	12,094	12,220	12,498	12,823	13,133	13,366	1.7%

Figures expressed in thousands

In RP2, the Performance Review Body reported that many monopoly air navigation service providers used their own low traffic forecasts to game the regulatory system and inflate unit rates. NATS own Determined Unit Rate (DUR) increased over 10% at the start of RP2. The result is an increased risk of capacity shortfalls and delays for airlines while ANSPs enjoy reduced risk and protect their revenues. The use of STATFOR base should be mandatory for all the ANSPs in Europe. We see no justification for using lower forecasts but would be willing to consider higher forecasts with strong supporting evidence.

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AIRSPACE MODERNISATION

We strongly support UK airspace modernisation which delivers a safe efficient service. NATS have failed to plan airspace changes effectively in the south east UK which have resulted in high delays for traffic arriving at Stansted airport. The CAA should put in place measures to ensure NATS tackle the issue from the beginning of RP3 (2020) and do not solely focus on developments of a new airspace configuration that might only bring benefits at the end of RP3 (2024) or even later in RP4. A whole RP3 period with the same levels delays of 2018 or the 2019 forecasts is unacceptable.

NATS should undertake without delay urgent restructuring of London TMA to avoid delays to flights arriving to Stansted and Luton. According to Eurocontrol's Network Operations Report 2018, London Stansted traffic increased by 6.2% while ATFM delay increased exponentially by 39.5%. Average delay per flight also increased significantly by 31.4% in the same period.

INVESTMENT CONTROL

Underspend has been a trend for almost all monopoly ANSPs during RP2, resulting in indirect costs and delays to airline daily operation and our passengers.

Failure to invest in infrastructure that has been paid for by airlines is a serious concern and we would like to request more details about how CAA is going to apply the exemptions to the cost risk sharing mechanism to manage under and over investment.

We welcome the proposed improvements in the investment governance process and agree a more transparent process is needed in the decision making of the investment plan.

We see risks in the slow pace of SESAR implementation which may result in investments being further delayed into RP4. The final RP3 Performance Plan and the Investment Plan should consider in depth these issues and provide a realistic investment forecast taking account of all uncertainties. In this regard, we fully support the estimations provided by Steer/Helios, particularly the calculations about DSESAR, which in NATS' proposal is clearly overestimated by almost £80 M.

	NERL RP3 business plan £m	Consultants scenario £m supported by RYR
Airspace modernisation	115	115
Delivering capability (DSESAR)	299	220
Technical resilience	144	124
Service improvement	37	30
Business resilience	88	55
Contingency	34	34
Total capital expenditure	715	579

OCEANIC SERVICE

We fully support the implementation of ADS-B for the south east corner of the North Atlantic, (ie. the "Tango" routes). NATS confirmed the costs are minimal and have made no increase to the rate for the remainder of RP2. We propose no increase to the rate also in RP3 given the implantation is all but complete and the amount of time an aircraft spends on the Tango routes is less than 30 min.

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TERMINAL NAVIGATION SERVICES

Regarding Terminal capacity targets, we propose a London Area aggregated target that stimulates improved service delivery for the area as a whole and a more impartial service to the London airports. We feel this is the best approach to face the disproportionate levels of delay suffered by London Stansted compared to London Heathrow. In 2018, the CAA Oberon indicators show that Stansted Airport suffered 55% of all ATC staffing/capacity delays in the London area caused by NATS, while Heathrow (which has 3 times the traffic) had 0.1% of NATS delays and Gatwick just 4%. Stansted suffered an astronomical 59,532 (55%) minutes of NATS ATC staffing/capacity delays between in 2018, while Heathrow suffered a mere 95 minutes.

	Source	2020
London Area aggregated target	LHR	1.95
	LGW	1.84
	STN	0.54
	LTN	0.43
	LCY	1.42
	Aggreg.	1.30

To realise the benefits of this new target, we also propose to set a financial incentive that could be proportionally distributed between the airports impacted. The incentive scheme would have a dead band of ± 0.05 and a maximum penalty of 1% and bonus of 0.25%.

	Parameters	CAA		RYR	
		Min	Max	Min	Max
Incentive	Deadband	--	--	1.25	1.35
	Bonus	--	--	0.00 %	0.25 %
	Penalty	--	--	0.00 %	1.00 %

Additionally, we would like to ask for a periodic report to see the evolution on cost-efficiency of the different airports.

We fully support the proposal to retain London City in the scope of the performance scheme.

--END--