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Ms Judith Ross
NATS/CAA Regulatory Appeal
Competition & Markets Authority
The Cabot, 25 Cabot Square
London E14 4QZ

Sent by email to: nats.caa@cma.gov.uk

15th April 2020

Dear Ms Ross,

Re. NATS En-Route Limited / CAA regulatory appeal - provisional findings report

Thank you for sharing the CMA's provisional findings report of the NATS En-Route Limited (NERL) regulatory appeal. Virgin Atlantic Airways would like to make the following observations regarding the provisional findings and in addition, how the CMA should take account of the impact of Covid-19 in your Final Determination.

The CMA's provisional findings broadly uphold the CAA's final decision for the RP3 price control period. We welcome the CMA's position on the key regulatory building blocks and note your support of the CAA's final decision on operating cost and capital expenditure allowance.

We note the CMA's provisional conclusion that no additional operating cost reduction should be made for non-regulated income and your provisional proposal to dis-apply the 5% efficiency reduction made by the CAA to the space-based ADS-B data charge.
We support the CMA's provisional conclusion that pension efficiency adjustments, as proposed by the CAA, can be introduced.

For capital expenditure, the CMA's provisional conclusion is that the capex governance proposals included in the CAA's decision that strengthen the Independent Reviewer role and require quarterly SIP updates, should be applied. Given our experience in RP2, where NERL fundamentally changed its capital programme, delaying airspace modernisation and significantly increasing capital investment costs, we welcome the CMA's position on the principle of applying capital governance incentives to NERL during RP3. We would expect to be working with the CAA and NERL to agree more specific capital governance provisions for RP3 in due course.

The CMA considers that the CAA's decision on proposed capital efficiency incentives implies that the basis upon which they would consider RAB disallowances following ex-post efficiency reviews, has materially changed and that change increases regulatory risk. In our view the CAA rarely disallow the investments of the regulated companies from their RAB's and consider any new approach unlikely to significantly increase regulatory risk. Overall, we support an effective process for disallowing inefficient expenditure and believe the CMA should support the CAA in strengthening incentives.

In its provisional findings, the CMA has determined a weighted average cost of capital (WACC) figure of 3.08% which is somewhat higher than the CAA's final decision figure of 2.68%. However, we note that the CAA's figure falls within the WACC range determined by the CMA, whereas the NERL figure of 4.21% sits well outside of this range.

In addition to your provisional findings, we believe the CMA should consider further adjustments, considering clearly defined, specific and material changes to protect customers from expenditure on investments that are no longer needed within RP3. Specifically, these are;

- **Heathrow's third runway** – given the recent delay to consent for the third runway the operating cost provisions made in RP3 for additional ATCO's should no longer be required.
- **The TC "Foursight" programme -** this programme will no longer take place in RP3 and so the capital provision for this investment should be adjusted.
- **Timeline for South-East UK Airspace Modernisation** – the timeline should be reviewed to ensure alignment of the RP3 airspace modernisation investments with the latest ACOG plans for the price control period.

Impacts of Covid-19

On balance we do not believe that the CMA should take account of the ongoing Covid-19 crisis as part of its final determination of this regulatory appeal. The full impacts of Covid-19 are still unknown and will remain so beyond the May date for the CMA to make its final determination. As an industry we are unlikely to have any clarity on this until 2021 at the earliest.

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Notwithstanding the ongoing nature of the Covid-19 crisis, we are concerned that reviewing specific elements of the price control may in turn lead to the entire price control being reopened, which we do not believe as being in anyone's interest at this time. The NATS appeal was made on specific grounds and therefore we believe the CMA should restrict its final determination to those specific points.

NERL, the CAA and the airlines will be able to address the impacts of Covid-19 during RP3 using the consultation processes that we have in place to manage change during the regulatory period. Whilst Covid-19 is not a "business as usual" event, our experience in RP2 shows that significant change and adaptation to new circumstances can be managed between all parties to ensure the best outcome for all customers. We therefore propose that the CMA allow the CAA, NERL and the airlines to work together to address the impacts of Covid-19 over the coming months.

With kind regards.

Yours sincerely

Geoff Clark
Head of Regulatory Affairs

[redacted]