



Via email: NATS.CAA.@cma.gov.uk

Judith Ross
Project Manager
Regulatory Appeals
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

AG 2.3.1

15 April 2020

Dear Judith

NATS En-route Limited (NERL) Price Determination

Prospect's response to the CMA Provisional Findings

Prospect is a key stakeholder in the operation of NERL and the wider UK Air Traffic Management (ATM) System. With over 2,100 members in the Air Traffic Control Officers' Branch, 820 members in the Air Traffic System Specialists Branch, and over 250 ATC workers in other branches – including the CAA - we represent virtually the entire workforce of professionals involved in UK ATM.

During the CMA's investigations, the Covid-19 pandemic started to develop and it has had a devastating impact on the aviation industry. As of the first two weeks of April 2020, air traffic numbers are down by around 90%, with a consequential huge drop in revenue for NERL. This has been compounded by the announcement from Eurocontrol on 7 April 2020 that it would defer En-route charges paid by airlines to ANSPs, staging them over a period of around 18 months.

Notwithstanding the severe financial implications for NERL, it has licence obligations to continue to provide an air traffic service to those flights still in the sky, be they overflights, emergency services, cargo operations or the scheduled services that remain.

It is for these reasons among others that Prospect has long believed that the economic regulatory model in place for NERL is flawed when applied to critical infrastructure like air traffic management - an industry that must be viewed as integral and essential for the functioning and success of the United Kingdom. Although no one could have predicted the impact that Covid-19 would have had on the world even six months ago, it has laid bare the inadequacy of such an economic model and exposed the industry, and the country, to an existential risk.

However, given the current regulatory model, we broadly accept the CMA's provisional findings, considering the context they now are set in. It is our view that the underlying principles of the findings are noted and carried forward, even if the specifics of the numbers now bear no resemblance to reality.

New Prospect House
8 Leake Street
London
SE1 7NN

0300 600 1878
info@prospect.org.uk
prospect.org.uk

We would however specifically support the CMA on its findings with respect to cost of capital - NERL's risks, described in our previous submissions have, unfortunately, become all too apparent.

As far back as November 2017, in the early stages of consultation for RP3, Prospect stated:

*'we would advocate a return to an element of contingency to be made available within the opex and capex allowance as appropriate. Given that the nature of ATM provision has a degree of uncertainty, NERL must be afforded room to be able to react. Experience in RP2 has clearly demonstrated that forecast plans have to be readily adaptable and the facility to enable this should be embedded as part of the core plan.'*¹

In our submission to the CMA we stated:

'NERL is very much exposed to the wider economy and to the traffic levels governed by the economic cycle, notwithstanding the traffic risk sharing mechanism. For example, in times of economic uncertainty people will curtail flying therefore materially reducing the available income for NERL, but people always need water and electricity.'

Never has a statement been more starkly realised.

It is clear that the Covid-19 crisis has resulted in a global situation that renders the current RP3 plan obsolete. The proposals that the CMA have been asked to rule on simply now bear no resemblance to reality. The reduction in traffic levels and income is so severe that it cannot be factored into the original plan in any meaningful way. It is our view that the CMA together with NATS and the CAA moves swiftly to conclude the process, perhaps ruling on areas of principle, as set out in the provisional findings. The RP3 process should then be reopened – hopefully, next year - when there is more clarity on the short-term recovery and forecasts for longer term air traffic demand.

A collaborative approach together with appropriate consultation with external stakeholders will allow the opportunity to properly reconsider the balance that must be sought between cost and service in these difficult times.

Yours sincerely



Steve Jary
National Secretary
Aviation, Defence & Security

¹ Prospect ATCOs' Branch response to CAA CAP 1593
https://www.caa.co.uk/uploadedFiles/CAA/Content/Accordion/Standard_Content/Commercial/Airspace/Air_Traffic_Control/ProspectATCOs%20response%20to%20CAP1593.pdf