

Constructive Engagement: The first attempt at UK airports

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Origins of Constructive Engagement

- Personal – I arrived at the Civil Aviation Authority (CAA) in 2003 with a Treasury not an economic regulation background. Enabled me to see things differently and put an emphasis on behavioural/more commercial solutions
- The recently concluded 2003 review had been extremely fractious. How to improve the dynamics for next time?
- Striking feature to an outsider was how so much of the dialogue was intermediated through the regulator rather than taking place between what were commercial parties used to negotiating in the normal course of their business

Basic structure of Constructive Engagement (CE)

- Applied to three regulated airports
 - Heathrow, Gatwick and Stansted
- The parties were asked to focus on particular elements where they could contribute most, including
 - the shape of the capital programme,
 - service levels
 - some aspects of opex
- Efficiency was considered by the CAA

CAA aims

- Best case was agreements which could be adopted into the regulatory settlement
 - subject to a check on passenger interests
- Short of that there would also be advantage in refining how and why parties disagreed
 - to make for better CAA decision-making.

Progress was patchy

- Some narrowing of differences in places
- But a lot of rhetorical positioning against a background of the Government promoting expensive airport development
 - Way ahead of need in places
- And the continued modernisation of Heathrow requiring continuing substantial price increases
- It all fell far short of a Littlechildian 'negotiated settlement'
- Though the intentions were similar, if originating differently and independently.

What stopped us doing better? Part 1

- A legacy of mistrust that was too great to overcome or significantly ameliorate at the first outing
 - combined with a number of combative personalities, in some airlines particularly
- The CAA did not do enough to set the ‘rules of the game’
 - that is, the basic hygiene factors of negotiation (timetables, record keeping, etc)
 - Naively, in retrospect, the CAA had assumed that the parties could be relied upon for that
 - This was a mistake that subsequent aviation iterations of CE and its counterparts elsewhere have learned from.

What stopped us doing better? Part 2

- The necessary, statutorily determined presence (and functions) of the regulator itself constrained negotiation
 - Because there was an inbuilt incentive for the parties to leave room for a better outcome from a regulator's determination
- Interestingly, the subsequent and successful Gatwick 'contract and commitments' approach has been based on a more distant regulatory approach
 - as well as parties seeing mutual advantage in airline-by-airline agreements tailored to individual requirements

What stopped us doing better? Part 3

- In a fiercely competitive airline industry (where product differentiation includes airport facilities, services & price), the extent of common agreement within the airline community (& with the airport) has some natural limits (as Gatwick demonstrates)
- There was a sensitivity to inevitably substantial airport charge increases (to pay for enhanced infrastructure which benefited some airlines more than others)
- In a slot-constrained environment with scarcity rents (particularly at Heathrow), charge increases affected some airlines' bottom lines more than passenger fares. So commercial pressures may have reduced room and incentive for the 'give and take' of negotiation
- Instead, they incentivised extracting the maximum from the regulator
- But none of this is necessarily to criticise the parties which were facing commercial and other pressures.

Was the introduction of CE a success?

- Despite the limited progress in this first set of airport reviews culminating in 2008/9, I would judge the introduction of CE to have been a success.
- Although parties were critical of the CE process, there was no call for it to be stood down as opposed to improved.
- It has remained part of standard airport regulation, was adopted at NATS' request for its regulatory process, and has effectively been incorporated into other sectors.
- It would seem strange now to design a regulatory process that did not include significant customer consultation/negotiation

Was the introduction of CE a success?

(contd)

- Although agreement is often lacking in these processes there is little doubt that they have contributed to more customer-centric company approaches and a better definition of issues for regulators
- In aviation, CE laid the foundations for the different degrees of regulation/deregulation now seen
- Both the deregulation of Stansted and the current, lighter touch regime at Gatwick were based on direct contracting between airlines and airports
- Would this have proceeded at the pace it did without the prior CE exercise which put the parties more directly in touch with each other over the key variables affecting price and service?

Conclusion

- Constructive Engagement (CE) initially had limited success in promoting agreement
- However, it did promote greater dialogue and, possibly, understanding
- It also laid the foundations for future regulatory developments in the aviation sector
- and more broadly in other sectors.