

Aviation Intelligence Reporter October 2008

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Sing along to another chorus of the Aviation Regulation Song: Re-, de-, do and do-whop

One of the beauties of ICAO is that sense of déjà vu as you arrive at the mighty, early Stalinist-style portals. Once inside you go even further back in time. After a day of meetings in ICAO you can almost yearn for the modernism of its 1930s facade. A week at ICAO can be the longest month of your life, unless you throw away any sense that there are things like telephones, e-mail and even aircraft outside, in the real world. One wouldn't wonder if the drafting of the Nicene Creed was not dreadfully different to discussions surrounding whatever negotiations are currently underway inside ICAO.

And in September it was the turn of the economics of airports and air navigation services to serve as the focus of these processes. The great and the good gathered to discuss what ICAO proudly announced was its once every 10 year conference on this subject. Once every 10 years, they announced; regular as clockwork: like it was a good thing. From the Nicene Creed to the ICAO Policy on Charges – not the huge leap you might otherwise think. They are, after all, articles of faith for the true believers.

Even before the conference started the problems that lie at the very heart of the air transport regulatory framework became apparent. IATA, CANSO and Eurocontrol announced a joint initiative – to much fanfare – of a project to identify savings in air traffic routings (and thus time and fuel) across Europe. A worthy project indeed.

But let's face it, if two trade associations and an inter-governmental agency can find the savings, they must be fairly easy to spot. No one in the history of the world has automatically turned to trade associations and inter-governmental agencies as models of efficiency before. And there is the nub.

Unless Eurocontrol's and CANSO's members' owners (the States) are involved, there is no way to turn the spotting into saving. The truth is that, in aviation, the government has a role more extensive, more decisive and more intrusive than that merely of regulator, or even asset owner. For all the talk of deregulation and of market forces, at the end of the day aviation is not a deregulated industry. There is no legal basis for it, there should be no actual evidence of it, but sovereignty still matters.

Coincidentally, in an attempt to 'normalise' aviation (meaning trying to find ways to make aviation normal, one assumes, whatever that might mean, or at least not subject to these remarkable accidents of history that are the rules of air transport regulation) Daniel Calleja and his band of merry troupers from the European Commission were in Washington last week in a discussion with the lamest ducks in a lame duck administration. These people are now so lame that that one legged sea-gulls stop to give them a hand. Calleja and the EC team wanted to talk about phase two of the liberalisation of the EU-US air transport agreement. Washington wanted to talk about saving the World As We Know It. Their timing might have been better.

Then, adding value by shooting them down was IATA, taking pot-shots from the sidelines. Are there not rules of etiquette against taking down such an easy mark? If there were, would the hunters of the testosterone laden IATA Shooters Club respect

them? Attempting to liberalise air transport is never going to be easy. Having the airlines say that it is impossible makes it, well, impossible.

And IATA has conceded that it is going to be impossible: at the ICAO conference they put forward their view, bravely perhaps, in the face of economic data certainly, that airports are in fact natural monopolies after all. So are air navigation service providers. Air transport cannot be liberalised, it cannot be deregulated. The airlines say so. What it needs is MORE regulation – in the form of direct economic oversight. Are there three words more likely to put fear into the hearts of the noble and the just than ‘direct economic regulation’?

This is worth a period of reflection and consideration: IATA is saying that the war is over. We are now negotiating the peace. No-one else seems to have picked up on this remarkable retreat from the airlines. That might be because, unrepentant, IATA has been pushing hard on the meeting it is convening in Istanbul this month to push again for liberalisation. They are even giving it a name that President Bush would be proud of – the freedom agenda. And like President Bush’s No-Banker-Left-Behind bill, brought down so spectacularly as this Aviation Intelligence Reporter was being finalised, there just might be a lesson for IATA in this week’s market turbulence. The people do not take kindly to a ‘one rule for them and a different rule for us’ approach. So whilst no-one within the airline industry seems to know the war is over, the rest of the world, they know. They are in the groove. They knew this song, words and all, not just the tune.

More encouragingly for IATA, the rest of the world is now singing the same song that IATA was singing at ICAO. The market alone cannot provide the solution.

But it is much less clear that anyone else is singing that next verse any more, the Istanbul verse, the one that goes liberalisation and deregulation is bad, but not in relation to the airlines themselves. The airlines, they need to be liberated from the menace of regulation, oh yeah.

Sure, when everything was good, that was the good old deregulation model working as we knew that it would. Now, suddenly, we need to socialise our losses. As goes Bisignani, it seems, there went Paulson.

How can IATA’s otherwise noble attempt later in October to introduce a new framework for liberalisation of air transport survive IATA itself saying that whilst airlines should get the upside of deregulation, all the other parts of the industry need economic regulation? The voting on the infamous Paulson package of measures to bail out the US banking industry should perhaps make salutary reading for IATA. What is good for the goose must be good for the gander. And for the lame ducks.

And if airports and ANSPs (and no doubt a lot of other parts of the infrastructure) are natural monopolies, then is the only solution economic regulation? And how do we define the rules of that economic regulation? It inevitably must mean more intervention, more oversight, more control. Clearly, that is the zeitgeist of the moment, but it is not without issue.

Economic regulation is not easy, and as the entire BAA imbroglio shows; equally, it is not easy to get right either. IATA and others lauded the regulatory regime for airports in the UK when it was introduced. The CPI – x model was held up as the way of the future. No-one is yet to find the perfect model, but having the airlines argue such a self interested position is not likely to be helpful. What is good for the goose has got to be good for the gander. Only lame ducks are exempt.

There are some well known starting points: service provision should be separated from regulatory oversight. The ICAO conference sort of got that point, recommending that States keep ‘a clear functional separation of the regulator and the service provider, with roles and powers clearly defined for each one’. The million dollar question of course being what exactly those powers should be.

And that is when IATA dropped its bombshell. CANSO, for example, suggested that good performance rests with good governance. Therefore policy-makers should focus on the various elements of governance instead of relying too heavily on regulatory mechanisms. IATA opposed that, pushing for more economic regulation of airports and ANSPs, making the point in its paper that they have given up on a free market, or even liberalisation.

IATA’s plea was to no avail, making it even more tragic. The conference recommended that ‘States should select the appropriate forms of economic oversight according to their specific circumstance, while keeping regulatory interventions to a minimum’.

The Conference also recommended that ‘States should ensure, within their economic oversight responsibilities, that a clearly defined, regular consultation process is established with users...’ and that ‘States should ensure that, as part of the consultation process, users are consulted on the level and structure of charges as well as on capacity development and investments’. That was perhaps predictable. More interesting was the range of suggestions for charges, such as airport and ANSP charges; suggesting flexibility (zone based charges for example, or even weight based charging and incentives). Charging for slots at busy times of the day, perhaps? Per safe landing?

Finally, in an attempt to make ICAO's Policies on Charges more authoritative in practice, the Conference also called on States to enshrine the main principles of non-discrimination, cost-relatedness, transparency and consultation with users in their national legislation, regulations or policies, as well as in all air services agreements between States.

As legislators and markets thrash about desperate for solutions to the market concerns, air transport should take the time to sit back and do some very hard reflection. This may present itself as a golden opportunity to reform aviation regulation. Aviation Advocacy supports the Istanbul initiative (despite its name) but cannot support a view that airlines should be free to operate liberally whilst all other parts of the industry should be regulated as monopolies. What we need is more time, and more brainpower devoted to making sure that the regulatory framework for air transport works properly, and is not merely shaped by the crisis of the day. We need to think about regulation, because it matters. Rushing headlong into either full deregulation, or full re-regulation, is to repeat the mistakes of the past. Let’s focus on better regulation. And let’s do that consistently.

AIS to AIM: Can aero-nautical information lead the way to better regulation?

With a focus that would have put the Nicene Creed draftsmen to shame, notwithstanding the IATA sideshow and the end of civilisation as we know it unfolding on Wall Street, the ICAO conference ground on, regardless. Buried in the papers are a number of very good contributions.

Australia and CANSO both put forward papers on the underlying and not well understood issue of aero-nautical information and the changes that it is going through that are worthy of note and commendation. They both made very sensible suggestions on how to regulate as well as liberate this important part of air transport.

There are some basic facts that need to be remembered. First, each State has an obligation to provide aero-nautical information at cost. That obligation cannot be outsourced, even if the provision of the information itself can be. Secondly, the information that is currently being provided must increasingly be supplied digitally, which in turn allows for more manipulation of that data, and presentation of it in ways that add value. ANSPs and others that provide that data can, therefore, add value in the process. For that to happen, they say, they need some assurance that they can be rewarded for the value added information they supply.

There is an easy solution: one that the Aviation Intelligence Reporter has been advocating for some time, and which we were pleased to see both CANSO and Australia supported in their papers. The State obligation is to provide data. It is a fundamental obligation. Whether or not that obligation is outsourced is irrelevant. That data must be accurate, and completely reliable. It must also be provided at cost.

After that, anyone can use that data to make products and services that the market might like or need. If they do so, they can charge what the market accepts for it. In other words, we need to redefine what is being provided and where the lines of obligation are, and are not. From that, the question that seems to be dominating attention, needlessly, that of liability, becomes easy. The liability for error lies with the entity that made the error in the way in which the data was manipulated.

The second issue that disturbs people is that of royalties. Again, taking this approach resolves this in a moment. Underlying data is provided at cost (so effectively royalty free); all are free to sell manipulated data as they see fit, and if that manipulated data is then used by a third party to also make money (by further processing, or packaging it) royalties can be charged.

Certainly in Europe, this subject is currently generating a lot of heat, but not a lot of light at the moment. Maybe it is time to find some common ground.

Airports start to make standards too

One of the interesting things to note at the recent ICAO conference on airport and air navigation charges was the emerging role of trade associations. CANSO, recently given observer status by ICAO, had a very good conference. The ACI was also prominent.

More interesting again was that the ACI has decided that it is the appropriate body to make standards relevant to airports. There are two things of interest in that: first, that ACI now thinks that it has the weight, membership numbers and gravitas to make standards that will actually become standard; and secondly, that it is moving in to what was previously thought to be IATA's role.

This is evidence of the growing commercial heft of the airports, which see themselves as an important, and free standing part of the air transport industry. The number of members continues to grow, and to be increasingly aggressive about asserting their rights. Standards are really the logical next step.

The airline industry has survived on standards since the invention of the airport, and it is increasingly true that airports are the only meeting point of the various sorts of airlines (low cost carriers are not members of IATA for example) so it is not inappropriate for the airports to take over this role. Indeed, arguably it is the right thing to have happen.

Blacklist to get blacker

In part in reaction to the tragic SpanAir crash in Madrid early in September, the EU Transport Commissioner Antonio Tajani announced this month that the Commission plans 'to look closely at some European airlines'. Mr Tajani was making a pilgrimage to the European Parliament Transport Committee to report on updates in Community law on air safety, in the wake of the SpanAir accident. He promised that a minimum number of annual inspections would be made in each Member State and that checks on Europe's airline would be tightened up.

The Commissioner highlighted the need to distinguish between fair competition and the lowering of safety standards, arguing that 'no form of fair competition justifies weakening safety guarantees for Europe's citizens'. He also emphasised the need to review existing Community legislation on air safety, giving two examples: the 1994 directive establishing fundamental principles governing the investigation of civil aviation accidents and incidents, and the June 2003 directive on occurrence reporting in civil aviation.

The parliamentarians called for the current blacklist to be re-examined, toughened and re-issued as soon as possible. And for it to include European airlines. That will be good news for the Commission, as they plan new legislation on a Single European Sky, strengthening the European Aviation Safety Agency (EASA) to include a role in procedures for certifying airport safety and granting pilot licences. It will also enable the EASA to work more closely with national aviation authorities when investigating accidents. Getting the committee, and thus the parliament on-side early is a good move, one not always fully understood by the Commission, or at least not always acted on.

The air safety committee is to meet on 5 November to update the blacklist. At present none of the banned companies on the list is European.

More scarier were the comments of a socialist party member from Spain, Ms Inés Ayala, who deplored the current 'legal vacuum' regarding passenger rights. It is hard to think of an area of passenger rights that the commission has not opined and legislated on,

except, perhaps, as Ms Ayala was maybe trying to point out, rights for those passengers actually travelling with a vacuum. No other reading makes sense. Fortunately, from the airline perspective, relief (if only comic relief) was at hand in the hands of Ms Eva Lichtenberger, a German Green. She asked whether 'competition between air transport companies is always a good thing'. Indeed.

If nothing else, what this exchange did was show that for any legislation to pass in Europe it must be acceptable to what can only be called a very wide church of interests and knowledge. This is a political game and needs to be played that way. For better or worse, there is a need to be sure that your messages are understood. It goes without saying that Aviation Advocacy would be delighted to help you in that.

Emission Trading – now the airlines need to watch a much larger game

Those with a persecution complex would be finding it hard not to give it a quick run around the ground at the moment. Airlines have been dragged, kicking and screaming, into the European Emission Trading System (ETS) only to find that the rules are about to change! The Environment Committee is currently debating suggested changes to the scheme. Parliament rapporteur Avril Doyle in her draft report for the Environment Committee calls for adjustments to channel ETS auction revenues towards climate protection measures and to give industry more clarity of how exactly the system will work after 2012. Which is exactly when airlines are currently scheduled to join.

The ETS is a 'cap and trade' system. At present National Allocation Plans prepared by each country define allocations - or caps - of how much CO₂ each country and each industrial emitter in the scheme may emit. If companies emit more, they must purchase permits. If they emit less, they can sell - trade - their unused allowances. An allowance for a ton of CO₂ currently trades at €28. Currently, unfortunately for airlines, these permits can only be traded within the airline community. It is arguable that the airlines would have been better advised to join the much more liquid general market for permits, rather than go it alone with the time honoured 'airlines are different' argument.

The aim is to reduce greenhouse gases by 8% by 2012 compared to 1990 levels, and at least by 20% by 2020. These goals are based on commitments made at and after the Kyoto agreement. If further agreement is reached, these reductions could be raised to 30%.

The Commission proposals for the third phase of the ETS are planned to be adopted by the end of 2008: Ms Doyle has now put forward a number of draft amendments:

- 50% (rather than 20% as foreseen by the Commission) of revenues from auctioning emissions permits should be directed towards environmental and climate protection measures such as reducing deforestation
- Strict rules should be applied as to which kind of credits/emission allowances are given for investment in green and renewable energy projects
- Emission credits are to be awarded to the operators of the first 12 facilities that are using Carbon Capture and Storage (CCS) technology before 2013.

- The EC, by the end of 2010, is to indicate the amount of allowances to be auctioned for the period 2013 to 2020. This will ensure planning and predictability for industries.

MEPs in the Environment Committee will vote on these suggested amendments 7 October, and the matter will be debated by the full plenary probably in December.

Spectrum: airlines to pay for riding the waves?

You have until the end of October to comment on the UK Ofcom plan, first reported in these pages a year ago, to charge NATS (and thus the airlines) for the use of spectrum used to provide air traffic control services in and above the UK. This will apply to all flights in UK airspace, not only to those to and from the UK. Ofcom is proposing calculating a proxy price for the spectrum, based on the price that others may be prepared to pay for it, working on the theory that one only values the things one has to pay for, and that commercial imperatives will provide an incentive for efficiency.

It is also sobering to note that Ofcom is something of a thought leader in the telecommunications and spectrum area, and it is not unlikely that if this proposal is adopted, other European spectrum regulators will adopt something similar. We understand that both the Netherlands and Sweden are studying this closely. It is hard to over-estimate how important this might be to NATS and to the airlines – it will certainly run into the billions of euros if adopted unchanged.

There can be no substitute to getting involved in this process. The link is here: <http://www.ofcom.org.uk/consult/condocs/aip/> Aviation Advocacy has been involved in spectrum matters, including in advising IATA at an earlier stage of this process, and we would be delighted to discuss with you any questions that you may have in relation to this development.

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

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