



CIVIL AVIATION AUTHORITY
Secretary and Legal Adviser's
Office

FOR PUBLICATION

CIVIL AVIATION AUTHORITY
MINUTES OF 414th BOARD MEETING HELD ON TUESDAY
25 NOVEMBER 2008 AT 10.00 AM

Present:

Sir Roy McNulty **Chairman**
Mr J Keohane **Deputy Chairman**
AVM Anderson
Mr J R D Arscott
Dr H Bush
Capt D J Chapman
Mr R T R Jackson
Miss C Jesnick
Mr R J Britton **Secretary & Legal Adviser**

In Attendance:

Miss C Brown
Director Corporate Communications

Mrs N Hastings
Head of HR

Mr M Smethers
Director European and International Strategy

Mr D Storey
Head of Price Control, ERG **For Item I**

Mr N Fincham
Director Economic Regulation and
Competition Policy, ERG **For Item IX**

Apologies for absence were received from Dr C Bell, Mr R P Mountford,
Capt R O Whitefield

The Chairman welcomed Capt Chapman to his first meeting of the Board.

I Stansted Airport Price Control – Presentation by Mr Storey, ERG.

1. Mr Storey briefed the Board on the emerging CAA proposals following receipt of the Competition Commission's recommendations for the Q5 price cap. In addition, the Competition Commission had found that Stansted Airport had pursued a course of conduct which had operated against the public interest in three respects, namely consultation relating to the strategic development of the airport and its capital expenditure proposals, service quality relating to the processing of passengers through security and the structure of prices affecting cargo aircraft during the period February 2002 to April 2008. The Competition Commission recommended that the CAA impose conditions to remedy those effects. The next step in the Stansted review process would be on 9 December when CAA will publish for consultation the Q5 proposals having had regard to the Competition Commission's recommendations. An industry seminar will be held on 16 December. The consultation period ends on 3 February with oral hearings planned for 9 February. The final decision would be made in early March so that the new price controls come into force on 1 April 2009. Dr Bush drew attention to the parallel developments against which this review was taking place. These included publication by the Competition Commission of its proposed remedies in the BAA market inquiry and the Stansted Runway 2 Planning Inquiry in respect of which statements had to be submitted by 22 December.
2. The Board noted the presentation, a copy of which was handed to Members, and endorsed the emerging proposals put forward on behalf on the Panel.

II Minutes of the Previous Meeting and Matters Arising.

3. The Minutes of the meeting held on 16 October were approved and signed. On the action points arising:
 - XL Failure – the Chairman confirmed that letters of thanks had been sent to airlines that had provided assistance in the repatriation.
 - Secondary Legislation – the Chairman confirmed that he had raised the matter a number of times at a senior level in DfT. Mr Britton confirmed that regular meetings were now being held with DfT Legal to check progress on amendments to civil aviation secondary legislation.
 - Ofcom Consultation – Mr Arscott confirmed that the CAA had responded to the consultation on spectrum pricing.
 - Penalties – Mr Britton confirmed that the level of penalties had been discussed at the

Prosecutors' Convention held by the Attorney General's Office. It was pointed out that operators who had suffered economic loss caused by the unlawful behaviour of others could seek to recover the loss through the civil courts. This approach was adopted by airlines which had to make unscheduled stops to unload disruptive passengers.

- DfT Payment – Miss Jesnick confirmed that the £1 million owed to CAA for work carried out for DfT had been paid.

III(i) Chairman's Opening Remarks.

4. The Chairman reported on the following highlights:

- Meeting with Secretary of State – the Chairman had described to Mr Hoon the enormous challenges and risks flowing from the Single European Sky II and SESAR projects. A note on EASA for the December meeting of the Transport Council had also been sent to the Secretary of State.
- Recruitment – the advertisement seeking his successor had now been published. Recruitment of a successor for Mr Keohane would now be put in hand. The announcement of Mr Arscott's successor was still with the Secretary of State. AVM Anderson confirmed that the MoD had approved the appointment as required by the CAA (Air Navigation) Directions 2001.

(ii) Strategic Review Implementation.

5. The Chairman reported that there had been little response to the DfT's consultation. A meeting had been held with Simon Webb at which the governance recommendations had been discussed. DfT were to provide a note on key principles of governance, but it had been accepted that CAA's use of Panels to deal with price control reviews and decisions, with endorsement by the full Board, was a valid and efficient method of dealing with these complicated and lengthy reviews. DfT had recruited an official to deal with the environment recommendations.
6. The Board noted the Report.

IV Directors' Reports:

ERG – Doc 2008/103 by Dr Bush.

7. Dr Bush reported on the following highlights:

- DfT Review of Framework of Economic Regulation – the CAA had responded to the DfT's questions contained in its consultation on the reform of the framework of economic regulation. Key issues were improving the passenger experience, appropriate and timely investment, environmental impact and the role and form of economic regulation. DfT were keen on a

licensing regime but were far from clear about the extent of its application to airports. In addition, a special administration regime for strategic airports was being considered although the need for such a regime was not clear, unlike in the case of monopoly utilities such as NERL. The consultation period expires in December. A key issue was the extent of any environmental duty on CAA and whether this should be of a general overarching nature or specific to particular functions. The Secretary of State was still pressing for a Bill in the 2009/10 Session of Parliament. Miss Jesnick said that she was CAA's representative on the Bill team which was primarily dealing with the Strategic Review recommendations. Dr Bush agreed to keep her abreast of proposals and discussions emerging from the economic regulation review.

In discussion, it was agreed that the Chairman should press Simon Webb for a further high level meeting before Christmas to focus on key issues related to the review of economic regulation.

Action: Chairman

- NATS CP3 – the initial consultation paper for the regulatory review for new price controls in 2010 for the en-route and Oceanic business of NATS En Route plc for the five years to 2011-15 had been published in October. Responses are due by mid-December. Key issues include the extent to which costs incurred by NERL as part of the SESAR project should be recovered through regulated charges and if so, how best to create incentives on NERL to manage the risks of this huge project.
- NATS 2009 En-Route Charge – NATS' proposals to charge up to the maximum amount permitted under the CP2 price control had been presented to the airlines on 21 October. Extreme disappointment had been unanimously expressed that in the current economic climate NATS had not chosen to charge below the cap which it had previously agreed to consider.

8. The Board noted the Report.

CPG – Doc 2008/104 by Mr Jackson.

9. Mr Jackson reported on the following highlights:

- Third Package – the revised EU Regulations on Licensing of Air Carriers came into force on 1 November. However, drafting issues had arisen with the UK Implementing Regulations which were not yet in force. Accordingly, CAA was currently unable to grant, vary or revoke operating licences.
- Markoss Aviation – this Type A operating licence holder went into administration on 13 November.
- XL Leisure Group – a short term “lessons learned” exercise had been carried out with DfT.

The Aviation Minister would like to make a statement on the matter before Christmas.

Following legal advice, the Trustees would be refunding customers of Freedom Flights (one of the XL Group's ATOL holders selling seats only) and Pure Flights which had been sold through travel agents. However, the Trustees propose to take an assignment of the customers' claims and sue the travel agents in the civil courts as organiser for the purposes of the Package Travel Regulations.

- ATOL Protection Contribution – a consultation would shortly be commenced on increasing the contribution.

10. The Board noted the Report.

SRG – Doc 2008/105 by Capt Chapman.

11. Capt Chapman reported on the following highlights:

- EASA Extension of Scope to Operations and Licensing – the timetable for publishing a Notice of Proposed Amendment for operations has slipped again and is not expected until mid-December. There was a pressing need to get on and make the Implementing Rules otherwise there was a risk of a regulatory vacuum. While transposition of existing rules was awaited, new rules urgently required by the industry were not being developed.
- Leasing and the Third Package – Capt Chapman said that the delay in making UK Implementing Regulations was also affecting SRG as the CAA has limited powers to issue any leasing approvals until the SI entered into force.
- Newquay Airport – the transition from MoD to civilian operations is proving very difficult. ATSSD had spent an enormous amount of time and resources on this project. Three airlines would be affected if services have to cease temporarily.

12. The Board noted the Report.

DAP – Doc 2008/106 by Mr Arscott.

13. Mr Arscott reported on the following highlights:

- Appointment – Hugh Westaway had been appointed Assistant Director International ATM Policy from 1 December.
- Single European Sky:
 - SES II – DAP staff led by Neil Perry, have been heavily engaged in the Council Aviation Working Group on the Commission's proposals to amend the four high level SES Regulations. The French Presidency is still aiming for a general approval of SES II at a meeting of the Transport Council on 9 December.
 - SESAR – the Transport Council endorsed the transition of SESAR to its development phase at its meeting on 9/10 October. The SESAR Joint Undertaking can now commence its operations

and is working to recruit staff and finalise membership agreements.

Single Sky Committee – the issue of filing differences with ICAO had arisen. CAA had offered a workshop in December to air this matter.

- Terminal Control North Airspace Change – NATS are continuing to evaluate design options. A more piecemeal approach is apparently being adopted starting with some of the London City SIDs.
- Ofcom Consultation on the Introduction of Administrative Incentive Pricing – further consultation with industry will be undertaken.
- Auction of Spectrum at 2.6GHz – it has been identified that this may well adversely affect primary radars used by both civil operators and MoD which operate in the 2.7-3.1GHz band. DAP and SRG together with MoD, are working with Ofcom to address the issue which has potentially significant modification costs implications.
- Meeting with BA on Heathrow Delays – Willie Walsh raised this matter at the last high level meeting with CAA. A meeting took place on 11 November to identify the issues which focus on the issue of minimum departure intervals used by NATS to regulate the flow of traffic to en-route ATC sectors.

14. The Board noted the Report.

Audit Committee – Oral Report by Mountford.

15. On behalf of Mr Mountford, the Chairman made the following points:

- Internal Audit had done some important but unscheduled work in support of CPG's handling of the failure of XL Airways, in particular assisting in extracting data from XL's systems and monitoring their handling of claims.
- A value for money report into the research programme commissioned by SRG had been completed.

These two assignments reflect the positive development of Internal Audit as a source of consultancy as well as assurance and an improved reputation within CAA management.

- PricewaterhouseCoopers had presented their audit plan to the Committee.
- Andrew Alsop had accepted an offer to become the new permanent Head of Internal Audit starting on 5 January 2009. Outsourcing arrangements with Deloitte would remain as they are.

16. The Board noted the Report.

V Legal Report – Doc 2008/107 by the Secretary.

Judicial Reviews

- (i) The Queen on the Application of easyJet Airline Company v CAA

17. The Hon Mr Justice Collins had granted permission for the Judicial Review to proceed. Both easyJet and BAA Limited, as Interested Party, were keen to make an application to the Court for expedition of the hearing. CAA is prepared to consent to that subject to availability of Counsel being taken into account. On this basis, the case could be heard during Hillary Term 2009.
- (ii) The Queen on the Application of Alan Cox v CAA and NATS (En Route) plc
18. The Administrative Court has put the case into the warned list for hearing.

(iii) The Queen on the Application of CGTSN Limited v CAA and BAA

19. This human rights challenge to CAA's detention powers on behalf of Eurocontrol and NATS is being resisted.

Scarce Bilateral Capacity Hearing

20. The Board formally appointed a hearing panel consisting of Dr Bush (Chairman), Mr Mountford and Mr Jackson to allocate scarce capacity on the London-Kiev route. Applications for a Scarce Capacity Allocation Certificate UK-Ukraine have been made by both British Airways plc and British Midland Airways Limited.

Price Control Decision Making

21. The Board agreed the recommendation that the legal decision in price control matters remains with the quorum or Panel of Board Members appointed by the Board to carry out the review and that the Panel must keep the Board fully abreast of its work and seek full Board endorsement of its decisions to ensure strategic challenge and oversight.
22. The Board noted the Report.

VI Finance Report – 7 Months Ended 31 October 2008 – Doc 2008/108 by

Miss Jesnick.

CAA Finances

23. The operating profit for the year to date was £686k as compared to the budgeted profit of £1,528k. After accounting for borrowing costs (£225k credit) the CAA's net profit was £911k as compared to a budgeted profit of £1,723k. Income for October was reasonable at £8,204k being below budget by only £31k. However, it is clear that ASK figures will not increase as planned. Income from airworthiness, personnel licensing, aerodrome licensing and general aviation was all below budget. EASA contract income was also below budget as a result of less than budgeted hours being booked to the EASA contract.
24. Costs for the 7 months at £56,400k were £1,254 below budget. The cost reductions put in

place including class of travel, cut-backs on temporary staff and overtime working were beginning to bear fruit. The VAT reduction announced by the Government should help marginally with CAA's irrecoverable VAT.

The Top CAA High Level Risks

25. Miss Jesnick drew the Board's attention to the Tables setting out the top high level business risks to CAA which had been developed since the Board risk workshop in March 2008. The Tables are reviewed by CMC. Miss Jesnick drew attention to the upward revision of the major accident risk and the inclusion of higher rated risks around loss of income, rate of return and the ATT funding. The occurrence indicators are moving in the wrong direction. SRG will be reviewing its response handling.

Renewal of Insurances 2008/09

26. The CAA's claims record and transfer of responsibilities to EASA confirmed to underwriters that the CAA was an excellent risk in which to be involved.

Recession

27. To prepare for the forthcoming economic recession, CMC had agreed a cost reduction programme including a recruitment freeze, a ban on temporary staff, consultants and the use of contractors, overtime ban, travel reductions etc. Some 110 people leave the CAA each year and in many cases CAA has to pay for leave which has not been taken. This will be managed much more closely. The research budget will be reduced by £150k. Further consideration of these items in 2009 may be required depending on the depth of the financial crisis. On income generation, proposals are being examined for an extra charge for enhanced turnarounds and a number of medical charges. ASSI is considering a move back to Gatwick from Crawley when the lease expires next year which should produce a saving. Building refurbishment works have been halted.
28. In discussion, Dr Bush said that the economic situation is likely to get much worse. The Chancellor's pre-budget statement was an indication of this.
29. The Board noted the Report.

VII European and International Strategy Report – Doc 2008/100 by Mr Smethers.

30. Mr Smethers reported on the following highlights:
- EASA – a series of meetings had been held with the Agency, the Commission and senior members of the Management Board to strengthen the governance of the Agency and to improve working relations between the Agency and the Commission. Improvements are being made. The recent partnership meeting had been constructive.

- ICAO Audit – preparations are continuing. Staff due to make presentations are being trained. A dummy audit for ASSI took place in mid-October and a specific rehearsal in Bermuda is scheduled for the second week in December. Similar sessions are planned for the Isle of Man in the last week of November.

31. The Board noted the Report.

VIII Environmental Policy Quarterly Report – Doc 2008/110 by Mr Keohane.

32. Mr Keohane reported that the debate about statutory duties continues. However, the main thinking is being carried out in the debate on the new framework for economic regulation. Sir Joseph Pilling made it clear in his recommendation that the CAA should not be given a general duty in statute without a clear policy framework from Government. This pre-condition is not being met so far. Mr Arscott said that it was important that the Pilling recommendation be kept intact.

33. There had been mixed progress with the CAA/DfT joint co-ordination group. However, DfT have recently reconfirmed its commitment to the group and will be recruiting a new member of staff whose responsibilities will specifically include work for the group.

34. The Board noted the Report.

IX NLMCC Annual Report – Doc 2008/111 by Dr Bush.

35. Mr Fincham, Chairman of the NATS Licence Management Co-ordinating Committee, presented the seventh annual report of NLMCC for the Board's consideration. During the past year, the Committee's main attention had been focused on monitoring NATS' performance, European developments, better regulation and preparatory work for the CP3 price control review. Safety standards had been maintained throughout the year. While there had been a slight increase in Airprox reports during 2008 when compared to the equivalent period in 2007, the number of risk bearing reports has been maintained at a very low level. There had been one major failure of the NAS in September. NERL had been asked to report to the Committee as soon as possible on the failure. The Committee had focused particularly on the methodology employed by NATS in preparing plans for the allocation to aircraft operators of restricted capacity in the immediate aftermath of a major incident and the extent to which NATS is consulting users on its plans. NERL is giving a higher priority to contingency facilities than previously. CTC is being examined for immediate use in such circumstances. NERL's financial position has continued to be monitored. During 2007/08 loan notes to the Airline Group, BAA and HMG totalling some £170 million were repaid. The Committee's documents setting out the CAA's

policies and processes for the monitoring and enforcement of NERL's licence had been updated and consolidated.

36. The Board noted the Report.

X Charging Proposals for 2009/10:

ERG – Doc 2008/112 by Dr Bush.

37. Dr Bush presented ERG's proposals for its airline, airport and NATS charges for 2009/10. In Table 1 the proposed charge for designated airports should be reduced from 2.65 pence per arriving passenger to 2.33 pence to take account of the de-designation of Manchester. As a consequence, the charge per arriving passenger at non-designated airports will increase from 0.58 pence to 0.65 pence.

CPG – Doc 2008/113 by Mr Jackson.

38. Mr Jackson presented CPG's proposals for the ATOL scheme and the fixed charges of the operator licensing scheme. The proposed ATOL charges for 2009/10 represented a 3.47% increase on the 2008/09 charges which was below inflation.

SRG – Doc 2008/114 by Miss Jesnick.

39. Miss Jesnick said that SRG charges schemes proposals had been presented to industry for consultation on 18 September. Taking into account the current economic climate and the continuing downturn in industry growth, the assumptions used had been revised to reflect a low to medium volume growth. This has resulted in the revised forecast position showing a loss of £1,089k.

40. Following approval by the respective Policy Committees, the Board approved the charging proposals for 2009/10 for ERG, CPG and SRG as set out in the Board Papers.

XI Any Other Business.

(i) Agenda Plan Update.

41. December 2008 – add Consumer Policy. Combine the ERG items into the Director's Report.
January 2009 – add BAe presentation on UAVs.
February 2009 – add CI Business Plan and Budget 2009/10 from December 2008.

(ii) Board Meeting Dates.

42. The Chairman noted with regret that the rescheduling of the meeting to enable attendance at the Bordeaux Conference had caused the absence of Dr Bell, Mr Mountford and Capt Whitefield, all of whom had given apologies. The consequences of moving the Board meeting from its traditional third Wednesday of the month must be fully taken into account before

moving meetings in future.

The next Meeting of the Authority will be at 10.00am on Wednesday 17 December 2008 in Conference Room 1, CAA House