

## **Aviation Intelligence Reporter September 2008**

- **CEOs and the Christian Virtues**
- **Broken airport operator gets broken up**
- **CRS Regulations – watch the screen**
- **Airlines look at the Olympics for Inspiration: Faster, Higher, Stronger**

## CEOs and the Christian Virtues

The recent tragedies in both Madrid and Bishkek have again seen calls for the resignation of the CEO of the airline. At first blush, that might seem harsh. However, those calls must be ringing some bells of recognition for the Swiss air traffic control organization skyguide's General Counsel Francis Schubert. Not that it will be giving him any comfort.

Francis led a very moving and completely engrossing presentation at the recent CANSO AGM on the issues skyguide had learnt from the Uberlingen crash. Management consultants might be tempted to call them 'key learnings' – but this was no laughing matter. Skyguide, and Francis in particular, went through a remarkable experience and to be able to stand and talk about it now that almost all of the litigation has been settled speaks volumes about Francis.

You may recall the incident: a Russian aircraft full of school children, especially selected for the trip because of their marks at school collided with a cargo aircraft over Uberlingen near the border of Switzerland and Germany. In his fury, the father of one of the school children later murdered the controller who had been on duty that night. For skyguide, it became a double tragedy. And a litigation nightmare. The 'Birdsnest' stadium in Beijing had nothing on the tangle of litigation that ensued after the crash.

Most of that is now settled. Only those that insisted on a day in court are still to finish this remarkable marathon. A couple of months ago the decision of the Swiss Superior Court on the corporate liability of skyguide itself was also finalised. This was a very nuanced decision – with a clear understanding of what a CEO can realistically be expected to be aware of on the one hand (and the answer is not everything, all the time) and what a person working at the screen can be liable for, too (and the answer there is not matters at a management level).

A number of issues do emerge from the cold hard de-briefing that skyguide has done.

First, one must never assume that it cannot happen; and if it does, communication is vital. Skyguide's initial response was, by their own admission, slow, for a variety of reasons so seemingly random that if it were not so serious, it would be seriously funny. Low batteries and a drunken uncle added together to mean that time was lost.

Once it has happened, skyguide showed how important it was to be self critical and to learn from the experience. At the end of the day, for an ANSP, safety is their product and if they fail to deliver, they need to be open and honest about making sure it doesn't happen again.

The second lesson was to never lose one's humanity: lawyers (a group for whom that warning is too late, if appropriate at all) will tell you, as they told Francis, to say nothing, to admit nothing and to concede nothing. Humans cannot survive in that environment. Is there not a place that all humans can find that allows one to share the pain and the hurt, admit the pain and the hurt that is not seen by the feelingless as an admission? There must be.

The process has now become a completely judicial one. That is dangerous for us all, but also means that questions like cause, and learning from the errors, are subsumed and defeated by the needs of the legal process. With the introduction of more and more statutes imputing corporate liability (and indeed corporate manslaughter charges) this situation is going to get worse, much worse.

The third and final lesson is perhaps the hardest of them all – at some time, perhaps inevitably, there comes a time when for the organisation to be able to move on, to get closure, the Chief Executive might need to realise that the most important of all the Christian virtues is resignation.

## **Broken airport operator gets broken up**

It is hard, perhaps beyond human limits, to feel too much sympathy for BAA after the Competition Commission of the UK announced this week that it was inclined to order the break-up of the UK airport operator. Perhaps the only thing harder might be finding anyone that has used a UK airport in the last few years that has any feelings at all apart from anger and frustration.

But in the cold light of the morning, BAA should not be singled out as the only culprit in this very sorry saga. The BAA story is as much as story of the failure of the regulations that govern the UK airports as the airport operator getting all it deserves. To be fair, this is just another example of the difficulty of regulating a monopoly. Private monopolies are no better than public ones, but most regulatory regimes, whether imposed on private monopolies or “self-imposed” on public monopolies, fail to properly strike the balance between the commercial and public interest goals of the regulated entity.

Can BAA be blamed for exploiting the regulations that existed? It had no obligation other than to its shareholders, and thus failure to do so would have been negligent. No one disputes that the airports were a disaster for their customers’ passengers, but they were run within the bounds of the regulations.

Is the issue capacity? BA seems to think so. A dedicated team within BA is lobbying fast and furiously to get approval for a third runway at Heathrow and the UK government appears to be using the issue as a totemic issue to show just how very hairy chested it can really be. And this is now a national government issue. New planning procedures that took decision making for strategic national infrastructure projects away from local governments and back to Westminster mean that this is a decision for Westminster. That will not stop a lot of impassioned protests.

There is already a second runway at Gatwick, but cannot alleviate the congestion because of an agreement that it not be reconditioned, and used, until 2020. Given the length of time planning appeals seem to take in the UK, it might be a good idea to start that process now. There are also groups pushing for a new airport, in the Thames estuary.

But there can only be real competition between the airports of London when the airports can add value to a vital component of the airlines’ thinking in choosing an airport – route

network. Heathrow is the most popular airport because of the interline traffic that it can guarantee. Gatwick cannot promise the same mix of traffic, making it less attractive. In the meantime, airlines are able to make huge windfall gains out of the slots that they have at the airports.

Terrible service is not always indicia of a monopoly – it can be an indication of bad management, and poor oversight. There are plenty of ‘monopoly’ airports in the world that offer significantly better service, some government run, some private. Changi and Schipol stand as examples.

Service is also a funny thing at airports. The airports’ customers are airlines, but it is customer (*i.e.* passenger) service that matters, and that competition commissioners, newspaper columnists and politicians experience. After they have, it is shut the gate on any hopes of a dispassionate discussion. Try talking about the complexity of interlining and ways in which the slot regulations might play a part in that context.

Sorting out the slot situation is not going to be easy, but without it there is no real way to ensure that each airport is working with an equal chance. For that one might need to give the airports a say in the property rights arising from their airport investments – but that is a fight for another day. (Speaking of slots, in a late-breaking development (or non-development) the US FAA decided to put on hold its plan to auction slots in the New York area as a means of relieving congestion; the stay will allow the FAA to decide if it has the authority to conduct these auctions after having been challenged by the airport authority.)

If it is service that is the issue that matters (and at the end of the day service was the only element that the Competition Commission could actually hang its hat on) there can only be one way to ensure that there is true competition – and that is by breaking up airports at the terminal level. That is often what happens in the USA. An airline choice is as much about the airport experience as the in-flight one, after all.

If airlines are free to choose which terminal they use, and the costs that they pay for the terminal, whilst remaining able to also choose which interlining passenger profile they expose themselves to (by separately choosing the airport to which they fly) then the passenger experience and the airline expectation of what their passengers might think appropriate might start to overlap.

## **CRS Regulations – watch the screen**

It has been interesting to note that the airlines (including the big, heavy hitting ones) have been remarkably silent in the environment debate. They have left all the heavy work to their industry associations. Maybe why is starting to come out – the big European airlines had other fish to fry and did not want to waste their political capital on a hard fight that was always going to be an uphill one. Instead, it is now clear what they were actually working on: the new CRS Regulation.

The CRS Regulation, for those that have perhaps not been putting it centre of mind, seemed to be working its way through the system innocuously. It had all the things that

one would expect: level playing fields; non-discrimination; equality of access. The “normal suspects.” So why are the big airlines so interested? Well, they own significant shares of the CRS. That is different in the USA, where the airlines have now all sold out of their ownership of the systems.

Indeed, in the USA, once the airlines had sold their interests in CRS, legislative interest in making sure that the systems be unbiased fell away. There was an expectation that the market would sort those problems out of their own accord. The situation in Europe, perhaps not surprisingly, is not the same. In Europe, the Commission, congenitally incapable of walking past an opportunity to use the words ‘non-discrimination of access’ felt the need to continue with the need for regulation and would have done so, regardless of the ownership of the systems. It’s the European way. Ergo, the revisions to the decade old CRS Code of Conduct.

The debate is important, at least for the consumer groups and travel agents, in that there has never been a way to show that carriers that own a CRS do not get a preferential ride in screen displays, routings and other things. CRS still matter, as can be seen with the dispute between RyanAir and anyone that chooses to ‘screen-scrape’ their own in-house version of a CRS and resell RyanAir flights.

This is particularly true for the business traveller, with more complex itineraries and a need for full service from their travel agents. The internet, direct sales and other things have changed some aspects of travel, but CRS are as important as ever.

Between them, Lufthansa, Iberia and Air France own nearly half of Amadeus. So it might be right that, unlike the situation in the USA, the ownership of the systems is an issue. The European Parliament put forward a draft that would have insisted on non-discrimination of access for non-owning airlines. This is known as the ‘parent carrier’ provision. That draft would, in the usual course, go to the Council for consent, which it did, and then back to Parliament, for adoption.

And there were the big boys. Having saved their energy by delegating the emission debate, they were ready to go into action. The Council version, remarkably, does not require anything as community as non-discriminatory access. The way this has been done is to play, ever so subtly with the exact wording of the parent carrier provision. What used to define a parent carrier as one that had ownership or control now talks about ownership and control. The Parliament version had a further definition, noting that a parent carrier was one that had board representation, or the right to board representation. That, too, is gone in the Council version.

And who are the winners from that amendment? Guess.

## **Airlines look at the Olympics for Inspiration: Faster, Higher, Stronger**

If not the Olympic ideal then perhaps Darwin anyway – there is a growing realisation that if only the fittest survive, now is the time to get fit. We are watching another round of airline closures and bankruptcy, and bankers are being appointed for all sorts of creative propositions – Virgin is looking at bmi, according to the press; Austrian is on the block

and Alitalia is, well, Alitalia is bankrupt (officially as opposed to in practice) and proving that it is an ill wind that blows no good, brought about long needed reform to the Italian bankruptcy rules so that it can be allowed to phoenix like rise again; BA is going through the regulatory procedures to join with AA and to merge with Iberia and rumours abound about almost every other airline one can think of. Good work for advisors and lawyers – but there continues to be a major hurdle: the ownership and control rules. As ever in aviation, regulatory risk is the deal breaker. All the fancy bankers in the world will still need to talk with the regulatory and aero-political experts to get to the bottom of the riddle.

But the Olympic movement might be a useful basis for one analogy – when sport professionalised, the last group to become professional were the administrators. Maybe, as was the case for many sports, the only group that can help are the players themselves.

IATA is trying to push forward on reform, with its Istanbul proposals for regulatory change to be discussed in October. The timing is looking good – by then there is every chance that the few remaining airlines will be so in need of a change that governments around the world might just be able to push forward.

And it is up to each nation's governments, not ICAO. IATA politely says in its background notes for the meeting that they do not intend dismantling or changing the role of ICAO at all. That is wise: it is completely ignorable and powerless now, so why worry about it at all? How can anyone get impassioned by an organisation that proudly declares the convening of a once every 10 year conference about airports and air traffic control, like it is a good thing?

ICAO is irrelevant to the ownership and control debate: the obligation is not even in the Chicago Convention – it comes from bilateral air services agreements. And what has been bilaterally put together can bilaterally be taken apart. All it takes is political will. One would think that the deepening understanding of the magnitude of the current crisis is going to help in that process. No sign yet, mind. Governments are being very leery of the IATA initiative, noting that there is no forum (meaning no government basis) for the discussion. For something to happen thereafter could take several years. Anyway, with the oil price back to USD115 a barrel happy days are here again!

Reality may soon intervene. As regulators come back from their well deserved summer holidays a number of crises are likely to come towards them. The business travel alliance, for example, is predicting that in the USD110-120 a barrel range, several thousand jobs will be lost and airlines will default on their debt obligations.

That is why the airlines are rushing to consolidate. The interesting question is what happens when the regulatory issues get in the way.

**For further advice or information on any of these issues please do not hesitate to contact us at [info@aviationadvocacy.areo](mailto:info@aviationadvocacy.areo)**

Aviation Intelligence Reporter is distributed monthly. The subscription is € 1'000.00 per annum.  
© 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.