

Kirstin Baker
Chair of Special Reference Group
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ
United Kingdom

[RP3 reference CAA document 037]
Your ref: NATS/CAA

6 May 2020

Dear Kirstin

CMA REQUEST FOR EXTENSION: DETERMINATION OF PRICE CONTROLS FOR THE PERIOD 1 JANUARY 2020 TO 31 DECEMBER 2024

In light of your representations,¹ I can confirm that the CAA is satisfied that the special reasons set out therein are sufficient to merit an extension to the period to make your final report on the reference of the NERL RP3 price controls. I note that your request seeks the maximum six month extension, provided for under section (s.) 12A(3) of the Transport Act 2000 (TA00). In agreeing to extend the deadline to make your final report, I wish to highlight the following:

- Both the main parties, and third parties, appear to agree that it would be sensible to make the final report largely on the basis of your provisional findings, rather than seek to substantially review your position to account for the impact of Covid-19. It is a generally accepted view within the industry that it will not be possible to determine the lasting impact of the pandemic on aviation in the next six months. This means that it will not be possible to properly understand the future strategic and operational context, which would be necessary to reasonably determine revised price control building blocks. Nor will it be possible to develop traffic forecasts with the appropriate degree of confidence necessary to reasonably calibrate a price control, in time to make any substantive redetermination by mid November this year.

¹ Letter dated 4 May 2020 from Kirstin Baker (Chair of the Special Reference Group, CMA) to Paul Smith (Director of the Consumers and Markets Group, CAA).

- We have proposed in our response to the provisional findings² a pragmatic approach to address the impact of Covid-19 on the NERL price control arrangements. It provides a longer time frame to properly consider the lasting impacts, full stakeholder consultation and includes a CAA commitment to conduct a review of the NERL price controls in 2021. We consider this will allow all stakeholders to make better informed inputs to the CAA, and allow us to take a holistic look at the impacts of Covid-19 on the building blocks and strategic context.
- If, as a result of the intermediate review, we propose to make modifications to NERL's price controls that it does not consent to, it will have the same opportunity, as in September 2019, to reject our modifications and require us to make a reference to the CMA on the basis of our new determination. In addition, NERL and other stakeholders will also retain procedural rights to judicial review.
- The approach we have proposed would avoid putting the CMA in the position of determining as part of this referral process whether major changes might be needed to price control arrangements to deal with Covid-19. These matters should naturally be considered first by the CAA as the regulator, in consultation with NERL and other stakeholders, with a reference to and redetermination by the CMA only if the CAA and NERL fail to agree appropriate licence modifications.

While we agree to the full six month extension to 17 November 2020 in the interests of pragmatism, I strongly encourage you to conclude the reference process and make your final report as soon as reasonably practicable, taking due account of the matters highlighted above.

Consistent with s.12A(5) TA00, we will publish a copy of this letter on our website and send a copy to NERL and the Secretary of State. Should you wish to discuss the content of this letter please do not hesitate to get in touch with me or Matt Claydon. In the meantime we look forward to engaging with you and your team on the necessary detail, in reaching a swift conclusion to this process.

Yours sincerely



Paul Smith
Director, Consumers and Markets Group

Copy: Lesley Moore – Project Director, CMA
Ian Elston – Deputy Director Aviation Policy, DfT
Thea Hutchinson – Director of Regulation, NERL
Matt Claydon – Head, ATM Regulation, CAA

² www.caa.co.uk/CAP1910 [RP3 reference CAA document 35] and www.caa.co.uk/CAP1910A [RP3 reference CAA document 036]