

Consumer Panel minutes

1-4pm Tuesday 23 June 2015

Attendees

Consumer Panel

Keith Richards (KR)	Chair	Steven Gould (SG)
Sarah Chambers (SC)		Alastair Keir (AK)
Philip Cullum (PC)		Anthony Smith (AS)
Ann Frye (AF)		

Invited guests

James Tallack (JT)	CAA (PPT)	Tim Johnson (TJ)	CAA (PPT)
Beryl Brown (BB)	CAA (MCG)	Pedro Pinto (PP)	CAA (MCG)
Dan Edwards (DE)	CAA (PPT)	Rebecca Roberts-Hughes (RRH)	CAA (PPT)
Stephen Gifford	CAA (MCG)	Paul Taylor	CAA (MCG)

Apologies

Crispin Beale	Robert Laslett
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Minutes by James Tallack, Panel Secretary

1. Introduction to CAA regulation of NATS

SG and PT provided an introduction to the way that NATS is regulated by the CAA, recognising that this is an area to which the Panel has had little exposure, but which is now subject to greater public focus following the independent inquiry into the December 2014 NATS system failure.

Key comments/responses/questions

- One option to consider for the improvement of NATS governance would be for one of the Government-appointed partnership directors to be a designated consumer or end-user representative.
- Recommendation 29 from the inquiry's report on quantifying and reporting the impact of air traffic control (ATC) failures on end users is, in principle, a good idea. However, there are a number of complexities that need to be worked through. One obvious one is that reporting detriment will create an expectation that something is going to be done to compensate those affected, and there appears to be no plans to do this.
- The CAA should consider whether there is an analogy with Network Rail as a monopoly provider of rail capacity. Here, train companies have been trying to maintain a distance between passengers and Network Rail, and claim to be a reliable proxy for passengers' interests. Consumer groups, on the other hand, have been calling for Network Rail to focus more on end user interests.

- As the European Commission ultimately approves the NATS service and investment plan, it would be useful to understand the criteria it uses when making its determinations. Does, for example, the objective to improve efficiency include some conception of what the consumer interest is in efficiency (e.g. what account is taken of resilience)?
- The interaction with Regulation (EC) 261/2004 is important in any discussion about the NATS regulatory framework. Airlines can claim extraordinary circumstances in the event of an ATC failure, meaning that there is a public-private partnership (NATS) which cannot be held directly accountable by passengers who have had their journeys ruined. This issue could be highlighted with any future effort to publicise the impact of ATC failures on passengers. Again, there are parallels with the rail industry to consider as in that industry the equivalent infrastructure provider (Network Rail) must compensate the travel provider (train companies) who then compensate the passenger.

Action

- CAA to investigate Commission's approval criteria and update the Panel at the next opportunity.

2. Market power test guidance

BB and PP provided an overview of the CAA's forthcoming public guidance on the market power test (MPT) process the CAA must carry out under the Civil Aviation Act 2012. The presentation explained the MPT and its application, set out the aim of the guidance and the key points on the MPT process and methodology.

Key comments/responses/questions

- The 5m passenger per annum (5mppa) threshold at which an MPT must be carried out if requested could mean that the CAA would be able to refuse to carry out an MPT for a smaller airport even if there was significant detriment to passengers. Should the guidance therefore be clearer about the criteria the CAA would use to determine whether to carry out an MPT where it is not obliged to (because the airport falls below the 5mppa threshold).
- Clarification was sought on whether a decision to expand the capacity of Heathrow or Gatwick would trigger an MPT assessment (it would not – any MPT would only be carried out once the new capacity becomes operational as until that point there would have been no material change in circumstances).
- It was recognised that the requirement under the Civil Aviation Act 2012 for the CAA to carry out MPT assessments had produced a more robust understanding of market conditions that would not have been possible under the previous regime, governed by the Airports Act 1986. This had allowed the CAA to develop more targeted regulatory regimes for the airports that were determined to have market power (e.g. the approach at Gatwick is quite different to Heathrow).
- It was agreed that when determining an airports market power in the context of the cargo market, the CAA is right to consider the interests of end users (i.e. those who send or receive cargo) rather than cargo carriers. This is because end users do not

care which route their cargo takes to its destination and may therefore have a number of options, whereas a cargo carrier may have an invested presence at a particular airport and therefore be 'locked in'.

- Regarding the Panel's future involvement in MPT matters, it was decided that the Panel should concern itself with matters of principle (e.g. the guidance itself and issues such as the consumer interest in cargo services, as set out above), but should not get involved in the detailed econometrics.
- Finally, KR recognised that how new capacity is paid for is a separate matter to MPT assessments but stressed the Panel's wish to remain involved in the development of the CAA's policy, urging the CAA to ensure that all alternatives to pre-financing are considered.

Actions

- MPT guidance to be circulated to the Panel when ready.

3. Strategic plan update

DE brought the Panel up to speed on how the CAA's 2016-21 strategic plan had been developing since the last update in April 2015, including issues that had been raised by the Board as of particular strategic significance and therefore of interest to the Panel.

Key comments/responses/questions

- The Panel reiterated its support for a more horizontally integrated strategy that recognised the interdependencies of the CAA's different functional areas and the reality that a decision taken in one area of the CAA's activities (e.g. safety) affects what happens in another (e.g. markets and consumers). This should help the CAA confront trade-offs in a more meaningful and effective way.
- The challenges of regulating an increasingly geographically fragmented industry were noted and that current approaches (the 'registry system' developed following the Chicago Convention) produce undesirable situations where the CAA has full oversight but not full control. It was recognised that the way the CAA funds its activities is out-of-kilter with the way the industry organises or wishes to organise itself. A passenger-based charge would spread costs more proportionately and would also be more transparent to consumers, industry and Government.
- The strategy needs to be about what the CAA is 'for' rather than what it does. This is clearer in some areas (e.g. safety) than others (e.g. infrastructure optimisation).
- Given the CAA's objectives and statutory powers, the strategy needs to be clear about where the balance between consumer and public interests lie. The CAA has no powers to deal with airport development and noise so should not allow itself to be dragged into that debate, which is ultimately about political choices. It should be pro-consumer in every area (recognising that in the area of safety the interests of consumers and the overflowed public are more or less perfectly aligned).