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From: Kirstin Baker
Chair of the Special Reference
Group

Our ref: NATS/CAA

4 May 2020

Dear Paul

REQUEST FOR EXTENSION UNDER SECTION 12A(3) OF THE TRANSPORT ACT 2000

On 19 November 2019 the CAA made a reference to the CMA under section 12 of the Transport Act 2000 (the Act). The terms of the reference require the CMA to consider and publish its report on the reference within a 6 months period, beginning with 19 November 2019. Pursuant to Section 12A(3) of the Act, the CAA may however extend the period for publication of the CMA's report on the reference by up to six months, if it has received representations on the subject from the CMA and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference.

The CMA published its Provisional Findings Report on the reference on 24 March 2020, based on data and evidence available to it at the time. Since then, the Covid-19 pandemic has had a significant impact on air traffic volume, which has fallen by about 90% below forecast levels, and in turn on NERL's revenue relative to the revenue forecast in its RP3 Business Plan. The full impact of Covid-19 is still not known, and uncertainties are expected to persist for the foreseeable future.

Since the publication of PFs, given the severity of the impact on airline liquidity, Member States of Eurocontrol, which collects and disburses air traffic charges, have agreed measures allowing airlines to defer the payment of air navigation en-route charges for up to 14 months. This is expected to further impact NERL's revenues, liquidity and financeability in the short to medium term. To ensure NATS can continue to operate, it would be eligible to receive up to £92 million in support from Eurocontrol.

It is now clear that NERL's RP3 Business Plan, the CAA's RP3 Decision, and most of the financial assumptions and forecasts the CMA relied upon to reach its provisional findings

are now relevant only for the period from January 2020 to March 2020 and otherwise will be largely outdated.

The CMA is currently assessing how best to address this unprecedented situation, both substantively and procedurally, in order to reach its Final Report. In doing so, the CMA is having regard to the submissions made by the CAA, NATS, and third parties, in response to its Provisional Findings. At this stage, the CMA cannot rule out that it will have to revise significantly the substantive assessments made in its Provisional Findings and that further consultation on an addendum or updated set of provisional findings will be needed.

The CMA further notes that both NERL and the CAA requested an extension to submit their responses to its provisional findings. Taking account of the particular circumstances outlined above, the CMA granted a nine-day extension to respond to the substance of the provisional findings and a further five days for the Parties to give their views on how to account for the current uncertainties. This has further delayed the CMA's ability to progress its inquiry.

In light of the above, it is now clear that the CMA will not be able to make its report on the reference by the statutory deadline of 18 May 2020. It is crucial that the CMA's investigation is not unduly constrained from objectively determining the appropriate next steps to progress the reference through to final determination, and to allow for due process accordingly. Taking into account that the Act allows only one extension; that there is still uncertainty as to what the appropriate process is going to be; and that the CMA needs to maintain its ability to respond to any consultation it considers to be necessary, the CMA requests the CAA to extend the reference period by a further six months. The CMA however commits to make its best effort to conclude its investigation and publish its report as quickly as reasonably feasible once it has determined the appropriate next steps to reach final determination.

Yours sincerely

Kirstin Baker

Chair of the Special Reference Group

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copied to Matt Claydon, CAA and Thea Hutchinson, NATS