

Reference to the CMA of NERL RP3 price controls: CAA response to provisional findings Appendix A – Responding to Covid-19

CAP 1910A

[RP3 reference CAA document 036]

APPENDIX A

Responding to Covid-19

Introduction

- A1 This appendix sets out our proposed approach for how the CMA should respond to the impact of Covid-19 in making its final report, and forms part of our main response to the CMA's provisional findings (PFs) on the NERL RP3 price control referral process, published as [CAP 1910](#). It also sets out at a high level, the steps we intend to take following the CMA's final report.
- A2 The principles and approach set out in this appendix are supported by NERL.
- A3 The appendix is set out as follows:
- Context and challenge
 - Functioning of route charges system
 - Our proposed approach
- A4 The PFs cover a broad range of matters, provide direction and will have enduring value in the future regulation of NERL – for example the approach to capex governance and incentives.

Context and challenge

- A5 In the PFs, the CMA invited stakeholders to provide views on how it should take account of the impact of Covid-19 in making its final report. We set out below what we regard as the most important context and key challenges.

Uncertainty

- A6 It is clear that traffic volumes have fallen significantly in the short term with actual traffic currently about 90% below forecasts for the period, as a result of the Covid-19 pandemic. What is not known is how long traffic will take to recover or what the new, post Covid-19, normal will look like.
- A7 While it is possible to start to identify traffic recovery scenarios, it is likely to be an unknown number of months before we can start to see a path to recovery and sensibly start to consult stakeholders on meaningful options for any changes to price controls to deal with the new normal. Currently many stakeholders who will have important insights are rightly focussed on the immediate financial, and

physical, health impacts on their organisations and the aviation industry more widely.

Regulatory framework and statutory duties

- A8 The existing price control arrangements in NERL's licence, and those envisaged in both our final decisions and the CMA's PFs, have a traffic risk sharing mechanism to address certain variations between forecast and actual traffic in a certain year ("year n"), where an adjustment to charges is made two years after the relevant year ("year n+2"). This reflects the requirements of the EU performance scheme.¹
- A9 These arrangements are designed to deal with variations in traffic of up to 10 per cent. We consider that the impact of Covid-19 is likely to be significantly greater and it is clear that using this mechanistic approach to adjust for the current collapse in traffic volumes is unlikely to take into account the full range of relevant factors and considerations in a way which is appropriate.
- A10 Where traffic variation exceeds 10 per cent – and/or the initial data, assumptions and rationales on which the targets were established are to a significant and lasting extent no longer valid – the EU framework² provides for the national supervisory authority (in the UK, this is the CAA) to review and assess whether it is appropriate to revise targets. We consider this is fully consistent with our Transport Act 2000 duties.
- A11 The present level of uncertainty is likely to persist for an unknown number of months. We consider, therefore, that trying to determine whether any and, if so, what changes to price control arrangements will be appropriate for future years, or what revenue correction, if any, should be applied for 2020 and beyond, would not be reasonable or practicable this calendar year. In these circumstances, our view is that the best way forward would involve the CMA putting in place backstop arrangements, which might reasonably be based around the price control revenue per service unit identified in the PFs, with the CAA then reviewing NERL's price controls in 2021.
- A12 In reviewing the price controls in 2021 we expect to be in a better position to determine what, if any, changes to arrangements would be appropriate for the new normal and any revenue correction that should be applied for 2020 and 2021, consistent with our Transport Act 2000 duties. As set out in our main response to the PFs,³ we consider that it is for NERL's management, its

¹ Article 27, Commission Implementing Regulation (EU) 2019/317

² Article 18, Commission Implementing Regulation (EU) 2019/317

³ Paragraph 2, [CAP 1910](#) Reference to the CMA of NERL RP3 price controls: CAA response to provisional findings [RP3 reference CAA document 035]