

Judith Ross
NATS/CAA regulatory appeal
Competition and Markets Authority
The Cabot
25 Cabot Square
London E14 4QZ
(by email: nats.caa@cma.gov.uk)

1 July 2020

Dear Ms Ross,

NATS En-route plc (NERL) Price Determination:

Submission by ENA in response to the CMA's consultation on Approach to COVID-19

Thank you for the opportunity to submit evidence in respect of the above determination.

Energy Networks Association (**ENA**) is the voice of the networks, representing the 'wires and pipes' transmission and distribution network operators for gas and electricity in the UK and Ireland. Our members control and maintain the critical national infrastructure that delivers these vital services into homes and businesses.¹ ENA's overriding goals are to promote the UK and Ireland energy networks, ensuring our networks are the safest, most reliable, most efficient and sustainable in the world. The combined regulated asset value of our members totals £66 billion.

ENA welcomes the opportunity to comment on the CMA's proposal to base its final report on the NERL price determination on its provisional findings, without taking into account the impact of the COVID-19 pandemic.

ENA recognises the need for a pragmatic approach to enable the CMA to conclude its redetermination in advance of the statutory deadline given the continuing uncertainty for the airline sector and NERL arising from the pandemic.

With regard to setting the cost of capital for NERL, the CMA states that, subject to certain limited exceptions, it will not undertake further analysis given NERL's changing financial circumstances. The exceptions are that the CMA will correct any inaccuracies identified in the CMA's provisional findings and that the CMA will undertake further assessment where the CMA's conclusions are capable of having a longer-term impact, irrespective of COVID-19. ENA does not oppose this approach.

As the CMA is aware, in ENA's response to the provisional findings dated 15 April 2020, ENA identified several methodological errors in the CMA's provisional analysis, and

¹ This submission is on behalf of the following ENA members: Cadent, Electricity North West, National Grid, Northern Gas Networks, Northern Powergrid, Scottish & Southern Electricity Networks, SGN, SP Energy Networks, Wales & West Utilities, Western Power Distribution and UK Power Networks. More information on the ENA is available here: <http://www.energynetworks.org/>.

identified potential solutions to these. Specifically, ENA identified that the CMA had made several errors in developing its TMR range, including relying on unreliable methodologies that the Office of National Statistics (ONS) considers contain errors and are not suitable for official uses. As a result, ENA considered that the CMA had significantly underestimated the TMR, resulting in the cost of equity being too low. ENA identified that setting the cost of equity on the basis of a flawed methodology has the potential to have a significant adverse impact in other regulated sectors, including energy.

ENA considers that these issues fall squarely within the exceptions identified by the CMA and are therefore issues the CMA will want to address in reaching its final conclusions. ENA remains available to provide such assistance to the CMA as may be required in this regard.

ENA recognises, however, that due to the complexity of the issues and the need to conclude the current process without delay, the CMA may not be able to consider these issues and the evidence in sufficient detail in the NERL determination. The unusual circumstances that have affected the CMA's redetermination in this particular case should not risk having a material and long-term adverse impact in other sectors. In the event, therefore, that the CMA is not able to reach firm conclusions on particular methodological issues underpinning the calculation of the cost of equity in its final report on RP3, ENA urges the CMA to qualify its conclusions on this basis and make it clear that these should not be regarded as having read-across to other sectors. This is particularly the case given the CMA is currently hearing PR19 appeals from four water companies meaning the CMA can give further consideration to these issues, including any new evidence that is now available. In ENA's view, it would be both pragmatic and reasonable for the CMA to reserve more detailed consideration of the cost of capital issues (including TMR) that have wider application outside of air traffic services to the PR19 appeals and for the CMA to make this position clear in its final report.

I confirm that this submission does not contain any confidential information, and that we are content for it to be published in full on the CMA's case page.

We should be grateful if you could acknowledge receipt of this submission.

Yours sincerely,

A solid black rectangular box used to redact the signature of David Smith.

David Smith
Chief Executive