



NATS/CAA Regulatory Appeal  
 Competition and Markets Authority  
 The Cabot  
 25 Cabot Square  
 London  
 E14 4QZ  
 United Kingdom

16<sup>th</sup> January 2020

FAO: [REDACTED]

[REDACTED]

**Referral from the Civil Aviation Authority (“CAA”) to the Competition and Markets Authority (“CMA”):- NATS En-route Limited (“NERL”) Price Determination – Third Party Representations**

Virgin Atlantic Airways (VAA) makes this written submission to you in order to support the submission of the International Air Transport Association (IATA), representing airlines from around the world and of which we are a member airline. We understand that this letter will be submitted to the CMA and will be visible to the public as part of the CMA process.

It is clear and unfortunate that airline customers will bear the brunt of any costs for the introduction and provision of space-based ADS-B charges, if and as approved. In line with this, we are not convinced that use of space based ADS-B, as proposed by NERL is within the sphere of public interest.

We support the submission to the CMA made by IATA and to that end our position may be summarised as follows:

- a. We are fundamentally opposed to the deployment of Space-Based Automatic Dependent Surveillance-Broadcast (“SB ADS-B”) systems at this stage of RP3 (as planned by NERL) and to the development of oceanic charges associated with the use of those systems that would be charged to airspace users by the respective Air Navigation Service Providers (“ANSPs”).
- b. For the avoidance of doubt, we do not object to the use of SB ADS-B systems indefinitely in principle and recognise that in future the technology (or another iteration of it) may play an integral role in the modernisation of commercial aviation. However, SB ADS-B technology remains in its infancy and at this stage we agree that:-
  - (i) the operational effectiveness of SB ADS-B navigation is not fully understood;
  - (ii) surveillance and navigation technology with the specifications of SB ADS-B is not yet seen to be necessary for commercial aviation and its introduction at this stage of RP3, along with the proposed associated data charges for



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oceanic flights, are both disproportionate and unduly onerous to airspace users;

- (iii) the benefits of SB ADS-B, including notably safety and efficiency performance improvements, have been over-stated by NERL and/or have not yet been conclusively proven. In several key respects the assertions by NERL are open to challenge and can be shown to be based largely on questionable presumptions. Notably, it is currently NERL's case that the proposed large increase in oceanic data charges will be off-set by the savings made by airlines due to fuel efficiencies - this has not been validated by the airlines, including ourselves;
  - (iv) viable alternatives to SB ADS-B with more established benefits do exist, but have not been given the benefit of a fair assessment by NERL in devising its business plan for RP3; and
  - (v) the use of SB ADS-B should be subject to further testing and explored as a potential long-term option only at this point in time. In this regard we endorse the position adopted by the U.S Federal Aviation Administration ("FAA") following an extensive study it conducted during the last year.
- c. In its submission IATA has set out its serious concerns about the wider competition-related implications, transparency and procurement process, conducted by ANSPs for contracts entered into with Aireon, for the supply of SB ADS-B services. We share these concerns which apply to the arrangement reached by NERL with Aireon.
- d. The public interest assessment presented by NERL is skewed and does not give adequate weight to all relevant factors that impact upon the public interest.

## Summary & Conclusion

- e. As set out above, we have a number of concerns with the proposals put forward by NERL for RP3 pertaining to the introduction of SB ADS-B technology and the accompanying costs of use, aligned with the IATA position. These concerns were acknowledged by the CAA but were not, we agree, fully explored, nor given adequate credence.
- f. In summary and conclusion, we support the position of IATA in maintaining that the benefits of NERL's proposal relating to the implementation of SB ADS-B have been overstated. NERL's case is, in our view founded upon presumptions that can be readily challenged, particularly as these relate to:
  - efficiency;
  - the balance struck by the scale of charges that would be passed on as opposed to benefits; and
  - the sourcing of SB ADS-B technology and the terms of use negotiated for those services.



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Thank you for considering this submission, written in support of the IATA response to the original "Main Party submissions".

Yours sincerely

