

Aviation Intelligence Reporter November 08

Setting free the Agenda for Freedom

The Environment and Aviation – a tale of competing realities

Single European Sky – did anyone think to tell the European States?

Airports take more bold steps on the road to normality

Setting free the Agenda for Freedom

Fifteen of the world's more liberal thinking governments met in Istanbul in late October, at the invitation of IATA, to discuss the liberalisation of air transport. In particular they addressed the ownership and control rules that limit and restrain such much of air transport. It had an unhelpful name, but a good intention. And judging from the comments made by the participants as they left Istanbul, the meeting had as good an outcome as might be expected.

That is good news for airlines, and IATA is to be commended. You will remember that IATA tabled for the meeting a proposal that the ownership and control provisions in the various bi-lateral agreements be amended by way of reciprocal, conditional declarations signed by like minded States, whereby signatories explicitly waive all traffic limitations, and give a mutual right of establishment to airlines of other signatory States prepared to also sign such a reciprocal declaration.

According to the official statement there were three outcomes, following what was described as a 'very frank and open discussion'. (In some circles, that is a way of saying that whilst punches were thrown, no-one was actually killed. If there had been a fatality, it would have been a 'full and frank exchange', but somehow, it is not likely that is what was meant). First, the group agreed to meet again in February 2009 with a view 'to take steps to turn the discussion into action'. That sentence is not really going to stand up to deconstruction, but in a spirit of goodwill, we will let it go untouched. Secondly, IATA is to develop a multi-lateral statement 'that would be a powerful tool expressing the common thinking and approach of the group'.

Finally, the group 'agreed to spread best practices in liberalisation by making more openly available to all states the most liberal agreements that are being negotiated'. How any language from an air services agreement can be an example of best practices in liberalisation is open to question. Presumably, this actually means best practice in aviation liberalisation; not the highest hurdle to overcome known to man.

So, apart from some very questionable grammar and drafting, was anything achieved? The answer to that has got to be yes. Simply having the meeting was of itself a major step forward. It is worth reflecting on this point for a moment. If nothing else, it is evidence of the change that is taking place in the relationship between the regulators and the regulated (both in aviation and more generally). It is hard to conceive of an industry body in effect convening a diplomatic conference (to use what is increasingly out-moded language) even a decade ago. What has happened in that time, certainly in air transport, and in other areas too, has been a maturation of the relationship of regulator and regulated. At one end, that can be manifest by things such as Public-Private partnerships; at the other end, the outsourcing of regulatory control and oversight.

Air transport has had a range of these experiences. The amendments IATA were able to drive through the old Warsaw liability regime was an early example. Convening the diplomatic conference was nominally a job for ICAO, but it would not have happened without IATA. The Cape Town Convention is another example of that.

But things have moved on recently from those early examples. IATA now takes a major role in air safety with the IOSA audits (which are now being reviewed by regulators, so as to avoid needing to audit the airlines themselves).

As a result of the financial crisis, it may be that industry will need to find an accommodation for increased regulatory oversight, but no-one is suggesting that there be no role for industry in its regulation. The challenge for IATA (and for others) is not to be swept up in the backlash, and to cement in place the role that it is now playing.

Timing the meeting so that the issues of the adequacy of the capitalisation of airlines and access to other funds were being discussed, just as the very worst of the financial crisis was raging outside, was inspirational, but presumably unplanned. But there was no doubt that it was focusing the minds of the delegates. Which then leads to what was probably the most significant outcome of the meeting; arguably IATA's reciprocal waiver proposal was going to be too radical – not in content, after all, a close look at the agreements being signed at the moment will show that it is being done now, quietly, on a case by case basis – and in its place, the multilateral policy statement will, in effect, set out what each State is doing and is ready to do, without binding them. That is a significant step forward.

So, as the official statement says, IATA has to prepare for a meeting in February to take steps to turn discussion into action.

The Environment and Aviation – a tale of competing realities

On Friday of last week, the Council of Ministers in Europe decided to accept, in its entirety, the proposal supported by 95% of the European Parliamentarians to include aviation in the next round of the European Emission Trading Scheme (ETS). A two year campaign has reached a significant milestone. To paraphrase George Bernard Shaw, having established the facts, we must now negotiate a price. And that is likely to prove very difficult.

When airlines and European environment regulators sit in the same room they look for all the world like they are performing some sort of obscure piece of theatre of the absurd; one written originally in a now lost, obscure and never more than little used language, translated by means of a series of dictionaries (obscure language to maybe Hungarian, from that to Japanese perhaps, from there to German and finally into English; that sort of thing). For an outside observer, and for the actors themselves, it is extraordinarily difficult to try make sense of all this.

But in fact, the issue is not the language, it is not the translation: it is reality, and what that might really mean. Perceived reality, if you wish. Reality is a tricky thing, because it is rather hard to pin down, and no-one else can possibly share the same reality as you anyway.

To try to get one's arms around where the environment issue is for aviation in Europe today, it is necessary to address a number of realities, or perhaps pluralities. On each plane the airlines and the regulators react to each other differently, in relation to the way

that each of them sees the circumstances. That they can, as between these various planes, support completely contradictory positions is irrelevant, because each of these realities must be treated in isolation. Not a lot of what Prime Minister Blair liked to call 'joined up thinking' there.

And that seems to be the big problem. The thinking is not joined up, it is tangled up.

Due to the complexity of these issues, this article is longer than most – so feel free to break in the middle for a coffee or a strong drink. To try to untangle the threads, it is instructive to look at a number of them in isolation. Only then can they be put back in some sort of order. When you do, it is not a pretty picture, particularly for the airlines.

In fact, it is no wonder that the industry is trying hard to distort the picture. Soft focus is called for – actually, it might be better to smear some Vaseline on the lens. It might be better still to use a jar of Vaseline as the lens. It is not a totally rosy picture for the environmental regulators either, for that matter.

[Crisis, what crisis?](#)

If you ask any politician, global warming is the crisis for this decade. The current economic difficulties, whilst uncomfortable, are little more than what was to be expected with the bursting of the bubbles that had allowed to grow because of a lack of regulation. From their perspective, the end of un-regulated rampant capitalism will only sort itself out with regulatory solutions. It is not only the bankruptcy lawyers that will win out of the recession; go long on regulator stocks.

For the airlines, the current crisis is severe and seemingly endless. Passengers are disappearing, airlines are disappearing and there is not even the prospect of an on-coming train to at least lighten the tunnel.

There can be no denying that the situation is dire. But from the regulator's perspective (and particularly the environmental regulators), the economic crisis is no more than this year's excuse to cry wolf. Last year the industry faced the worst crisis of its existence because of oil prices, the year before that it was the Gulf War, before that SARS, and before that, and before that – and don't even mention September 11.

Environmental regulators are sure of the urgency of the problems that the planet faces and they have no doubt how they would rank global warming and global economic melt-down. They don't deny the latter, but will not let it stand in the way of addressing the former. With commendable focus, pushed in part by environmental activists, but also by their polling of their constituents and such famous panic-ers as Sir Nicholas Stern, they are determined to stay on message.

Furthermore, the European regulators see the ETS (and perhaps particularly in the aviation sector) as a means of leading world opinion, and indeed shaping world opinion. Heady stuff indeed.

Certainly in Europe, but also in other parts of the world, the message is that these issues need to be addressed as a matter of urgency, in ways that represent a change from the past. It is starting to look a little like the US Presidential election. The serious,

committed environmental ministers and ministries looking and sounding statesman-like and assured, insisting on change, with a plan, quietly and assuredly put forward (despite the screams of the ideologues that want more fire and brimstone) on the one hand, versus airlines determined to not repudiate the past, but looking increasingly unable to produce policies that are convincing. Their strategy therefore is to play the man, attacking every proposal because of its source, not its content, and calling on the faith of their fathers, in the form of ICAO.

Indeed, at the risk of pushing this analogy too far, ICAO is suddenly the one true path, according to States that would normally be demanding reviews of ICAO and its processes. We might be watching a fundamentalist revival here. Unless, of course, calls to ICAO are nothing more than a cynical attempt to 'energise the base'.

It is not that the airlines have not had a strategy in this debate: they have got out the traditional airline strategy for matters such as this – a three pronged strategy: deny; reject; complain. It is just that the good old three prong strategy is looking like it is not fit for purpose this time.

Subject matter experts, but which subject?

One of the reasons why the traditional arguments are not making headway is that airlines suddenly have to deal with a new set of regulators, speaking a new set of jargon. This is very disconcerting.

The environmental regulators are a different breed. They are subject matter experts without question, but it is a different subject. In their role, they deal with various industry sectors at the same time. That gives them some distance from the particularities of the details of each sector, and a certain cynicism, when faced with each sector spending several months explaining why they are so very different, oh yes, and special, when compared to all other industry sectors. Sometimes that cynicism comes across as a certain smugness, or even defensiveness, which also does nothing to help relations.

It is important to remember that the constituent base for the environmental regulators are the greens and other radicals, so the regulators feel that in denying their base any of their demands, but listening to reasonable arguments that an industry sector brings forward, they are taking a risk, and doing that industry a favour. Furthermore, they are not in a position to do the sort of trading of industry-specific points that each industry brings forward. They do not appreciate the issues surrounding these suggestions. The one true religion for them is an ETS scheme, and they are as frustrated at you for not understanding the intricacies of the ETS scheme, as you are for their not understanding the details of your industry proposal.

In the airline case, the AEA, IATA and all the other industry bodies have pointed out repeatedly that by simply making the Single European Skies (SES) initiative a reality, emissions will reduce by more than the targets the ETS sets out. It's a good argument, and a strong point. Or in other contexts it would be. But here, this falls on deaf ears.

For a start, it is not understood; secondly, making the SES a reality is outside the mandate of DG Environment; and thirdly, DG Environment is interested in reductions in emission – how you choose to do it is entirely an issue for you. The means that they

have, indeed the only means that they have, to force those reductions into place is through an ETS, so to argue there is a better solution, or a neater solution, or a cheaper solution is like suggesting to airlines that they might like to join an ETS as a means of reducing carbon emissions. It is to miss the point. What we are watching is a dialogue of the deaf; a master class in talking past, not to.

And that creates a further disconnect in this debate. It also turns, very quickly, into a nasty sense of mistrust.

The need to make one size fit all

The doctrinaire determination of DG Environment to force all industry sectors into a one size fits all ETS scheme is not without problems either. On this point the airlines should be supported. What is being proposed could only be dreamt up by a bureaucrat, on a vendetta. And possibly on mind altering drugs.

But by the time the details of how the system might work are being discussed, the lack of trust and the breakdown in relations mean that it is difficult to make real progress or industry specific improvements in the ETS. DG Environment is not helping, working with unshakable faith that they can make the scheme work for airlines the way it does for cement manufacturers and steel mills. No, aviation is not special, but it does have certain specificities that should be recognised. The Commission admits that the airlines are the first 'mobile source' of emitter they have had to deal with, but that will not stop them.

Part of the problem is that the easy solution – to record the amount of fuel purchased and then multiply that by a generally accepted co-efficient to translate fuel into CO₂ emitted – might be held to be a tax. And a tax this cannot be – first because for the Commission to introduce a tax it needs unanimity of all 27 Member States, and secondly, because for intra-European, but nevertheless international flights, this would be a breach of the Chicago Convention.

In their defence, DG Environment notes that it does not want to necessarily introduce a tax; it wants to use the ETS as a means of driving down emissions. If you can reduce emissions enough, one would not need to purchase certificates at all. But, say the airlines, we would then need to reduce emissions by more than 15% to get within the free allocation of certificates. And, there are already moves afoot to require airlines to purchase all of their emissions by 2020. That is not decided at this stage, but is certainly being mooted.

Indeed, and perhaps related to the lack of trust point above, one current proposed plan would see the airlines go to 100% auctioning faster than the rest of industry. There is no doubt, that would change the dynamics of the ETS scheme altogether. It would also make it impossible to try to call it anything other than a tax.

As an aside, there is an interesting opportunity here for airports (and to a lesser extent ANSPs) that can offer certificates that they have earned from reducing their carbon as an incentive to airlines to use their services. Because if airlines have to reduce their carbon emissions to qualify for free certificates, or need to find low cost certificates to meet their obligations, expect that there will be serious questions put to the supply chain.

Monitoring, reporting and verification

Whether or not the current scheme, with its 15% auctioning, is a tax, there can be no doubt that the monitoring, reporting and verification (MRV) requirements will impose a huge compliance burden on airlines. It is also so complicated that after a day of explanation on the proposals, it is impossible to succinctly describe what is to be required. Again, the airlines are in the right here. Making this part of ETS the same as it would be for heavy industry in the goods sector is meaningless.

As it is, there are entire sections of the airline industry that are not catered for in this proposal. Business aviation, cargo carriers and charter flight operators are not in a position to predict future flying on the basis of previous production (one of the fundamentals to be entitled to apply for an allocation of the 'free' certificates). The interests of these operators have been ignored.

Certainly for non-European airlines, the temptation to do nothing and see if anyone does anything in response must be pretty high. What are the EC going to do: scramble the jets? The do nothing strategy might also be tempting to some European CEOs but the risk of bad press ('XYZ refuses to share in fight against global warming') might put most of them off.

The one thing that is certain is that airlines not prepared to test the above theory need to start preparing now, if they want to qualify for free certificates. The first period in which they need to take positive steps is by mid 2009, which is just around the corner. That kick starts the process of registering with the appropriate national regulatory authority, and then ultimately the independent verifiers and so forth.

The final details of the MRV scheme are in fact still being finalised. DG Environment held a very bad tempered and terse stakeholders meeting towards the end of the month, to gather industry comments on a consultation document currently open for comment (but only for about a further week) on various aspects of the proposed MRV scheme. There are a number of flaws immediately apparent, including that wet-lease aircraft do not seem to have been considered. A link to the consultation is here:
http://ec.europa.eu/environment/climat/aviation_en.htm

Litigation?

And it goes without saying that the sound of lawyers warming up their litigation equipment can be heard in the background. The ATA (the American carriers' association) has already assured anyone who will listen that they will be suing. The Commission and the Parliament go out of their way to say that they have significant, robust, advice on the legal issues. There is an interesting continuum that will need to be addressed in that assessment: European carriers in Europe; European carriers over the high seas; European carriers over third countries; third country carriers over their own country; third country carriers over third countries; third country carriers over the high seas; and finally, third country carriers over Europe.

Other questions, such as where such a lawsuit would be filed are yet to be resolved either. The obvious choices are pursuant to the Chicago Convention, or at the International Court of Justice. So don't expect a speedy resolution. Time that is moved by little fidget wheels is not their time...

Equivalent arrangements, ICAO, extra-territoriality

One of the features of the EU ETS is that there is an open attempt in its language to allow other States to join, or to at least exempt from this scheme carriers subject to 'equivalent' schemes in their home jurisdiction. To date, this evangelising has fallen on deaf ears. The Commission notes that it has done what it has done to date because nothing else seems to be happening. It was only after they tried to introduce their scheme at the last ICAO Assembly that ICAO started to address the issue at all – 10 years after ICAO had argued for the mandate in relation to air transport in Kyoto, when the Kyoto protocol was agreed.

The ICAO Council (not the Assembly) has formed a committee, the Group on International Aviation and Climate Change (GIACC) to put forward what they call, straight-faced 'aspirational goals' for aviation. The original proposal to produce a global ETS scheme seems somehow to have been misplaced.

So suddenly we have the entirely unedifying sight of nations, the USA for example amongst others, normally frustrated beyond belief at ICAO, saying gravely that nothing should happen unless it happens within ICAO. This is ICAO remember, which many believe actually stands for Impossible to Conceive of Any Output that we are talking about. We need a global scheme they say, one that recognises the differences in each country. So that is a global scheme that is not actually global, or perhaps one that allows the Europeans to do what they are doing.

Ah yes, the USA argues, but not to our carriers. What you do in your backyard is your concern, but do not impose extra-territoriality on us. Regular readers were probably assuming that we would then add 'OK we made that last bit up' to the end of the sentence, but be assured, we did not. What can the commentator say that is funnier than reality? Only the USA, apparently, has an unfettered right to act extra-territorially.

Single European Sky – did anyone think to tell the European States?

The initial European response to the economic crisis has been completely State driven. Each national capital has been out there, announcing measures to save their banks and national jobs. Post facto, the Member States are only now starting to acknowledge that they might try to think of finding a job for The European Commission. Consequently, the Commission has been reduced to walking around looking like an illegitimate child on Father's Day, helping with the washing up, sweeping, generally staying out of the way. For airlines that is bad news, very bad news.

It is bad news because that is also how the States seem to be behaving in relation to the new proposed Single European Sky (SES) package. It might be the start of a trend. You will recall that this is Mark II of this proposal anyway, because the first attempt did not get traction. Attempt Mark I was gentle, suggesting that the EU Member States might like to get together with their neighbours to form 'functional airspace blocks (FABs)'. It was a very gentlemanly proposal, calling for honour on all sides – hence the need for Mark II.

This is very worrying indeed. Whatever one thinks of the European Union, and Brussels and the creation of a federal super-state and so forth, in air transport, the work of the Commission, and the European experience, has been positive: for the airlines, for the passengers and for the regulators. If the States are going to row back from that, they might have chosen their timing better.

The Council has met several times on this issue this month, and draft working papers and compromises are starting to float around the corridors of power. At superficial first blush, the UK would appear to amongst be the biggest States holding out, but the UK assures that it is doing so only because it is not prepared to sign on to something that is less than acceptable, preferring no deal to a bad deal.

For the first time ever, too, the European Parliament committee has put forward a number of suggested changes that are consistently helpful. Credit should be given to Marian-Jean Mariniescu, from the centre-right party in Romania, who is the rapporteur on this dossier. So the big issue is to get the Member States on-board and in-line.

This is important. Not only will SES of itself make a significant contribution to the airlines' emission reduction targets, by reducing flight times and distances, but SESAR depends on these changes being made too. If you are going to spend billions on the SESAR project, it seems perverse to pull the rug out from under the feet of the system. All of these changes being made. Says it right there, in fine print. SESAR is looking to almost halve the price of providing gate-to-gate ATM services (from €800 to €450 per flight) but only if the SES measures are in place.

The debate between Member States and the Federal centre is perhaps the defining political argument of Europe, but previously, generally, aviation has stood apart from that particular squabble. It would be very disappointing if that were to unravel now.

Airports take more bold steps on the road to normality

Airports continued to make clear that they intend being considered an important part of the air transport community this month with two very interesting, and possibly significant, announcements. First, Aeroport de Paris (owners of CDG and Orly) and Schipol Group (owners of the main Dutch airports, as well as management contracts in a number of others) announced a cross-shareholding deal. Secondly, Shanghai airport and Dallas Fort Worth announced a strategic alliance arrangement.

Something is clearly going on. If airports are competitive and allowed to compete, this must be a natural next step. Airports have been listed on stock markets for some time, but for two announcements in the same month, between such significant airports, is uncanny. Clearly airports too are looking at their financial situation and looking to see what management and other synergies they might be able to extract. These might include bulk purchasing of equipment and systems, training perhaps, working together to do larger deals when negotiating with concessionaires maybe.

To read the statements announcing these deals one would think that a new airport, servicing new aircraft, promising a new passenger experience, was just around the

corner. Most passengers are happy to get through with their dignity intact, so if they can promise that it might be worthwhile in the short term.

In the case of Aeroport de Paris and Schipol, there is the added incentive of each of their major customers being two halves of the one company in any event. The Shanghai DFW alliance is not as instinctively apparent. Or at least it would be if one were to take the 'natural monopoly' line of argument. If you take the view that airport management is as free to exercise vision and creativity as any other sort of manager, it makes more sense.

Which rather begs the question of how long it will be before they start to ask the question of who, exactly, owns the slots? Let us hope, when they do, that the ANSPs are in the room.

In the USA the question of slot ownership is currently before the courts. The Department of Transportation, having announced that it intended retrieving 10% of the slots at the New York airports and then auctioning them to all bidders, has been faced with the inevitable litigation. The DoT acted, apparently, to reduce congestion around New York which had got to noteworthy levels. A worthy cause; just not the right solution. And so wrong, and so wrong-headed that it is likely to put worthy causes back by several years.

It may be that the government owns all the slots, making the DoT action legal (assuming that the investments the airlines have been made are duly recognised and recompensed) or it may be that the airlines themselves or the local airport authority own them (based perhaps on some sort of creation or adverse possession right), but the rationale for taking this step in this case is misguided, so the decision is more than likely going to spin on an irrelevant axis (at least irrelevant to this discussion).

Taking something away, re-pricing it and reselling it to the same group of users will not reduce congestion, it will increase price. Slot allocation is not a crowd control measure. Slot auctions are a means of allocating scarce resources, not reducing their use. If the issue is congestion, slot auctions are not the answer. If the issue is congestion, capping the number of movements is the solution, making slots scarce. Auctions are then generally regarded as the most economically efficient means of distributing those scarce resources.

If you have any questions or concerns about any of these matters, please do not hesitate to contact us: info@aviationadvocacy.aero

Aviation Intelligence Reporter is distributed monthly. The subscription is €1,000 per annum. A corporate subscription is €3,000. For information on subscription see www.aviationadvocacy.aero/newsletter
© Aviation Advocacy Sàrl 2008. This publication is not to be distributed beyond the organisation, company or firm to which it is sent without the express written permission of Aviation Advocacy.

www.aviationadvocacy.aero