

MONDAY 8 FEBRUARY 2010

Present

Bradshaw, L (in the Chair)
Dykes, L
James of Blackheath, L
Paul, L
Plumb, L
Powell of Bayswater, L
Rowe-Beddoe, L
Ryder of Wensum, L
Walpole, L

Witnesses: **Mr Jonathan Moor**, Director General of Civil Aviation, **Mr Francis Morgan**, Head of International Aviation and Safety Division, and **Mr Phil Dykins**, Head of Bilateral Relations, International Aviation and Safety Division, Department for Transport, examined.

Q1 Chairman: You are very welcome. As you know, this session is to be divided into two: a public session and a private session. We have decided who is going to ask the questions in the public session, and of course any other Peer who wishes to follow them up can so do. Would you like, Jonathan, to introduce your colleagues and then we will get going?

Mr Moor: Thank you very much, Chairman. I am Jonathan Moor, Director General of Civil Aviation.

Mr Morgan: Francis Morgan; I am Head of International Aviation and Safety Division in the Department for Transport.

Mr Dykins: Phil Dykins; I work in the same division.

Q2 Chairman: Is there anything you want to say before we begin?

Mr Moor: No thank you.

Chairman: I will ask Lord Dykes if he would like to begin.

Q3 Lord Dykes: Thank you very much for coming, gentlemen. This has been going on for some time, as we all know to our cost and pain, and the whole thing of course had to be put in abeyance with the US presidential election period, which was not just the immediate campaign itself but a much longer period. Can you update us since the one-off evidence session with DfT we had on 10 March 2008?

Mr Moor: Certainly. The negotiations on the second phase of the EU-US Agreement were launched in May 2008, just after that session, within 60 days of the start of the first phase, as required by the Agreement. Progress was indeed slow initially, largely due to the high level of political uncertainty in the United States during the period of the presidential election, and also the protracted process of nominating and confirming the members of the administration. The pace of negotiations has picked up since the confirmation of Mr Ray LaHood as Transportation Secretary on 21 January 2009. There have been six rounds of negotiations during which both sides have had ample opportunity to discuss one another's proposals to amend or supplement the Agreement. The core issues for the negotiations have been five priority areas agreed by both sides at the end of the first phase of negotiations and set down in the stage one Agreement. These are the further liberalisation of traffic rights, for example cabotage within the United States; additional foreign investment opportunities, in particular ownership; the effect of environmental measures and infrastructural constraints on the exercise of traffic rights; further access to government-financed air transportation or the Fly America scheme, and the provision of aircraft with crew or wet-leasing. In addition, there have been lengthy discussions of other changes and refinements to the Agreement, in particular on the Joint Committee, which provides a forum for discussing the operation of the Agreement and addressing any difficulties, and on the need to address the environmental effects of aviation, which has increased in importance since the first phase.

Chairman: You made reference to the fact that progress has been slow. I must say, as an observer on this for a long time, that it is certainly not rapid, anyway, but we may come on to that a bit more.

Q4 Lord Dykes: The second question follows on directly from the first, and that is that when the negotiations took place in Washington a month ago, what were the main issues at stake? What achievements can you boast about to us, and what were the disappointments that you came home with?

Mr Moor: If I may, can I ask Francis Morgan who led on the negotiations in America to answer that question?

Mr Morgan: The sixth round focused mainly on three issues: the environment, the ownership and control issue, with which you will all be familiar, and what has been described as the framing of the Agreement, which is the organisation or staging of the Agreement. On the first point on the environment, the discussion covered two things. It covered on the one hand the US request for a tougher regime at EU level to control the imposition of noise restrictions at European airports, and on the other hand the EU's request on environmental issues, which is for firmer commitments essentially by the US to developing joint efforts to tackle carbon emissions from aviation, which has been our priority. On the environment, the negotiation did move forward. I think it is clear that further discussion will be needed; we have not reached a text with which we are satisfied as yet. In particular the current US demand on airport noise would require a commitment by the EU side to amend its legislation and transfer some of that ultimate responsibility for decisions on noise matters from the local and national level up to the European level in Brussels. This is clearly something that the UK would find unacceptable and that we believe most other Member States would find unacceptable; so there is some work to be done on that. The second point was ownership and control, where it is clearly an EU demand for the United States to relax its own strict ownership and control rules.

On this point, the EU side was informed by the US in no uncertain terms that faced with a weight of US political opinion, which is very strongly against reform of the foreign investment rules, it would be extremely difficult for the US administration to make changes in its laws in this area within the time period set out for the negotiations. The EU side noted this, but again this is an area in which the EU has not signalled that it is ready to cede ground, and we will continue to press the case during the next round in Madrid. The final point was the framing of the Agreement, which is essentially how the Agreement might be structured if an acceptable set of agreements between the two sides can be reached. The two sides discussed the balance of rights that might accrue to each side, and the possibility of having a phased approach to the Agreement coming into force if, as I said, an acceptable outcome can be found on all the issues. In terms of other items, good progress was made on a number of other issues. The headline issues are perhaps difficult, but others are moving forward. On security, the two sides have agreed that they can reiterate the importance of working together and consulting one another on new security measures, which, in the light of what happened at Christmas¹, is a good step forward. Regulatory co-operation: again there was progress made on competition matters and further co-operation there. Finally, as Jonathan described earlier, on extending the role of the joint EU-US Committee, which was established by the first phase, in order to oversee the future development of the Agreement, there were steps forward taken in that area as well.

Q5 Lord Dykes: You have set out the position with great clarity in terms of what was achieved and some of the disappointments. Were there any surprises?

Mr Morgan: I would say there were no surprises.

¹ On 25 December 2009 an attempt was allegedly made to detonate a bomb on Northwest Airlines flight 253, on its approach to Detroit.

Q6 Lord Powell of Bayswater: Chairman, to follow up on that to be sure I have understood, Jonathan Moor at the beginning identified five main areas, which seemed to me all really areas where the EU is asking for things and not much where the US is asking for things. Are there other major issues on which the US is asking for things? The ones that Francis Morgan has described sounded in relative terms to be quite minor - they seem to be more procedural or bureaucratic. Are there major political demands on the US side which are not in the five areas you outlined?

Mr Moor: I do not think there are any significant ones that are not already identified in the five we said. I think there are some quite significant things in there, though, which America obviously wants, for example around some of the seventh freedoms which will allow their cargo operators to operate bases within Europe and between European countries; so there are some significant things which are there as part of the negotiation.

Q7 Lord Powell of Bayswater: They do not sound on quite the same scale as ours: certainly the consequences of the US ceding some of the European demands would be far greater, it sounds to me, than the consequences for Europe of looking after the US demands. The point of the question is: is there really scope there for a balanced package, or is it so one-sided in the sense that the US is not really looking for big things whereas we are, so that the chances of getting there are quite small?

Mr Moor: I think it is very important to know that the US is not looking to go backwards. One of the issues in the first-stage Agreement is that in November this year our ministers, in consultation with the Transport Council and other ministers around Europe could actually go backwards and change the original Agreement, so that is one of the key things America has in mind in the negotiations.

Lord Powell of Bayswater: We should be thankful for small mercies really!

Q8 Lord James of Blackheath: I have two questions I would like to put that derive from my former time long ago as chairman of an airline, the first one of which would be: how far have we now got inter-cross-continental agreement as to the standards to be applied to engine certification of maintenance? Are they now an absolute universal standard internationally?

Mr Moor: I will start trying to answer that question; I might then ask Francis to back me up. Actually, at the moment a meeting is going on, the CAEP meeting in Montreal, which is talking around standards for engines, and about stringencies for nitrogen-dioxide emissions, carbon emissions, noise and particulates. Those negotiations do go on very regularly in Montreal in a three-year cycle. Standards are then set which are applied internationally.

Q9 Lord James of Blackheath: Mr Moor, I think I have just heard you answer “no” to my question in that case, to the extent that there is not at this moment an international standard, which goes to the very core of competition between airlines because it allows some airlines to fly without having the certification which will be required to cross international and continental barriers. This is a very, very restrictive and anti-competitive practice.

Mr Moor: If I can just clarify what I was saying. There is an international standard already around things like noise and air quality. At the moment we are negotiating for more stringency in those standards; but there are already standards which are applying to all manufacturers.

Q10 Lord James of Blackheath: I am talking about actual safety standards of engines. If one airline is allowed to fly without carrying the cost of whatever regularity is required for its maintenance, then it has a cost advantage to its own operating costs and a safety disadvantage to its passengers; so where is the international universal standard applying?

Mr Morgan: If I may, on the safety question, there are ICAO minimum standards to which all states that are members of ICAO must submit. When we admit aircraft to the United

Kingdom we expect all of them to meet a certain minimum level of safety. So there are minimum rules and minimum requirements. ICAO enforces all its safety standards through regular audits of states. At the European Union level we have a system of putting in place the list of banned carriers, so countries that are found to have systematically unsafe airlines, either an individual airline or an entire country, will be banned from flying into Europe if they do not meet the right standards.

Q11 Lord James of Blackheath: Mr Morgan, given the prevalence of code-sharing, the risk exists that a passenger could fly from Britain believing that he was flying on aircraft that are fully serviced and in possession of the appropriate certification, and then come back on a code-sharing airline from the other country that does not have the same standard of certification, and could be at greater risk.

Mr Morgan: We are satisfied that the aircraft flying into the United Kingdom and the airlines operating here all operate to an acceptable and international -----

Q12 Lord James of Blackheath: I am not worried about our standards flying out; it is coming back I am worrying about.

Mr Morgan: Well, I would say all aircraft entering the United Kingdom, we are happy that they are safe.

Mr Moor: The CAA on our behalf does random inspections of up to a thousand aircraft a year to look for compliance with safety regulations.

Lord James of Blackheath: My Lord Chairman, I would like to register a continuing concern in regard to certain aspects of this. I will not press the question, but I am not exactly happy. I think there is an issue here that still needs a little more clarity. Can I ask a second question, please? It comes on the same safety basis. I will shut up.

Chairman: I think we ought to go on.

Q13 Lord Rowe-Beddoe: Good afternoon, gentlemen. Can I just go back, before I ask the question, because it may have a bearing: when I was putting down my pluses and minuses in answer to the last question, which Mr Morgan was answering, I heard the word that there was positive movement in the area of competition. Did you say that or did you say “competitiveness”?

Mr Morgan: Competition.

Q14 Lord Rowe-Beddoe: Thank you. I just wanted to clarify that. That was one of your achievements. Therefore, what has happened and what is now the current situation between the US and EU positions on cabotage?

Mr Dykins: Cabotage remains on the table as an objective for the EU side and has done from the beginning of the negotiations, but the US has always made it clear that this is not something it favours, it is not something that is part of its open-skies template and it is not keen on granting access to its large domestic market. That remains the US position. Their position is made tougher by the fact that cabotage is proscribed by American law, so foreign airlines are not allowed to fly in the US domestic market. Unless and until they change that domestic law, that will not happen. As I said, at the moment there is a lot of opposition within Congress to changing that law, and there is little indication that the US is prepared to contemplate that.

Q15 Lord Rowe-Beddoe: For the moment the EU is whistling in the wind, having this even on the agenda?

Mr Dykins: As I said, we are maintaining it as one of our demands, but there is no early indication, or no indication at all, that the US side is flexible at the moment.

Q16 Lord Rowe-Beddoe: What happens the other way round? I am afraid I do not speak from experience on US airlines, but I know that at one stage Canadian airlines could come through London, pick up and go on to a continental destination. Can American airlines do that today?

Mr Dykins: They can do that under the first-stage Agreement; that is not cabotage, that is called fifth freedom flying, in the jargon. What they cannot do is fly within the UK.

Q17 Lord Rowe-Beddoe: So they cannot pick up at Heathrow and take passengers to Manchester?

Mr Dykins: Exactly.

Q18 Lord Walpole: Can I ask about the environmental problem in this. Flying an aircraft half-full across America cannot be a very good idea from the environmental point of view, can it?

Mr Moor: I totally agree, and it is not a very good idea from the airlines' point of view either.

Q19 Lord Walpole: I am sure it is not!

Mr Moor: The airlines will do everything in their power to make sure the aircraft are full. This is not something that the government has any real control about how the airlines can operate in terms of the fullness of their planes.

Q20 Lord Walpole: In other words, it virtually stops you flying in and stopping ---

Mr Moor: One of the advantages of these different freedoms and rights is to allow you to fill up the plane, and so therefore you get as full a plane as possible.

Q21 Lord Walpole: Then you are okay from an environmental point of view.

Mr Moor: Yes.

Q22 Lord Dykes: Forgive me if I have made a mistake on this because I am not an expert and do not follow closely enough like you do, but presumably then the US is always at an advantage on this unless there is a proper negotiation of reciprocal cabotage rights eventually - but presumably the EU is pressing energetically for that, as are the underlying national governments - because the US can continue to fly from one sovereign country Member State of the EU to another one, and do its own internal cabotage therefore and not treat it as one single area. This is manifestly unfair, is it not?

Mr Dykins: It depends whether you look at the EU as a single whole or as individual countries. On one level it is unfair, if you take the EU as a single market and the US as a single market; but in terms strictly of flying within the individual country then it is on a reciprocal basis and neither side at the moment has the right.

Q23 Lord Dykes: Would we have any possibility of putting pressure on them with other countervailing arguments that would convince them to be more helpful?

Mr Dykins: Essentially we would have to persuade them to change their domestic law, and the US administration would have to get that through the Congress.

Q24 Lord Dykes: Which is very difficult.

Mr Moor: If I may add as well, the key issue here is about investment rules because, to be honest, if you had a relaxation of investment rules there would be no requirement for UK airlines for cabotage; they would be able to buy into subsidiaries or have operating companies in America

Q25 Lord Dykes: Which might be a better way?

Mr Moor: Which I think would be a better way as far as UK airlines are concerned.

Q26 Lord Rowe-Beattie: Can I just pick up that last point? The 25 per cent rule of course still exists in the United States, and we have no corresponding rule in Europe.

Mr Moor: We have a 49 per cent rule within the European Union.

Q27 Lord Rowe-Beattie: Meaning? Can you explain that for me, please?

Mr Moor: 51 per cent of the company has to be owned by the UK; so a UK airline must be at least 51 per cent owned by EU citizens.

Q28 Lord Rowe-Beattie: In Europe.

Mr Moor: Yes.

Q29 Lord Walpole: May I ask which one of you has been doing wet-leasing, and is there any progress in the EU over wet-leasing?

Mr Dykins: It is the same picture in that the first-stage Agreement already allows wet-leasing in the transatlantic market. The EU's remaining demand is that airlines should have the flexibility to wet-lease within domestic markets; but, again, the US regards that as cabotage certainly within the States and so again it falls foul of their domestic legislation.

Q30 Lord Walpole: We will get there in the end.

Mr Moor: We would like to think so.

Q31 Chairman: I was on a plane from Heathrow to Belfast which was wet-leased. It was supposed to be a BA plane but it was an American plane with an American crew. That is allowable, is it not? It flew from London to Belfast, not anywhere else.

Mr Dykins: Our domestic regulations are not quite as tough as the US ones, so, yes.

Q32 Chairman: It all seems to be a one-way street.

Mr Dykins: Wet-leasing benefits both sides actually. It benefits in this case BA, who are allowed to bring in a plane presumably because they did not have a plane with crew available, so it is a double-edged - I will not say weapon - tool. The UK and EU position is to basically free up controls, obviously within appropriate safety requirements, so that all airlines have the flexibility to use it.

Q33 Lord Walpole: Does that happen at all airports in this country? It is not just something that goes on in the big three or four or five or six in the United Kingdom? I was thinking of odd little airports like Norwich International or something, which is my airport. As far as I know, I have never seen another aircraft other than the ordinary companies in there, but then I suppose the crews might be different, might they? Might they be borrowing, hiring crews from elsewhere?

Mr Moor: The key issue here is that there are no restrictions in terms of who can fly from where within the EU. That is purely a commercial matter, which airlines want to operate out of which airports, and you will find different airlines operating out of different airports.

Q34 Lord Plumb: It seems that negotiations are difficult, slow, and in some cases at stalemate. It is very much an ongoing situation. On the next question can I ask whether any progress has been made on the position of allowing foreign carriers to participate in the Fly America programme, and whether that policy has been liberalised?

Mr Dykins: We made a little bit of progress on this in the last round, in the first stage, but not enough in the sense that the Fly America policy still exists.

Q35 Lord Plumb: Sorry, progress in what way?

Mr Dykins: They were prepared to open up routes to EU carriers which were not those that had been set aside specifically for the programme. Essentially, this works by the

US Government fixing certain routes where a lot of US contractors or government officials fly abroad and they offer those routes to US carriers in return for participation in their domestic military airlift programme or reserve, which is called CRAF. A number of American carriers participate, and in return for that they get privileged access to US Government traffic. That is basically what the Fly America programme is. In the first stage they did offer some access to the European carriers to other routes that were not in that programme for US government officials. We have discussed it again in the second stage. Once again, this would require amendment to the US legislation. They are not open at the moment to changing that legislation. They do not want to remove the incentive that it currently provides to US carriers to participate in the CRAF programme.

Q36 Lord Plumb: So there is no sign of liberalising the programme, as you see it?

Mr Dykins: Regrettably at the moment, there is not.

Q37 Chairman: Can you explain in words of one syllable: does the Fly America Programme apply to employees of the American Government or to contractors and aid workers whom the American Government is paying, or does it extend even further to voluntary organisations in the United States whose staff might fly somewhere?

Mr Dykins: As I understand it, it applies to US Government workers and those engaged on contracts let by the US Government.

Q38 Chairman: Might it be attached to any condition of supplying aid that any staff who fly, should be Fly America?

Mr Dykins: It may well be a condition of contracts that are let to suppliers.

Chairman: Thank you. Are there any other points before we go into private session?

Lord James of Blackheath: I apologise for this question because it can only come from a pub on a Friday night and it comes from pilots who live in my village, but I would like to ask the question nonetheless because it is a terrifying one. They are telling me that they believe unanimously as a body of pilots that the Airbus 380 crash from Brazil into wherever it was ---

Lord Powell of Bayswater: It was an A330, I think.

Lord James of Blackheath: --- was caused by the pilots having switched on to automatic because the air traffic control system provides a radar ahead of the pencil storms or whatever they are that are littering the sky, only to a distance of 200 miles; whereas if they switch on to automatic they can get 600 miles of rest out of it and therefore are unaware of the pencil storms littering the mid-Atlantic. Is there any move towards the internationalisation of an ATC system which will ensure that nobody can go on to automatic control for anything under 600 miles? It seems to be the pilots' obsession that this is the biggest danger in global flying today.

Chairman: Before you answer that, I recognise that that is quite outside the scope of the questions.

Lord James of Blackheath: I am sorry, my Lord Chairman, it is not outside the scope of my pub on a Friday night. I am sorry!

Chairman: I think we have to keep to the agenda.

Lord James of Blackheath: Okay, but ATC is a huge issue.

Chairman: I am not saying it is not, but we are here to examine the witnesses on EU-American relations.

Lord James of Blackheath: Apologies for the question.

Chairman: That is the end of the public session.