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Heathrow T5: For the want of a nail...

Heathrow Terminal 5 opened, as planned, in a blaze of publicity. Sadly, whilst there was publicity galore, that seems to be where the planning ended. Publicity there was, but not of the sort that had been planned on.

There are perhaps three things to say about T5 and its introduction to aviation operations: first that it is not all that interesting a terminal, secondly, what does the opening, and the unseemly blame game that followed, portend for the future of airport regulation in the UK? Finally, it is of course ironic that the clouds over the start of T5's operations should steal the headlines from the start of the EU-US open skies arrangements.

Notwithstanding all the marvellous gushing things that have been said about the building itself, it is very hard not to think of it as the last of the type, not the start of the new type of terminal. Think of it as T4 at Heathrow with a glass dependency problem. It is perhaps the best lit shopping centre in the world – same old things, flashy new surroundings. The public spaces are fine and light and roomy (mind you, one should bear in mind that not all services have been transferred to the terminal and 20% of those that have been transferred have been cancelled so that helps with the 'no crowding' sensation).

What the terminal shows is not the future of airports but the pinnacle of current thinking – on site baggage drop off and collection, for example. Given the issues with baggage, how much would BA have given, one wonders, for new thinking on that score. There is also a very clear admission that passengers will not get food on the aircraft, or that the food they get will not be worth eating. The terminal has a range of interesting food options (plus some standard offerings that appear to be unavoidable). BA seems to have given up on catering itself. In the new world, a full service airline will be one that has quality catering at the terminal. LCC passengers will have to be content with fast food outlets.

Once the problems became apparent – the early morning news reports about the shiny new terminal giving way before lunch to an unfolding PR disaster – it was only the State Visit to the UK by Mrs Sarkozy (oh, yes, and her husband, the President of France) that kept this story away from being the only news in the UK for three days – there was the unsightly scene of each of BA and BAA trying to blame each other for the problems.

When all is said and done, we suspect that the real issue might be the least poetic of all – lack of car parking space. Staff arrived to start work but could not find parking spaces, when they did they were a long way from the terminal itself and the security system was overloaded. Why was there too little parking space? Because as part of the long running saga that was the planning procedure for the terminal, local residents and environmental campaigners had protested against the building of a reasonably sized car park. The small staff car park was all that was ultimately allowed. Some of the staff that might have been able to resolve the inevitable day one issues could not get into position quickly enough, and the problems cascaded through the system from there.

For the want of a nail, as the old saying goes, the battle was lost.

In part because of the way in which the PR was handled, or mishandled, if you will (a gushing email arrived in frequent flyer email in-boxes proudly claiming that the new terminal meant that finally the new world had arrived: one could 'glide through the terminal, including baggage drop off and security', in ten minutes the email claimed – just as the news reports of cancellations and several hour delays started coming in. If you read this in a novel you would think it too far fetched to be believable) there are renewed calls to look at the regulation of BAA.

The Competition Commission is to release its 'emergent thinking' from the first round of hearings and deliberations in its inquiry into the airports in April (see our February Intelligence Reporter www.aviationadvocacy.aero for details). Already calls for the break up of BAA's holding of London's airports are growing. The influential weekly The Economist, for example, joined the chorus at the end of March. BA trying to blame BAA for the initial T5 disaster will only add fuel to that fire.

Other airlines have long complained that they seem to pay airport and aeronautical charges at UK airports only so that every 10 years BA can get a new terminal. They at least might take some consolation from the disastrous launch, and find comfort that their fee payments did not go towards burnishing BA's reputation. On the other hand, they might be well advised to remember the peril of hubris.

The problems with the launch also stole the headlines from the Commission, which released its own entry in the gushing email competition with a statement noting the start of the EU-US open skies arrangements. Airlines have been lining up to pay for slots to get into Heathrow. That was seen as clear evidence that the open skies proposals were on the right track. Some of the airlines must be wondering why at the moment.

More interesting, but less obvious, is the impact that this will have on the arrangements within Heathrow itself. BA moving out of T4, for example, allows other airlines to move in. The airlines are all looking at a major reorganisation. There have been rumblings about the way in which this is being done. Star Alliance carriers are to take over (some might say dominate) T3 for example. The risk of delay in BA consolidating all of its flights into T5 may also have to put these plans on ice. Again, there are likely to be harsh words spoken.

The Competition Commission's emergent thinking looks like it will have to be very nimble if it is to stay ahead of events.

Environment: Next year's election results

Someone once was said to have broken into the Kremlin and stole the following year's election results. The final resolution of the Aviation Environment Summit, to be held at the end of April in Geneva, is likewise now available on the black market. The analogy with the Kremlin is not all that far from the mark. To their enormous credit, and notwithstanding political reality, the airline industry worthies (IATA, ATUG, CANSO, the ACI - all the usual suspects) insist that they will continue to back ICAO as the source of environmental regulation. Furthermore, whilst supporting market based processes (such as emissions trading) in principle, the final resolution rejects the European ETS for

aviation. Only a global system, with global acceptance, will be good enough, the resolution pompously intones.

Hand up anyone who genuinely thinks that this will be seen by the world at large, and of course the environmental community, as anything other than a cynical attempt to defer, once again, aviation being part of the environment debate. It is hard to believe that anyone will be fooled by this.

The airline industry has so many good stories to tell on the environment debate: Airbus calculates, for example, that if the A380 drove through London it would not have to pay the congestion charge, so low are the emissions per passenger. Rolls Royce has a lovely photograph of an aircraft equipped with both new and 1980's technology engines. The difference in emissions is stark. One half of the aircraft spews smoke, the other is clear. But these arguments are not being allowed to get into the world at large, because aviation continues to be on the 'nasty person' side of the debate. Saying NO, forcefully and repeatedly will not make that change.

Furthermore, much of what the European airlines say has merit. There would be more support for the ETS scheme if the money raised went to appropriate research, rather than it being a tax. But the airlines do not seem to see that they cannot make those claims whilst being on the outer. In our opinion, the way forward is not to say NO again, but to welcome the European ETS as a good start for discussions. Then, from inside the tent, they can argue for improvements, global reach and directed funding, commitments to improve the political will to reform ATC and so forth.

In Europe, it seems increasingly clear that despite the airline protestations (as for the impact of which see above), the ETS package will reach an agreed common Council position under the Slovenian presidency. That will lead the way for a common parliamentary/Council position in the second half of this year under the French presidency.

Airlines and other parts of the aviation industry are gathering in Geneva in late April for their annual environment summit. They will call for global, ICAO-led market based solutions in their final resolution. The easy way is to get on the positive side of the debate now; the alternative is to be dragged into something put forward against their will that will ultimately look very similar anyway. Being right never wins beauty contests (and a quick look at the Aviation Advocacy website will show that we have no prospect of winning by more conventional means), but that does not stop the solution from being obvious (and inevitable).

Security Issues and the EU-US Summit

In February, the EU announced a raft of new security measures aimed at improving and strengthening Europe's security. As expected, the arrangements, which we reported in our February Intelligence Reporter, were passed by the European Parliament in mid March. The new rules set out a series of common security procedures, but also provide that the Member States can require additional security as they see fit, and that in doing so, they can also specify who will then pay for it. Remembering that the first rule in

aviation security is that 'more is better, as long as you pay for it' this should make for an interesting period. The common package of agreed measures includes the introduction of Sky Marshals, who we were assured would be 'specially selected and trained'. That is a relief. The reverse of that vacuous sentence would not bear thinking about.

At the same time as these new measures were agreed, there was anger that the US seemed to be playing divide and conquer by granting visa free entry to those European Member States that agreed with the US demands for even stricter measures, ahead of the Summit. The US seemed genuinely shocked that the EU could speak so forcefully and be so upset by the way that they had behaved. The Summit was acrimonious, and no real progress was made. The fig leaf at the end of the summit was that both sides had agreed to continue talking. That is never a good sign.

Cynical, but well placed observers noted at the time that the EU-US open skies pact was agreed that the clinching part of the argument was the US conceding that they would deal with the EU as a single entity. The EU craved that sort of acceptance. So with the next round of EU-US open skies talks starting in May, it seems risky on the part of the US now to move back to the old style of working with each Member State separately. Unless, of course, the US strategy is to divide and conquer and then play the united acceptance card when it needs to the most. Playing divide and conquer normally increases the value of the occasional concession to EU unity.

In the meantime, and buried under another mountain of luggage at T5, was the embarrassing concession that notwithstanding the installation of the equipment necessary to do so, the UK would not be recording the fingerprints of departing passengers, on legal grounds.

Is Michael O'Leary the dieu ex machina in the State Aid tragedy?

Last month we likened the Olympic Airways/Airline state aid saga to a Greek tragedy. This month, the next enthralling act was played out. Ryanair has gone to the European Court of Justice, protesting the state aid ruling against it at Charleroi, dating back to February 2004. You may recall that Charleroi was not allowed to cut a special deal with Ryanair to subsidise passenger handling charges. The case is the basis of all the further (and growing number of) state aid cases in the aviation industry. To not be held to be illegal state aid, the aid needed to be limited in time, digressive and transparent. The gods had spoken. And now that word is in doubt.

And then, remembering that those whom the gods make great they can also make small, Ryanair was back at the ECJ a week later, complaining that the new Dutch environment tax, or more particularly the exemption given to transfer passengers at Dutch airports, was in fact state aid. The argument being that given the disproportionate number of transfer passengers that KLM transfers through the Dutch airports, by exempting those flights the tax is actually attacking the point to point business model carriers over the hub and spoke carriers that happen to use Dutch airports (well one in particular).

If nothing else, the cases help to show that this is not a simple issue, that there are more ways to provide state aid than dreamed of in some philosophies (as Shakespeare so

nearly said), and that perhaps there is a need for a clear and open conversation about it. Don't, however, hold your breathe for that conversation taking place anytime soon.

Two interesting developments in passenger rights: 2-0 to the airlines

Legislators tend to introduce passenger rights legislation in the face of customer/voter demand that they do so. Generally, these are resisted by the airlines, which argue that they can be trusted to self regulate (at least up until the next crisis and demands for legislative intervention). Helping the airlines out tends to be the courts.

In the US, the courts have rigorously applied the doctrine of pre-emption against any state attempt to introduce legislation in an area that is both rightfully (under the constitution and the Federal Aviation Act) the purview of the Federal government, and for which the Federal government has decided that it will legislate to the exclusion of the state governments. In the case of airlines and passenger rights, that means that the Federal government (and the FAA) alone has the right to legislate, even if states continue to be entitled to legislate in the area of consumer rights generally. Consequently, the recent New York airline passenger bill was overturned by the US courts, on the grounds that states have no residual rights to protect their consumers in the portion of the aviation field covering carriers' 'rates, routes, or services.'

In Europe the situation is not as clear cut, and is further complicated by the language issues. This month Advocate General Sharpston (who appears to be getting all the aviation cases that come to the ECJ at the moment) delivered her opinion on an appeal by Emirates regarding the EU Denied Boarding Compensation rules. Emirates cancelled the return leg of a flight booked by a Herr Schenkel between Manila and Dusseldorf (via Dubai). Herr Schenkel claimed €600 as compensation.

The language of the DBC rules are clear, at least in most languages: the rules apply to departures from European airports and to European carriers irrespective of place of departure. In German, the language used more accurately mirrors that in the Montreal Convention on liability and refers not to departures but to 'flights,' which, in the liability arena, has always been held to refer to all parts of a complex itinerary. A-G Sharpston's opinion is clear: if the Parliament had meant to apply the rules to the overseas operations of non- EU carriers, it would have said so, clearly, and in all languages.