

# **THE ACCOUNTABILITY OF REGULATORS TO CITIZENS AND PARLIAMENT**

## **Evidence to The House of Lords' Select Committee of the Constitution**

**by the**

### **BRITISH AIR TRANSPORT ASSOCIATION**

#### **Introduction**

1. The British Air Transport Association (BATA) welcomes the opportunity to submit evidence to the House of Lords' Select Committee on the Accountability of Regulators to Citizens and Parliament. BATA represents UK-registered airlines, both scheduled and charter. Our members produce 90% of UK airline output. BATA's objective is to encourage the safe, healthy and economic development of UK civil aviation.
2. This response presents our views about the Civil Aviation Authority (CAA) which is the principal regulator for aviation in the UK.

#### **Overview**

3. The CAA regulates all sectors of civil aviation. Its four divisions cover Airspace Policy - including UK Air Traffic Services (UKATS), Safety Regulation, Economic Regulation and Consumer Protection. In 2002 it had a turnover of £152M. Almost all its funding comes from aviation and the associated travel trade and most of that, either directly or indirectly, from airlines. This includes the Air Transport Users Council (AUC) which is funded by CAA and so is, in effect, also paid for by the aviation industry.
4. Although aviation pays for the CAA, it has little influence on the size of its budget nor on how the money is spent. The accountability of the CAA to aviation and hence to citizens, who are aviation's customers, is poor. Recently for example, the CAA carried out a study on seat pitch. In theory this was done on behalf of JAA (the European Joint Aviation Authorities) but the CAA initiated and specified the study. They engaged and paid for the consultants – i.e. UK aviation paid for it. Not only was there no consultation with airlines beforehand but the results were given first to the media by the consultants.
5. The contributions made by different sectors of the aviation industry are not proportionate to the costs incurred. In effect, the airlines subsidise general aviation.

#### **Economic Regulation**

6. CAA regulate charges at Heathrow, Gatwick, Stansted and Manchester airports and en-route navigation charges from NATS.
7. We have concerns about the CAA's approach to airport regulation. In the Airports Act 1986, section 39, the CAA is required to:
  - “further the reasonable interests of users of airports”,
  - “promote the efficient, economic and profitable operation of such airports”,
  - “encourage investment in new facilities at airports in time to satisfy anticipated demands by users of such airports” and

- “impose minimum restrictions that are consistent with the performance by the CAA of its functions under those sections”.
8. During the last quinquennial airport review the CAA stated that “it intends to adopt a framework of economic efficiency as its guiding criterion for making recommendations to the Competition Commission in this review” and “to maximise the total economic surplus generated, irrespective of which parties enjoy that surplus”<sup>1</sup>. This is not compatible with the requirements of the Airports Act in a number of ways.
  9. Insufficient emphasis has been given by the CAA to its first statutory objective, that is “furthering the reasonable interests of users of airports” – the airlines and passengers. It is only as a result of a finding by the Competition Commission that BAA was acting against the public interest with regard to service quality that the CAA has established a regime of rebates payable to airlines in the event that specific airline and passenger related standards are not met. Yet the CAA have indicated that it will still not be until 2005 that an element of this framework regarding aerodrome congestion will come into effect. We believe this is too long and the time scale can be shortened.
  10. The CAA perversely interpreted its last objective “impose minimum restrictions that are consistent with the performance by the CAA of its functions under those sections” to mean the application of minimal regulation regardless of circumstances. Generally we would support the principle of “light touch” regulation. However, the level of engagement by the CAA should be in line with the achievement of its other statutory objectives under the Airports Act rather than the driving objective influencing the achievement of its first three objectives. A regulated monopoly which recognises the symbiotic nature of its relationship with its customers and demonstrates this practically will require less engagement from its regulator than a monopoly which acts independently of its customers without consequence to its own business.
  11. BAA has a monopoly of the main London airports - this after all is the reason they are subject to economic regulation. In espousing the doctrine of maximising the “total economic surplus generated, irrespective of which parties enjoy that surplus” the CAA has ensured and increased BAA’s ability to continue to earn supernormal profits. It was based on this mindset that the CAA decided that it was not of concern that their final decisions would be likely to result in “a shift of economic rents from the airlines to the airports”<sup>2</sup>. Firstly, we do not accept that airlines who are in competition with each other hold economic rents in comparison to the monopoly airports. Secondly, the role of a regulator is to ensure that the monopoly service provider does not increase its economic rents at the expense of its customers - not deliberately set out to transfer more value from customers to the monopoly.
  12. The CAA has also signally failed to “encourage investment in new facilities at airports”. It has been obvious for more than 10 years that an additional runway was required at Heathrow yet BAA has not only never made such a proposal but will not even support specific proposals made by others such as the DfT as part of the SERAS consultation.
  13. We have no comment to make on NATS regulation or on route and air transport licensing.

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<sup>1</sup> Quality of Service Issues. Consultation Paper. CAA December 2000.

<sup>2</sup> Paragraph 2.34 of Competition Commission report to CAA on BAA - October 2002

## **Safety Regulation**

14. This is by far the largest group within CAA with 80% of total staff numbers.
15. The UK enjoys a very high standard of aviation safety and we are keen to see that this is maintained. However costs are high, not only in CAA charges but also in the far greater costs of complying with the regulations. In some instances, UK regulations are different, and more onerous, than those of other respected authorities and we are not convinced that such differences are always necessary. An example is the recent requirement for strengthened cockpit doors where it was deemed necessary for the crew to monitor the space outside the door which led to CCTV having to be fitted to UK registered aircraft.
16. The EU has set up a pan-European aviation safety agency EASA. This should harmonise regulations throughout Europe and lead to improved safety, reduced bureaucracy and reduced costs. However the CAA have not yet told us what the UK contribution to EASA costs will be. We fear that the CAA will impose its own version of the EU regulations and the UK will not be in harmony with other EU states. There will be duplication of charges and compliance costs rather than improved efficiency.
17. The CAA is obliged to carry out a Regulatory Impact Assessment (RIA) before bringing in new regulations but we are not consulted during the RIA process. Obviously, we believe we should be consulted but it would be even better if workshops were held early in the planning phase. This should lead to improvements in regulations and safety being implemented in a more cost effective manner.
18. Although SRG devote about 20% of their time to advising and responding to Government, aviation pays for all the costs. The Government should pay for the services it receives from the CAA.
19. For many years airlines have maintained that CAA charges do not reflect the costs incurred. An example is the Aircraft Operators Certificate (AOC) scheme where an analysis by the CAA shows that the operators of large aircraft (greater than 15 tonnes) subsidise the operators of small aircraft by £5M pa. This anomaly has yet to be corrected.

## **Airspace Policy**

20. The design of UK airspace has a significant effect on the efficiency of airline operations. We feel that there has been insufficient consultation when changes are being planned. Military requirements seem to take precedence. The North Sea changes implemented in 2003 are a case in point. Airlines were not consulted until very late in the process when the main elements of the plan had been agreed.

## **UKATS**

21. The UKATS cost base of some £60M p.a. covers payments to the Meteorological Office for core services, the UK's share of Eurocontrol Agency's costs, Lower Airspace Radar Services (LARS) and Satellite Distribution of Met Data (SADIS). Costs are recovered from airlines via en-route navigation charges. This means that users of uncontrolled airspace get these services at no cost. This is another example of a subsidy to general aviation.

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