

CIVIL AVIATION AUTHORITY
Secretary and Legal Adviser's
Office



FOR PUBLICATION

CIVIL AVIATION AUTHORITY
MINUTES OF 412th BOARD MEETING HELD ON THURSDAY
18 SEPTEMBER 2008 AT 10.00 AM

Present:

Sir Roy McNulty Chairman

AVM Anderson

Mr J R D Arscott

Dr C Bell

Mr M J Bell

Dr H Bush

Mr R T R Jackson

Miss C Jesnick

Mr J Keohane

Capt R O Whitefield

Mr R J Britton Secretary & Legal Adviser

2. In discussion, it was noted that the principle of divestment was generally accepted. Indeed, BAA had now offered Gatwick for sale. Dr Bush commented that the Commission needed to look beyond simple divestment to the structure and regulation of the market.
3. The Board agreed the thrust of the CAA's response. The Chairman asked Members to submit comments on the paper to ERG within the next 24 hours.

I Minutes of the Previous Meeting and Matters Arising.

4. The Minutes of the meeting held on 16 July were approved and signed. On the action points arising:
 - Heathrow Passenger Transfers – Agenda Item.
 - Strategic Review – the Chairman confirmed that he had written letters to Sir Joseph Pilling and key stakeholders. Miss Brown confirmed that an appropriate note had been sent to the Chief of the Air Staff.
 - Stansted Airport Regulation – the Chairman confirmed that a letter had been sent to DGCA about co-ordination of FOIA requests.
 - NATS Regulation – Dr Bush confirmed that governance arrangements for the CP3 price control review were being considered in the light of the Pilling report recommendations.
 - 1982 Resolution – Miss Jesnick confirmed that this matter was under consideration and would be brought back to the Board in November.

Action: Miss Jesnick

 - EASA – it had been decided to postpone writing to Matthias Ruete.
 - Bordeaux Conference – Mr Smethers reported that the French DGAC was being reorganised in the Autumn so it would be more useful to arrange a meeting in the New Year.
 - ICAO Audit – Agenda Item.

II(i) Chairman's Opening Remarks.

5. The Chairman reported on the following highlights:
 - Meeting with Secretary of State – Ruth Kelly was pleased with the CAA's reaction to the Pilling Report. A proper substantive dialogue on the next stage of the review of economic regulation was promised. In this connection Dr Bush said that DfT's response to the Competition Commission will set out their views on this subject. There was a risk that economic regulation will be channelled into a directive model. There will always be costs associated with Government intervention and there was more than one possible

approach to economic regulation.

- Recruitment – the Chairman said that the aim is to advertise for his successor around the end of September. The advertisement for the Chief Executive post would follow four to six weeks later. All being well, both should be in place by late Spring/early Summer 2009. The second round of interviews for John Arscott's successor should take place in October.
- Deputy Chairman – Mr Keohane's term as a Member of the CAA has been extended to 31 March 2009. Steps are being taken to recruit a new non-executive director with economic regulation and consumer protection experience to start on 1 April 2009.

(ii) **Strategic Review Implementation**

6. The first implementation meeting would take place this afternoon. DfT are broadly comfortable with the CAA's approach.
7. The Board noted the Report.

III Directors' Reports:

ERG – Doc 2008/81 by Dr Bush.

8. Dr Bush reported on the following highlights:
 - SES II – ERG has been analysing the legislative proposals and has produced a briefing note on the scope of the performance regime. The newly established SESAR Economics Task Force held its first meeting on 1 September. The airlines have high expectations of SESAR.
 - Stansted Price Control Review – the Competition Commission held its final oral hearing on 10 September. The Commission's report to the CAA is in its final stages of preparation. It is not yet clear how it will emerge. There will probably be a RAB based price cap. Dr Bush outlined the Commission's possible treatment of both the SG1 and SG2 proposals.
 - NATS – discussions have been held with NATS and with some airline interests on the scope of the CP3 price control review and the prospects for greater NATS/airline working. The aim is to put out an initial consultation paper at the end of October 2008. Revised governance proposals for the review will be brought to the Board in October.

Action: Dr Bush

9. The Board noted the Report.

CPG – Doc 2008/82 by Mr Jackson.

10. The Board congratulated Mr Jackson and his team for their successful undertaking of the huge task of repatriating XL's 85,000 passengers following the company's failure on 12 September.

11. Mr Jackson reported on the following highlights:

- XL – the re-financing proposals had failed and the company went into administration at 0300 on Friday 12 September. CPG's contingency planning arrangements were immediately put into place. The travel industry had been very helpful with Thomas Cook, Thompson, First Choice and Virgin Holidays staff providing essential support on the ground in resorts with co-operation from other tour operators and the Federation of Tour Operators, which is helping to co-ordinate the operation. Mr Roger Allard, an industry specialist, had been retained for the purpose of commercial oversight of rates. The forecast costs for the repatriation exercise are about £20 million. To keep the XL fleet flying would have cost in the region of £50 million with unquantifiable debts on each aircraft rendering them liable to seizure. In any event, the Government was not prepared to give an indemnity against all liabilities to Kroll, the administrators. The repatriation programme will run over the next two weeks. The ATT's reserve insurance was with AIG. The position of AIG UK was sound.

Included amongst XL's customers were those who bought flights direct from XL.com.

These customers were not entitled either to repatriation or refunds. However, because of the difficulties in sorting people out at foreign airports and the risk to public order, it had been decided to repatriate all XL's customers where seats were available. Those not protected by ATOL will be charged. There is a more difficult issue in the case of refunds claimed by customers of both ATOL holders and non-ATOL holders who were split contracting in contravention of the ATOL Regulations. The travel trade quickly made the point that there should be protection for all as previously advocated by CAA to overcome this confusion.

In discussion, Dr Bell said this was a tremendous operational achievement. The press releases from Corporate Communications were particularly helpful in keeping the Board up to date. Miss Brown said that Corporate Communications were in at the very beginning and extra staff were brought in for 24 hour manning. There had been some 250,000 calls to the call centre in the first 24 hours. Over 1,250 calls had been made to the Press Office in the first 72 hours alone. Mr Jackson said that thanks was also due

to Miss Brown and her team and to Legal.

Action: Chairman

12. The Board noted the Report.

SRG – Doc 2008/83 by Mr Bell.

13. Mr Bell reported on the following highlights:

- BA Boeing 777 Accident Investigation – on 4 September AAIB published a further interim investigation report. The investigation has established that the fuel flow to both engines was restricted, probably due to ice within the fuel feed system. Three safety recommendations were made to the FAA and EASA. The recommendations relate to circulating the fuel on the ground in very low temperatures and changes to flight profile. These are not too onerous for operators and have been accepted. More difficult is the recommendation to look at other airframe/engine combinations since this is the only reported incident of its kind. Although the recommendations are not directed to the CAA, SRG continue to work closely with AAIB and British Airways and to monitor the actions of EASA and FAA.
- Coventry Mid Air Collision – on 17 August a Cessna 402 carrying four persons and a Rand home built aircraft with one person on board collided. All five occupants were killed. SRG is assisting the AAIB investigation. The licences of the controllers providing an air traffic service have been provisionally suspended. The accident is also being investigated by the Warwickshire Police. AVM Anderson commented that the police are taking a more proactive approach to accident investigation and its possible criminal implications because of the right to life under the Human Rights Act.
- General Aviation Airfields – SRG has been working closely with DfT to develop a new planning policy statement for General Aviation airfields. The subject of wind turbines is also to be addressed. The Minister will present the statement to Parliament in the Autumn.

14. The Board noted the Report.

DAP – Doc 2008/84 by Mr Arscott.

15. Mr Arscott reported on the following highlights:

- SES II – the CAA has been heavily engaged in assisting the UK to develop its position on SES II before negotiations begin. A major challenge for the UK is to ensure the basis for an effective performance regime. There is starting to be push-back from the more traditional States on this. Sovereignty and national obligations remain difficult

issues.

- NSA Co-operation – CAA is continuing to press for the inclusion of a formal NSA co-ordination body within the SES II legislative changes. This body would have a critical role in ensuring the common implementation of SES.
- Transport Select Committee Inquiry into Airspace – the CAA's Memorandum is being prepared and will be circulated to Board Members, having been scrutinised by the Airspace Policy Committee. The deadline for submissions is 6 October. The Transport Committee's Inquiry will no doubt give environmental interests a platform for their views.
- Terminal Control North – NATS notified CAA on 3 September that all elements of the TCN airspace change will be delayed. NATS wish to revise the design work and to conduct further simulations. NATS further intend to re-consult on the more contentious aspects of the proposals.

16. The Board noted the Report.

Audit Committee – Report by Mr Mountford.

17. On behalf of Mr Mountford, Miss Jesnick reported on the highlights of the Audit Committee as follows –

- Head of Internal Audit – it had been decided to place an external advertisement to seek a suitable candidate for the post of full-time Head of Internal Audit to be supported by co-sourcing from Deloitte with opportunities for CAA staff to train and rotate through the Internal Audit Department.
- There should be a Board Discussion in November to consider the impact of external factors and risks to CAA.
- The possible separation of contracting authority from financial authorities.

18. The Board noted the Report.

IV Legal Report – Doc 2008/85 by the Secretary.

Air Safety Support International Limited

18. The Board noted the move of ASSI's dollar account with Scotiabank Limited from the Bank's Antigua branch to its branch in Tortola BVI.

CAA Pension Scheme

19. The Board, as Principal Employer of CAAPS, agreed to the deletion of Rule 47(d) of the CAA Rules to enable Test Pilots in this closed sub-section to defer their pension benefits beyond age 55 which would accord with "pensions simplification".

CAA Management Committee

20. The Board approved new Terms of Reference for CMC.
21. The Board noted the Report.

V Finance Report – 5 Months Ended 31 August 2008 – Doc 2008/86 by**Miss Jesnick.***Finance*

22. The operating profit for the year to date was £508k as compared to the budgeted profit of £1429k. After accounting for borrowing costs, CAA's net profit was £669k as compared to a budgeted profit of £1569k. Income was 5% down over the first five months. The collapse of XL would result in a loss of approximately £400k income to SRG. The company's debts will also have to be written off. General Aviation income is down but this is thought to be a result of the poor Summer weather. Operating costs at £40,018k were £986k below the budgeted level of £41,004k. In view of the poor economic outlook, the CAA will need to bear down hard on costs. The Executive will be circulating a note to save on discretionary costs such as travel, facilities, flying experience scheme and similar matters. It was noted that debtor days are now starting to show an increase.

IT Service Provision

23. The new service started on 1 September and the transition from Steria was seamless. A total of 17 Steria staff transferred to the CAA under TUPE legislation. The successful transition was due to an enormous effort from Lawrence Murtagh and his staff. Settlement agreement negotiations are still on-going with Steria and these should include a credit of approximately £100k back to CAA.

Unity Project

24. The contract was suspended on 18 July following unreasonable demands by the contractor, Atos Origin. Mr Keohane said that he viewed this move positively. Dr Bell commented that the CAA's robust approach would send a good message to a new contractor.
25. The Board noted the Report.

VI European and International Strategy Report – Doc 2008/87 by Mr Smethers.

32. Mr Smethers reported on the following highlights:
 - EASA – the Chairman congratulated Mr Smethers on his appointment as Chair of the EASA Management Board. Maxime Coffin of DGAC France was elected Deputy Chair. EASA will soon be letting a contract for a major study on future options for carrying out

its certification activities. The study will cover strategic issues such as the extent of outsourcing certification tasks, provision of “proximity activities” locally and the possible establishment of EASA regional offices.

- **ICAO Audit** – Mr Smethers presented a report on preparations for the ICAO audit of the UK which is due to take place in February 2009. A Contracting State can be audited against any of the 10,000 ICAO SARPS. Accordingly, findings will be inevitable but it was important to ensure that none came within the definition of a “safety concern”. The UK itself should be in a good position. However, there were certain legal issues concerning CAA’s discretionary powers which were raised by ICAO at the first audit in 1998 which will require convincing arguments to persuade the auditors of the efficacy of the UK system. There was also a legal issue relating to the provision of Search and Rescue which was a DfT responsibility. The criticisms of safety oversight in the Overseas Territories should have been resolved by the work of ASSI. However, the position of the Crown Dependencies had the potential to generate findings as the Government has not established a harmonised safety oversight as it has done with the OTs. The audit has to be process-driven and universal in application in order to be acceptable to all 194 Contracting States. In some less developed aviation countries, the audit process can assist Directors of Civil Aviation to obtain the necessary resources from their Ministries. The issues for the UK are reputational rather than safety. A successful audit gives a State credibility in peer reviews.

33. The Board noted the Report.

VII Environmental Policy Quarterly Report – Doc 2008/88 by Mr Keohane.

34. Mr Keohane reported on the following highlights:

- The Aviation Environmental Working Group and the joint working group with CAA and DfT were carrying out a number of work programmes for EPC. Work was being carried out on data collection and provision to produce a reference document for aviation and the environment.
- Pilling Report – it was noted that four out of the 41 recommendations related to the environment. Discussion of the aspects and issues of a new environmental duty would be carried out with DfT.

VIII SAROG Report – Doc 2008/89 by Mr Bell.

35. Capt Chapman presented the Report which stemmed from the 2005 Costs and Charges Review. As part of the drive to eliminate cross-subsidies, the Small and Medium sized Enterprises AOC regulation and safety oversight working group had been established. The aim of the group was to recommend the most cost-effective method of regulatory oversight of SME AOC holders without adversely affecting achieved safety levels. The group was chaired by Capt Whitefield. A key point was to ensure that an oversight rating system did not become a league table with operators individually pitched against each other. However, it was acknowledged that a banded system of grading might result. Capt Gray will lead a group to look at the oversight matrix. The objective of the exercise is to redistribute oversight costs based on a rating assessment of SME AOC holders. The redistribution of charges would more appropriately target those operators who require more oversight and result in a lower charge to those operators who maintained high safety standards with little call on SRG resources. Advice had been taken from HSE, the IMO and the Australian CASA on how they apply similar systems. It was proposed to introduce the recommendations of the report progressively. Communication to industry would need careful handling as those who required extra regulatory effort would have to pay more and might complain about damage to their reputation.

36. The Board agreed the future actions set out in the Report.

IX Air Transport White Paper – Doc 2008/90 by Dr Bush.

37. Dr Bush presented the Paper setting out progress on the various work plans set out in the 2003 Air Transport White Paper as updated by the 2006 Progress Report. In 2007 the Secretary of State had requested advice from the CAA on a number of aspects of the passenger experience. One item related to runway resilience. The CAA and its consultants had conducted an analysis involving the airlines, NATS and BAA on the operational and economic costs of delay caused by current pressures. There had been a reasonable response from stakeholders. CAA intends to provide advice to the Secretary of State later in October. DAP had been asked to look at enhancing the existing TEAM procedures to remove capacity constraints. DfT wish to widen the range of options to be considered short of introducing Mixed Mode. Mr Arscott commented that there was a need to get NATS heavily involved in this matter. No decision was likely until the end of the year. The Chairman asked to see a copy of the consultants' report.

Action: Dr Bush

38. Dr Bush referred to DfT's proposed revision of traffic forecasts which will take into

account recent Government forecasts of GDP, oil price and cost of carbon. Forecasting at a time of severe financial turbulence is very difficult. It is not clear whether DfT's methodology will capture this. Traffic levels might not recover as quickly as they did post-9/11 because the current economic problems may take some time to resolve although the long term growth potential of the industry remained.

39. The Chairman commented that the update was very helpful, bringing a number of different issues together.

X Heathrow Passenger Transfers – Doc 2008/92 by Dr Bush.

40. Dr Bush introduced the Paper which derived from a view that transfer passengers at Heathrow added little or no value to the UK economy and if they were deterred there would be no need for extra capacity at Heathrow. The report shows this to be a very simplistic view. Connecting traffic comprises those passengers whose sole business at an airport is to transfer from one flight to another. However they may be transferring between domestic routes and international routes or between international routes. Transfer passengers may be motivated by convenience or by price and may play a substantial or a marginal role in supporting the service on which they fly. Connecting traffic is of particular significance to BA and accounted for 37% of its total traffic at Heathrow in 2007. However, the airlines' incentive is to increase point-to-point travel as this was more profitable in terms of yield. When capacity is limited, point-to-point travel should drive out transfers. However, the message of the report is that transfer passengers sustain routes which would otherwise fail and that they sustain levels of frequency to other world business centres. This is clearly of importance to the City and the UK economy generally.

41. The Board discussed possible publication of this report. Dr Bush said that he would send it to DfT first. It could either be published as it stands or as part of the larger document on business travel which is to be published later. The Chairman said that continuation of connecting traffic was clearly a sensible thing for Heathrow to be doing. Such traffic was highly relevant to both the range and frequency of services and London as the capital city would be less well served without them.

42. The Board noted the report and agreed that it was worth publishing as a separate publication.

XI Any Other Business.

(i) Agenda Plan Update.

43. The Chairman tendered his apologies for being unable to attend the October Board which would be chaired by Mr Keohane. The Secretary advised the Board that the presentation by Mr Andy Lebrecht would not now take place because of his European Council commitments.

(ii) UAVs.

44. AVM Anderson expressed his thanks to SRG for their assistance to MoD on certification and regulation of UAVs.

The next Meeting of the Authority will be at 10.00am on Thursday 16 October 2008 in Conference Room 1, CAA House