

Better not Bigger Conference

A vision for the future regulation of the industry – delivering the new Government's objectives

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It is probably becoming almost a cliché to say that the aviation industry is rapidly evolving: there has rarely been a time since the dawn of commercial aviation in the forties and fifties that it was not true to say that the industry was in a state of rapid, usually positive, flux. But over the past decade and a half we have seen changes that have led to liberalisation, privatisation and commercialisation, all driving benefits for consumers and coinciding to create a UK aviation market that is one of the most developed in the world.

The UK is unique in our position in the world, supporting as we do in London alone the busiest international airport in the world in Heathrow, the busiest single-runway airport in Gatwick and airports that offer hundreds of destinations. That is coupled with the unique situation of our regional airports - I've recently visited some of them and seen their successes myself,. This was most recently illustrated by the arrival of the A380 at Manchester - a world first outside of a capital city. Indeed the competition between regional airports led to the CAA recommending, and the Government agreeing, to the de-designation of Manchester, meaning it no longer required us to cap its prices.

And as it has always done, the market continues to evolve: the recent sale of Gatwick, the prospective conclusion of the Competition Commission's processes on break-up, the ever-growing focus on making environmental improvements, airline consolidation, fierce competition between carriers, and increasing pressure on package holiday companies.

One of the major benefits of the past two decades' unprecedented growth has been real investment in our airport infrastructure: I've seen it recently at Bournemouth, Edinburgh, Gatwick and Bristol. And there has of course been a massive programme of investment at Heathrow which is delivering improvements in performance relative to its peers. The CAA's regulatory framework has supported this investment, and has helped to realise real benefits for consumers.

But I'm sure that most people who have used our airports would agree that there is still a lot of room for improvement, and we very much welcome recent statements from the Government re-emphasising their commitment to bring forward legislative measures to help give the CAA greater ability to facilitate that process. Because I don't think anyone would argue against the idea that the legislation governing airports has not kept pace with the radical changes we've seen, largely due to its lack of flexibility.

The proposed legislative reforms

The CAA has been working closely with both the last Government and the coalition on the direction of the reforms that they are proposing to bring forward during the course of this Parliamentary session, and we are happy that the new Government is committed to this, and agrees on the direction of travel that had been previously established.

At the heart of the proposed Airport Economic Regulation Bill will be a primary duty to the consumer. The CAA was the first to call for such a change, so we of course strongly support it now and welcome the clear statement of the purpose of economic regulation.

But it is important that it should not be confused with ignoring the interests of the airlines, which some have argued it does. The CAA's process of airline/airport-engagement at the last review was not perfect but it was ground breaking, explicitly recognized the value of airline engagement in the regulatory process and is now increasingly reflected in approaches of other UK regulators. And whilst airlines are central to consumer outcomes, and can normally be expected to argue for facilities that serve their common interest, there are instances where airline, airport and passenger interests might diverge – such as the provision of facilities for new entrant airlines, or in the value placed on the arrivals experience.

But what the Duty will bring is a sharper focus in CAA processes on consumer evidence, and under such a regime we would expect all participants to explain how their perspectives, suggestions and responses relate to consumers' interests

The proposals suggest introducing a power to licence airports, subject to an assessment of their market power and the benefits of applying a licence. Once licensed, the CAA would have the ability to propose additional licence obligations, subject to appeal by the airport. This change is designed to allow the CAA to regulate in a 'smarter' more flexible way, better able to take into account the rapid changes inherent in the airport market,

and able to make sensible decisions between the use of licence conditions and general competition law.. These new powers would also bring the CAA in line with the other major regulatory sectors, changing an historical anomaly present because the airport act predates the development of the legislation in other sectors.

How might the CAA regulate in future?

Which brings me to what the CAA might seek to achieve within the proposed framework. I think the first thing it is important to say is that one should not expect a seismic shift in the CAA's regulatory approach. The reforms will provide us with added flexibility, coupled with greater accountability, through clearer duties and updated appeals arrangements. But, they very much open up the potential to better match regulation to the circumstances of each airport, instead of the more one-size-fits-all approach of the Airports Act. It is early days, but we think that focusing regulation on a price cap set at five-yearly intervals does not always fit the more dynamic nature of airlines and the long-term nature of airport investment. This suggests that we might focus on developing ways to further support greater airport-airline negotiation and agreement, and better match regulation to the planning cycles at airports.

We will also be able to use a more subtle blend of tools, supplementing price controls and existing incentives with the potential for conditions that set acceptable standards of performance, for instance on meeting airlines' reasonable requests for facilities or to act efficiently across the airport's operations. These tools can be useful to supplement the existing package of incentives which focus on aspects of performance that can be readily measured. The regulation of energy networks provides some examples in this respect, with network licences using a mix of financial incentives, backed by general obligations such as: "*to develop and maintain an efficient and economical pipeline system*".

We also hope that the reforms will provide the CAA with the tools to be smarter in its use of 'softer' forms of regulation. This involves working with industry to improve outcomes and empowering consumers with information that they value and can act upon, avoiding the need for more detailed, intrusive interventions. The existence of formal tools, backed by transparency and an ability and willingness to enforce where necessary, can *reduce* the need to resort to formal enforcement – as industry understand its obligations and is encouraged to work collaboratively with the CAA to resolve issues as they arise.

We summarise this approach as a commitment to operate with a bias towards prompt, informal engagement with industry but with a willingness to intervene firmly and effectively with formal powers where required.

In discussing how we will regulate in the future, I also want to touch on an issue of increasing importance to the public, government and aviation industry, that is the environment. It is an area that presents a particular challenge for industry and, therefore, for the CAA. In recent years industry has made steady progress both in its management of the environmental impact and considering how to help aviation demand to grow in a sustainable fashion.

And of course the CAA also works to help limit the environmental impact of aviation, often focussing on the noise impacts but also with the regulatory regime surrounding the EU-ETS. We are working closely with Government and the EU on the Single European Skies project and our own Future Airspace Strategy project. This will actively involve airspace users and look again at the UK's airspace structure, aiming to put in place a more effective and efficient system that will form a framework for the next 30 years.

All of these areas will bring environmental benefits, but we are also conscious that more could be done, so we are working with Government to establish whether or not there are opportunities for the CAA to do more in this area, as well as exploring can be done under our existing remit without creating burden same regulation.

Challenges ahead

But although we are clearly very positive about the developments I have talked about, there are some risks that need to be managed in order to meet the Government's policy objectives:

The reforms must deliver a framework that builds on the successes of the regional airports market, and allows these airports to compete - one of the biggest drivers for improving the consumer experience of aviation by driving down costs and increasing competition has been the development of uninhibited airline competition and the commercialisation of the regions' airports.

This will be particularly important in a more capacity-constrained South East, where airports around London are expected to compete to attract airlines and passengers and mitigate the effects of constraints and maintain choice for passengers.

In this context, the transposition of the Airport Charges Directive into UK law presents some risks. The Government's recent statements that it will avoid 'gold-plating' European laws provide some comfort about this – the ACD is certainly one where we need transposition of the Directive into UK law to support the UK's successful airports market and its future development.

More generally, the proposed Bill presents an early opportunity for the Government to bring forward a tightly-focused Bill, stripped of any unnecessary obligations, processes and powers. And let's not forget that each obligation comes with policies, procedures, guidance and, ultimately, costs to airports, airlines and consumers. Better Regulation needs to start with the Bill and it then falls to the CAA to implement its provisions in an appropriate manner.

Role of Secretary of State

I'm sure most of you will have noted with interest statements from the Government about the role of the regulator, the benefits of creating a transparent, independent regulatory sector that removes the government from the process of regulation.

We would certainly support this approach, given the clear benefits of independent regulation in terms of helping to develop clear, consistent decision-making, free from short-term policy imperatives. The Government has confirmed its view that a key role for Regulators is to take technical decisions, and, as an independent voice, make choices that attract criticism from vested interests but benefit consumers. And an approach that properly codifies and develops a strong, stable regulatory sector within a clear framework of checks and balances also supports investment by mitigating investment risks. The UK is rightly acknowledged for its stable investment framework and the benefits of this have been seen across all sectors of our economy in recent years. It is important to recognise that success in current times, when it is more vital than ever to be able to attract private investment.

In drafting the bill it will be important for the Government to provide further clarity about its role and that of the Secretary of State and Parliament, and then the interaction between the three and the regulator.

ATOL

Finally, I should briefly touch on one further area of our work which is in need of urgent updating to better protect consumers. The ATOL scheme provides a vital protection to holiday makers, covering them if their holiday operator fails by allowing them to finish their holidays and return to the UK as planned, refunding their money if they are yet to travel. But in recent years, as the travel industry evolved and innovates in line with the rest of the aviation industry, ATOL has come under increasing pressure and has found itself more and more often unable to protect consumers when they may have expected to be.

A decade ago over 90% of all air holidays were protected by ATOL, now that figure is only around 50%. Recent high profile failures like Goldtrail and Kiss Travel, along with the Supreme Court deciding not to hear a case that would have helped to clarify when holidaymakers can expect to be protected, have drawn attention to the urgent need to look again at the regulations surrounding ATOL. The CAA has been working closely with Government on its proposals for the scheme, and we look forward to it publishing more information as swiftly as possible.

Conclusion

In conclusion, I hope I have explained why the reforms proposed by the Government are so important, and how they will support an industry that is both vital to the UK's economy and is constantly evolving. The CAA is facing an industry that I would argue has changed more than any aside from telecommunications over the past two decades with a legislative framework that has not been significantly updated for three decades. A new Bill would therefore enable us to act more effectively in key situations. What's more the legislation also offers an early opportunity for the new Government to demonstrate its commitment to Better Regulation, which will support a commercial and competitive market for the benefit of the consumer.

There are clear challenges ahead, but I am confident that the Aviation Economic Regulation Bill will provide the CAA with a firmer footing to meet them, and to work with industry to improve life for the passenger, something I am certain we would all agree is the most important thing for us all.