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The Interconnectedness of Things

Physicists forever strive to find the grand interconnected theory of just about everything, as a sort of Holy Grail. They have been smashing electrons together, investigating pieces of string and otherwise searching throughout the universe for years. Turns out they were looking in the wrong place.

Yes, the definitive proof of the interconnectedness of everything is right here in air transport. Of course it is. We have had hints before, of course: after all, there is only ever a break down in customer service delivery and responsiveness when something goes wrong.

It is more than a little arguable that ownership and control, economic stimulus packages, competition and State Aid are connected too. It would certainly seem that they are. This is discussed below.

But this month, proof positive was unearthed: the Single European Sky Committee – a European Commission-convened, Eurocontrol-lead group of worthies – took it upon themselves to try to find more and better ways to improve the flow of air transport around Europe. A worthy goal, to be sure.

The group is working on what is fetchingly called the European Traffic Flow Management initiative (ETFM). This is mandated in the Single European Sky legislative package. So far, so good.

One of the issues that it is looking at is the mis-allocation of resources and the inefficiencies that arise from aircraft not arriving at the time set out in its filed flight plan. The committee noted that in such a situation, at a slot constrained airport, by way of example, a slot goes to waste. Secondly, if an aircraft files a flight plan to a slot constrained airport without actually having a slot, perhaps on the hope that it can use one of these otherwise going to waste slots, it is clogging the system.

The ETFM proposal therefore suggests a couple of solutions to this problem. First, if a flight plan is filed by an operator that does not have an appropriate slot the flight plan will be rejected. Secondly, if an airline does not use the slot that it has, at the time that it has it, it is lost. Forever. This will be the case even if the slot is not used because of being rerouted in flight (for weather reasons for example) or being held by air traffic control, or for any other reason.

The interconnectedness of all of this is clear. A simple plan to make air traffic management better and less wasteful attacks the balance sheet of airlines struggling to make a profit in these troubled times. Airports, having lobbied hard to be more involved in determining how slots are allocated are now standing back. ANSPs are suddenly struck by the awesome power at their disposal. It might at least help balance power between them and the airlines. Who wants to complain too hard when a simple re-vectoring might have such far-reaching consequences?

What this comes down to is who, actually, owns slots – one of the elephants in the room of air transport. The latest ETFM proposal may inadvertently affect that debate. After all, how can a slot be of value if it is at risk of being wiped out in an instant by an air

traffic controller? If that is the case, they should not be considered to be assets. They cannot be on the balance sheet, or in the thinking of airlines looking to acquire other airlines if only for their slot cache (Lufthansa's moves on bmi spring to mind).

The airports feel that they are entitled to some recompense for the work that they do in creating the infrastructure that airlines then use and occasionally buy and sell with huge windfall gains. So do the ANSPs. They also feel that they should have more involvement in the way slots are allocated and used. They have been lobbying the European Commission hard to get more involved. And now they are.

At least this proposal would take away much, if not all, of the windfall gain component of the current slot regime. Devaluing slots at least levels the playing field.

So, see how interconnected everything is? Make a move to increase efficiency and operational integrity and look what happens. ANSPs feel that their role is valued, and with a level playing field their contribution to slot values are also recognised as equal to that of anyone else. Airports have the involvement that they wanted, but might have obtained it in such a way that might bring down some airlines.

What a house of cards we work in. If this was the banking industry we would be saying things about it being a Ponzi scheme.

Perhaps what is required is a mature, grown up debate about the way in which the industry as a whole is regulated. A debate that recognises all of the interested parties, and treats them as equals. Don't hold your breathe for that any time soon.

The Stimulus Package – OK sure, but what is in it for me?

If it is true that every cloud has a silver lining, it stands to reason that every silver lining must have a cloud. The global financial crisis is a storm of the very highest order, and it is generating clouds that are redefining black; but there was at least a hope that some good would come of it for aviation.

At first, it was thought that the obvious area for change would be restrictions on foreign ownership and control. These restrictions on airlines have hung over from 1944, yet proved remarkably resilient. IATA has been pushing for change by convening a group of like minded States to discuss what the brave new normal world might look like, privatising the rule making process into the bargain.

IATA hoped that the crisis would focus minds, making governments realise that airlines need to look in all possible directions for investment sources. This is the silver lining theory at work. It was hoped that the regular meeting of the EU-US open skies committee this month might provide the venue. The director general of IATA even went on a lobbying campaign to make the point. He went to the USA to tell America that only foreigners could save their industry.

Instead, remarkably, what we seem to be seeing is the first sign of the dark cloud scenario: decisions to raise the draw-bridge and assert protectionist polices. The first of these was the 'Buy America' clause in the USA stimulus package. When there is

nothing to fear but fear itself, it seems that there are always clowns happy to play the roles of that famous double act Smoot and Hawley. Since then, more aviation specific proposals have also been put on the table.

At the same time, where there is a stimulus package there is an opportunity. Stimulus packages are a gravy train, and one labelled so clearly to be about infrastructure is a gravy train the industry should be on. Which thus begs the question, why then was there so little for aviation in the stimulus package?

The US Stimulus Package – a brief analysis

A detailed examination of the stimulus package shows that there are a number of helpful initiatives tucked away in the thousand or so pages. There is a bonus 50% depreciation on new aircraft purchases, as well as an increase to certain expensing provisions for qualified business aircraft purchases. One assumes that car industry executives are somehow exempt from this, but at least for the remainder of the executive jet sector, that cannot hurt.

In addition, there was \$1 billion for the procurement and installation of checked baggage explosives detection systems, \$200 million for improvements to power systems, air route traffic control centres, air traffic control towers, terminal radar approach control facilities, and navigation and landing equipment and \$1.1 billion for the procurement, installation and commissioning of runway incursion prevention devices and systems at airports.

But so what? There are two ways to look at these amounts: a good start, or an insult to an industry that generates so much wealth for the world economic system. In the context of a very aviation sounding \$787 billion package, that is not a huge percentage of the total.

Meanwhile in Europe...

At the same time in Europe, Commissioner Tajani is reportedly working day and night on a paper about relief measures for the whole transport sector. This paper is now going through inter-services consultation. The aim is that a Commission Communication will be published in March. It may even include legislative proposals, for adoption at the end of May, for subsequent submission to the Council.

This is a remarkably fast timetable, but it is not only a sense of the urgency of the situation that is driving it: the Commissioners', and the Parliament's, terms end in July, so it is now or never.

The AEA in turn is adding its bit to the package. It is asking that capacity reductions during the next two IATA seasons (summer 2009 and winter 2009/2010) not to be taken into account for the allocation of slots during the next corresponding season. An open question is whether this should also be requested for this winter 2008/2009.

In other words, the legacy airlines want a suspension of the 80/20 'use it or lose it' rule. Putting that another way: please spend a lot of money on our industry, but do not require us to go through any sort of Darwinian process to ensure that only the fit survive these challenges. And for God's sake, do not let our competitors in. On the bicentennial of his birth, almost to the day, Darwin must be spinning in his grave.

Funding of Air Traffic Management

What is not in the US Stimulus Package, or as far as we can understand, in the Tajini paper, is a clear way forward to fund the future system needs of air traffic management. In both the US and in Europe there are huge infrastructure up-grade programmes on foot. They will cost significant amounts of money.

In the US funding has been by way of the infamous FAA reauthorisation process, and that, in turn, is a remarkably political process. Congress, lobbied by all sorts of interest groups, is virtually incapable of action. No Congressman will approve a change to the radar system, for example, if it means a radar manufacturer in his district being closed down. That the technology is out of date is not typically part of the debate.

Nor will any Congress member want to be seen to be voting to increase the per passenger fees that fund the FAA generally. Airlines want business aviation to pay more (on the grounds that a blip is a blip on a radar screen); business aviation wants to keep the fee on a per passenger basis on the grounds that a passenger is a passenger. That a comparison of the two parts of the industry shows that one flies a lot of aircraft but not many passengers and that the other flies few aircraft (proportionally) but many more passengers is clearly beside the point.

This has been clogging the passage of vital funding legislation that will allow long range investments in NextGen for two years now. If you are asked at a cocktail party to summarise the debate, just say that everyone is happy for someone else to fund the system. This has been a political football for a very long time, and the stimulus package only confuses the situation further.

It seems incredible that legislators can have so much involvement in the basic day-to-day management of the process. Not for nothing did CANSO's Alexander ter Kuile argue last year that the US air traffic management system was as outdated as a 1959 Chevrolet. And also not for nothing was the reaction of the American citizens in his audience that nothing, nothing, was going to change the situation.

In Europe, industry has decided to take matters into their own hands. No, not by dipping into their own wallets, heaven forbid; but to sponsor, write and now promote at all opportunities a paper that outlines the funding possibilities for the Single European Sky (SES).

As industry sees it, there are three options: using en-route charges; funding this through the European Development Bank; or obtaining priority access to ear-marked funds under the Transport Network programme (TEN-T). Option three was clearly the choice of the industry.

Security funding too

At the same time, February also saw the publication of a long promised report on the funding of European aviation security. This is now looking so passé. Funding of security comes from at least three crises ago.

The rules are clear: the funding of airport and other aviation security must be transparent, not discriminatory and not used in such a way as to distort the competitive environment.

After a review of the current European situation, the Commission has confirmed (i) that security is a Member state responsibility, (ii) that user-pays is an appropriate funding mechanism, provided that the security charge is clearly marked on the ticket face, and (iii) that the Commission will establish baseline quality standards. That will then allow the application of one-stop security, so that transit passengers do not get screened twice (or more).

That can only mean one thing. There will almost certainly be still more legislation. The Commission believes new rules are required to identify potential discriminatory security charges, taxes, or fees. Bodies levying aviation security charges or taxes should regularly provide operators with information on how these charges or taxes were based.

Good news for the lawyers, anyway.

Bye American (oh, and bye United and bye Delta, and bye Continental...)

As we saw with the 'Buy American' provision in President Obama's stimulus bill, it is getting increasingly difficult to rule out protectionist provisions sneaking into all the frantic work governments around the world are doing. It seems that the general rule is that the more vocal a political leader is in praising global trade, the sooner a protectionist provision will hove into view.

As mentioned above, IATA had hoped that its modest proposals to find a way to work around the foreign ownership restrictions might be a good start to find funds for the industry at this critical time. It is focused, proportionate and does not force large scale change. Those hopes look somewhat forlorn at the moment, as the crisis deepens. That is a real pity.

Dismantling the World Trade Organisation will take effort, and someone, somewhere, is surely bound to notice. Probably. Not doing anything is always easy. It is doing things that take courage.

Not doing anything about liberalising airline ownership and control is also easy. Furthermore, doing something is bound to lead to screams about the loss of local jobs.

Rep Oberstar, a long time observer of air transport, with a well known international viewpoint, but a seat in Congress from a strongly unionised electorate, recently introduced a draft bill into the House of Representatives demanding that no further anti-trust immunity is granted to applications for alliances and off-shore mergers, and that all existing immunities not be renewed. Airlines seeking anti-trust immunity is the most common means of airlines (both within alliances and outside of them) to be able to achieve some of the benefits of mergers, notwithstanding the traditional restrictions against off-shore ownership of airlines.

He has followed that up with a bill to further tighten the ownership and control restrictions in US airlines. To rub salt into the wound, or perhaps to make his point more poignant, he did so by adding this to the FAA reauthorisation bill.

What is clear is that he is not alone in the USA in fearing foreigners. Alaskan Airways' General Counsel Keith Loveless (readers of last month's Aviation Intelligence Reporter will know to interpret that name in the manner intended) has petitioned the Department of Transport to again review Virgin America's nationality on the basis of news that some of their initial investors might divest. Not have, but might, divest.

Adding to the difficulty of predicting the reaction to petitions like Alaskan Airways' is the vacuum in aviation regulatory leadership. The Obama Administration is still filling out its ranks. The Senate must also confirm the nominees. In the meantime, even previous proposals are back on hold awaiting the arrival of the new appointees.

The possibility that the US might retreat on foreign ownership relaxation is somewhat curious, given that other national governments are falling over themselves to increase the amount of foreign investment, and in particular foreign airline investment, they will allow in their airlines. India has done so; Canada has done so; Australia is proposing to do so. This is tinkering at the edges somewhat, increasing the amount of foreign investment, without removing the restriction altogether, which is the IATA position. .

What is happening is that the debate about ownership and control is taking on a life of its own, but not in the way that IATA had hoped. It is morphing into a debate about airline competition, and whether it is good or bad to have competition only between a select few (legacy) carriers.

As we can see from the AEA proposal to Commissioner Tajini on the slot regulation, that is what the select few legacy carriers would prefer. The counter argument is that it is only when there are a number of smaller carriers entering the market that consumers are likely to win. Watch this space.

You say stimulus package; they say State aid

There is only a very fine line between governments giving their economy a bit of boost and what the Commission is likely to find to be State aid. A cheque to a national airline has been held, time and time again, to be State aid – just ask Olympic and Alitalia. But time is the operative word here – by the time the European Court of Justice has ruled against you, the election is over.

And that is merely the most egregious of types of State aid. Better forms can be found up at the non-cash incentive end of the street. In the UK, the prime minister nodded through a merger between two banks that is very unlikely to have survived a competition authority review.

Arguably, ratifying the Cape Town Convention is a means for a country to bolster their airlines, by reducing the cost of credit on the purchase of imported aircraft. In the case of the USA, Europe, Canada and Brazil, it can help the airframe manufacturers. Mind you, that is of little benefit to the airlines in those countries.

The benefit to the manufacturer is through the export development finance mechanism (such as the ExIm Bank in the US). That in turn is only available to foreign airlines – so we have a situation of the airframe and engine manufacturers being able to sell more cheaply, using national funds, but only to foreign competitor airlines.

Determining whether there has been State aid at airports it is a little harder to be sure – partially because the court cases are not clear. One of the rules of untangling State aid cases in aviation is to understand that if the case involves RyanAir, then at first instance, they will lose (see our Aviation Intelligence Reporter of June 2008). Sometimes, RyanAir gets to win on appeal, as they did this month in Charles Roi in Belgium. But not always.

This is important, as there are currently not less than eight State aid cases involving airports in the pipeline (Alghero, Aarhus, Bratislava, Frankfurt Hahn, Hamburg Lubeck, Pau, Berlin Schonefeld and Tampere). The rules on State aid are clear. Government actors cannot do what a commercial entity would not otherwise do. Like, erm, creating employment by proposing that a runway apron be enlarged perhaps.

Neelie Kroes, the European Competition Commissioner, came out of the blocks early, saying that she and her team would not be making any exceptions to the rules just because there happened to be a global financial crisis under way – but she has not been seen or heard from now for several months. In the meantime, we have had airlines being nationalised, airports being given runways and open debates about funding sources.

Elvis Costello was right: What is so funny about peace, love and understanding?

Many years ago, the English singer Elvis Costello had a cult hit with a song called 'What's so funny about peace, love and understanding?' A good question, you might agree.

CANSO's Secretary General has recently been circulating a proposal for the establishment of a top level group for the air transport industry, bringing together airlines, airports, air navigation service providers and others, so that the industry can at least speak with a common voice on issues of importance. The Aviation Industry Council was to be its working title.

This proposal has been rejected out of hand by one of the industry associations, on the grounds that other possible members of such a group are 'not sufficiently mature'. Right. That was a fairly mature position to take, don't you think?

Answers on a postcard please as to which industry association you think that might have been.

Aviation, climate change and Copenhagen – a first look at the runners and riders

As we briefly mentioned in last month's Aviation Intelligence Reporter, the European Commission has now released a communication setting out its position ahead of the

Copenhagen conference to negotiate a successor to the Kyoto protocol. Air transport gets a special mention: the Commission makes clear that it will push hard to end the special exclusion that air transport currently enjoys.

What does this mean, and why does it matter? Two very fine questions. And not just for the student of the arcane. This is starting to become very real.

This month, the Commission released a first draft of the list of carriers and the certifying agency to which that carrier would need to report. Errors and omissions must be finalised by the end of March. Monitoring plans are due to be submitted by the end of August this year. The first report, on an RTK basis, is due early next year.

Meanwhile in Copenhagen, the world will be trying to move to the new protocol, currently known as Kyoto2. ICAO will be there, representing the interests of air transport. They will have a hard time.

The European Commission has noted in its communication that it proposes that the Copenhagen meeting set the carbon emission reduction limits for aviation. Should ICAO not come up with a plan for meeting those targets by 2010 (*i.e.*, within 12 months), under the Commission proposal, emissions from aviation will come into national targets. That, the communication dryly notes, should focus the minds of the developed world.

In other words, ICAO, working through the GIACC process (Group on International Aviation and Climate Change) will have 12 months to produce a clear concrete plan for emission reduction. The targets the Europeans are looking for are emissions below 2005 levels by 2020 and below 1995 levels by 2050. Given that air transport currently expects a doubling of flying by 2050, that is likely to be a big ask.

Our understanding of the work that GIACC is currently doing is to look at what has been achieved and what might be achieved by the use of bio-fuels. In order to take promises of future improvement (which is what any consideration of the possible widespread use of bio-fuels currently is) and turn them into binding obligations, which is what the European Commission wants from Copenhagen, the Communication notes that economic measures will be called for – in other words, an emission trading scheme, such as, let me think, why here is one right here! What about ours? they ask. (Well not in so many words, but between the lines.)

It is not strictly true that under Kyoto1, air transport was excluded. Rather, at Article 2 ICAO was given a particular remit to address air transport. In the 10 years since Kyoto, it is clear that this has also meant that aviation has been saddled with certain constraints.

First, ICAO's geographic and policy ambit must reflect its membership of 190 States. Kyoto has 39 States that have ratified Annex I (which calls for action) and 181 ratifications in total. It would be difficult to apply the Kyoto Annex I/non-Annex I industrialised/other country concept (known as 'differentiated by common responsibilities') in the equality of treatment philosophy of the Chicago Convention.

Perhaps even more importantly and certainly more importantly going forward, being outside the mainstream of Kyoto means that aviation is unable to benefit from application of the Kyoto provisions regarding Joint Implementation, the Clean Development Mechanism and emissions trading.

So, for ICAO the work in Copenhagen seems clear: they need to either modify Article 2 of Kyoto¹ to allow them to create an aviation only system (that includes the features of the mainstream system), or remove the special treatment provided by Article 2.

IATA and other associations have made clear that they prefer the first option. Unfortunately for them, their members are increasingly realising that they do not prefer this option. BA, AF/KLM, Cathay and Virgin Atlantic, along with BAA, this month joined together to call for aviation to be included in Kyoto².

There are compelling reasons for this. It is difficult to justify treating aviation outside the remainder of the tourism and trade areas. Air transport operations should also be treated analogously with alternative transport modes.

Whether IATA likes it or not, economic mitigation measures are coming into play for an increasing number of countries. The least offensive measure for the industry is a well-designed emissions trading scheme. With the application of emissions trading, aviation would not be singled out for special treatment – defusing claims that air transport is a bunch of refusniks – but would nevertheless be enabled to continue to grow.

So, what role would that leave for ICAO? Maybe it is to bring those States that have not ratified Annex 1 of Kyoto into line with the aviation aspects of a global system. They can also provide technical support and serve as a focus of research and development efforts. The worst case would be for ICAO to allocate permits.

But for all that, the most likely scenario in the real world is for the various regional and local ETS to develop reciprocal linkages. That is likely, over time, to include aviation. The job of work at hand is to make sure that they do so in a non-duplicative and non-market distorting manner.

That will call for a change of focus, so that is unlikely. Instead, perhaps the most likely outcome from Copenhagen is that we get the same outcome in Kyoto² as we had in Kyoto¹, with aviation outside the formal process, and the European States dissent. On reflection, that is not a good prognosis.

Olympic Airlines – A Marxian interpretation

Karl Marx once said that history repeats itself, first as tragedy, then as farce. Did he have Olympic Airlines in mind when he wrote that? Hard to believe that he didn't.

The Greeks invented theatre after all, so it should come as no surprise that the events in Athens this month carry a very strong smell of being stage-managed. After a long and laborious sale process, best and final bids were submitted for the airline itself and two ancillary businesses: ground handling and an MRO. This was done to

comply with the terms of a Commission decision as part of a settlement of a long running dispute about State aid to the airline formally known as Olympic Airways.

Finally, bidders were told, all of this process would be above board and under strict Commission supervision. A big law firm was retained to observe the process and very posh merchant bankers brought in to lead the disposal process. Cynics might have guessed that a fancy law firm and a posh merchant bank were never going to be enough for the current European champions of delay, subterfuge and misinterpretation of European rulings, the Greeks.

And so it proved. The final bids came in, the envelope opened and all bids rejected, on the basis that they were too small. There had been a reserve price no-one had been told about. Now everyone knew it, because the announcement rejecting the bids made it clear.

Within 24 hours a large Greek bank stepped in, offering one Euro more than the minimum, and also offering to resell the companies to the Greek government anytime they wanted to buy it back. Obviously, it would have been better if it had been one drachma higher – because for all intents and purposes, that was what it was. But as Aristotle so very nearly said, needs must.

During our flight this evening, we will be serving an allergen laden meal...

One for the 'unintended consequences' file: the Commission recently announced an initiative aimed at improving public health transparency in relation to food. They proposed requiring the publication of information concerning any food additives and possible allergen risks when food is sold. When opened food is served, such as in aircraft, an announcement of possible allergens needs to be made. In several languages, presumably.

The number of amendments to this draft legislation has been so long that the air transport industry's concerns never seem able to make it to the top of the agenda. The bill is now moving away from working group to full committee (at the end of March) and to plenary in early May.

Speak up now, or for ever be bombarded with announcements about what harm airline food will do to you. Not an appetising prospect.

For further advice or information on any of these issues please do not hesitate to contact us at info@aviationadvocacy.areo

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