



NATS (En Route) plc / CAA Regulatory Appeal

Approach to COVID-19 - Consultation

Submission by Prospect to
the Competition and Markets Authority

June 2020

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Prospect Submission to CMA NATS / CAA Regulatory Appeal - Approach to COVID-19

Response to CMA's proposals

Following the COVID-19 pandemic we agree with the CMA that the assumptions made in the RP3 NERL business plan are no longer valid. The reality and impact of COVID-19 is so significant that only high-level principles apply to general concepts.

The CMA in its determination should take into account the experience of historical downturns in air traffic, where short-term decision making resulted in capacity problems. The most recent example followed the global financial crisis, when measures put in place for RP2 led to significant staffing issues which inhibited NERL's ability to respond to increasing demand.

Regulatory mechanisms should ensure the maintenance of sufficient resources for NERL to preserve capability for recovery or, as demonstrated by recent history, the wider aviation industry's recovery from the pandemic will be hampered.

We support the view of the CAA conducting a 'reconciliation exercise'¹. 2020 is such an unusual year that actual costs and flight volumes are unique to the impact of the pandemic and should be viewed as such.

On the reference to the '£92 million' available to NATS as a second package from EUROCONTROL, Prospect found this referenced article misleading. The figure that is actually paid to NATS remains to be seen, but part of this figure is simply payment of revenue owed to ANSPs from movements before the pandemic was in full-swing, and previously deferred by EUROCONTROL's first package. It does not detract from the fact there is still a significant financial strain on NERL's cash flow.

We agree with the CMA's conclusions not to refine its assessment further with the exception of capex governance / incentives. There is far too much uncertainty at the current time. If introduced, capex governance / incentive mechanisms should take full account of the immediate and detrimental effect that the pandemic has had on the capex program, and the long term consequences of this. It is our view that the concept should be deferred until the next price control, and even then, much more thought, and consultation is required.

We agree with the CMA that the price control should be limited to three years, but with an option to reduce this should a new price determination be arrived at sooner. There would also be merit in looking at the sensitivity of the traffic risk-sharing mechanism to cope with unforeseen changes in demand during the three year period, perhaps with provision for review within the three year period.

We also reiterate our previous comments that the CMA should conclude the process as swiftly as possible, with findings that relate to matters of principle (e.g. cost of capital etc) that are not affected by the Covid-19 pandemic.

¹ Para 23 NATS / CAA Regulatory Appeal Approach to COVID 19 - Consultation

Comments on other submissions

On the submission by IAG and Virgin Atlantic, there are consequences to this approach:

'[...] the CMA should base its determination on the STATFOR forecast last published prior to the suppression of air traffic volumes due to COVID-19, and the established risk sharing mechanisms should deal with the shock'

At European level, there are steps being taken to dramatically change the risk-sharing mechanism *ex-post*, where the recovery of en route charges expected under the current terms of the RP3 regulation are coming under attack, which would in turn exacerbate the revenue and funding issues for NERL for years to come. It may be the case that the proposed 'reconciliation exercise' would address these concerns by different means. As previously mentioned, Prospect welcomes further clarity on how this exercise might resolve these issues.

Although the open nature of this consultative process is understood and other regulated industries' desire to make submissions might seem appropriate, this crisis proves the statement we made in our submission to the CMA in early January 2020, before Covid-19 had begun:

'[...] in times of economic uncertainty people will curtail flying therefore materially reducing the available income for NERL, but people always need water and electricity.'

It is unreasonable to compare the provision of air traffic services and other services such as water simply because they are regulated. Most obviously, the impact of events such as COVID-19 on consumer demand is quite different. While aircraft may not be flying *en masse* at present and movements are likely to be depressed for some time (the current consensus seems to be that this will last two-to-three years), the legal requirement to provide safety-critical air traffic services remains. To maintain this capability whilst taking a significant hit on revenue for months on end means there is simply no comparison to be made with the other public utilities. Comments such as those of Citizens' Advice demonstrate a lack of appreciation for the issue.